

# THE EDUCATION (ACCESS FUNDS) (SCOTLAND) (No. 3) DETERMINATION 2022

Scottish Ministers make the following determination in exercise of the powers conferred by regulations 3, 4 and 5(c) and (d) of the Education (Access Funds) (Scotland) Regulations 1990(a) (“the 1990 Regulations”) and all other powers enabling them to do so.

## PART I GENERAL

### Citation and Effect

1. This Determination may be cited as the Education (Access Funds) (Scotland) (No.3) Determination 2022 and has effect from 1 August 2022.

### Making of Determinations

2. The Scottish Ministers (who may pay grants under regulation 2 of the 1990 Regulations for the purpose of providing financial assistance for students) make the determinations set out in paragraphs 3 to 13.

## PART II Further Education Bursaries

### Persons eligible for further education bursaries

3.—(1) Subject to sub-paragraphs (2) and (3), a college of further education may pay an allowance to be known as a “further education bursary” to or in respect of any person undertaking a course of education at the college who is a person described in one or more paragraphs of Part 2 of the schedule.

(2) To be eligible for the payment of a further education bursary a person must be undertaking fundable further education (as defined in section 5 of the Further and Higher Education (Scotland) Act 2005(b) (“the 2005 Act”).

(3) A person described in paragraphs 23 or 24 of Part 2 of the schedule is not eligible for the payment of a further education bursary.

(4) Part 3 of the schedule informs the meaning of “ordinarily resident” for the purposes of Part 2 of the schedule.

### Amount of further education bursaries

4.—(1) The amount of a further education bursary may, subject to sub-paragraph (2), include sums in respect of—

- (a) tuition and other fees payable in respect of the holder of the further education bursary,
- (b) travelling expenses necessarily incurred, or to be incurred, by the holder in undertaking the course of education in respect of which the further education bursary is awarded,

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(a) S.I. 1990/1534 as amended by S.I. 1993/1892 and S.S.I. 2013/80. The functions of the Secretary of State under sections 4 and 5(c) and (d) of the 1990 Regulations were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 2005 asp 6.

- (c) the maintenance of the holder and of any persons dependent on them during periods of full time study and during vacations, and
- (d) other expenses incurred, or to be incurred, by the holder in taking advantage of educational facilities.

(2) A further education bursary payable to, or in respect of, a person who is eligible for a further education bursary only by virtue of paragraphs 21 and 22 of Part 2 of the schedule may include sums only in respect of tuition and other fees payable in respect of that person.

(3) The amount of a further education bursary may take account of the sums, if any, which the holder, the holder's partner, the holder's parents and the holder's parents' partners can reasonably be expected to contribute towards the holder's expenses.

(4) The amount of a further education bursary may be revised at any time if the college of further education thinks fit having regard to—

- (a) the failure of the holder to comply with the requirements of the further education bursary,
- (b) all the circumstances of the holder, the holder's partner, the holder's parents and the holder's parents' partners as the case may be, or
- (c) any error made in determining the amount of, or entitlement to, the further education bursary.

(5) For the purposes of this Part, "partner", in relation to the holder or the holder's parent, means—

- (a) the spouse of that person,
- (b) the civil partner of that person,
- (c) a person ordinarily living with that person as if he or she were the spouse or civil partner of that person.

### **Conditions and requirements of further education bursaries**

**5.—**(1) The following shall be conditions of payment of every further education bursary for each academic year—

- (a) an application in such form as the college of further education may require shall be received by them by such date as they may require in respect of that year, and different dates may be required by them in respect of different courses, and
- (b) that application shall include an undertaking by the applicant to repay to the college of further education any amount of which they request repayment following a revisal in terms of paragraph 4(4).

(2) A college of education may treat an application received after any date required for the purposes of sub-paragraph (1)(a) as having been received by that date where they consider that, having regard to the circumstances of the particular case, it should be so treated.

(3) Every further education bursary shall be held subject to the following requirements—

- (a) the holder shall comply with the requirements of the course of education in respect of which the further education bursary is awarded,
- (b) the college of further education shall be satisfied as to the conduct and progress of the holder,
- (c) the holder shall provide the college of further education with such information and such documents as they may from time to time require to enable them to act in accordance with this Determination, and
- (d) the holder shall repay to the college of further education any sum in respect of which the holder has given an undertaking in terms of sub-paragraph (1)(b) and which falls to be repaid following a revisal in terms of paragraph 4(4).

## **Method of payment**

**6.**—(1) The further education bursary may be paid to the holder or to another person for their behoof, or in part to the holder and in part to the said other person, and any sum in respect of fees payable to an educational institution which is included in the amount of the further education bursary may be paid on behalf of the holder to the institution.

(2) The further education bursary may be paid in a single payment or by instalments as the college of further education thinks fit, but no payment shall be made before the holder has been accepted for admission to the course of education in respect of which the further education bursary is awarded.

(3) Payments may be made in such manner as the college of further education considers appropriate, and they may make it a condition of entitlement to payment that the eligible student shall provide them with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

## **PART III**

### **Discretionary Funds**

#### **Persons eligible for payments from discretionary funds**

**7.**—(1) A college of further education may pay a grant from discretionary funds to any person undertaking a course of education at the college in accordance with paragraphs 8 to 11.

(2) An institution within the higher education sector may pay a grant from discretionary funds to any person undertaking a course of education at the institution in accordance with paragraphs 10 to 12.

(3) Part 3 of the schedule informs the meaning of “ordinarily resident” for the purposes of Part 2 of the schedule.

#### **Further Education Discretionary Fund**

**8.** To be eligible for the payment of a grant from the Further Education Discretionary Fund, the person applying for support from that fund must—

- (a) be an eligible person under Part 2 of the schedule or be eligible to receive student support under equivalent provisions of legislation made under sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998<sup>(a)</sup> (“the Teaching Act”) or articles 3 and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998<sup>(b)</sup> (“the NI Order”),
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the Education (Scotland) Act 1980<sup>(c)</sup> (“the 1980 Act”),
- (c) be studying at least on a part-time basis, and
- (d) be undertaking fundable further education (as defined in section 5 of the 2005 Act).

#### **College Childcare Fund**

**9.** To be eligible for the payment of a grant from the College Childcare Fund the person applying for support from that fund must—

- (a) be an eligible person under Part 2 of the schedule,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates ) of the 1980 Act,

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(a) 1998 (c.30).

(b) S.I. 1998/1760 (N.I. 14).

(c) 1980 (c.44).

- (c) be studying at least on a part-time basis,
- (d) be undertaking fundable further education or fundable higher education (as defined in section 5 of the 2005 Act), and
- (e) have responsibility for the care of a child or children.

### **Higher Education Undergraduate Discretionary Fund**

**10.**—(1) To be eligible for the payment of a grant from the Higher Education Undergraduate Discretionary Fund the person applying for support from that fund must—

- (a) be an eligible person under Part 2 of the schedule or be eligible to receive student support under equivalent provisions of legislation made under sections 22, 42(6) and 43(1) of the Teaching Act or articles 3 and 8(4) of the NI Order,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates ) of the 1980 Act,
- (c) be studying on at least a part-time basis,
- (d) be undertaking fundable higher education (as defined in section 5 of the 2005 Act),
- (e) have availed himself or herself in the current academic year of the full entitlement to student support provided by Government and
- (f) be an undergraduate or in receipt of student support available to undergraduates.

(2) Paragraph 10(e) does not apply to a person who is eligible for the payment of a grant from the Higher Education Undergraduate Discretionary Fund only by virtue of paragraphs 21, 23 and 24 of Part 2 of the schedule.

### **Higher Education Postgraduate Discretionary Fund**

**11.**—(1) To be eligible for the payment of a grant from the Higher Education Postgraduate Discretionary Fund the person applying for support from that fund must—

- (a) be an eligible person under Part 2 of the schedule or be eligible to receive student support under equivalent provisions of legislation made under sections 22, 42(6) and 43(1) of the Teaching Act or articles 3 and 8(4) of the NI Order,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates ) of the 1980 Act,
- (c) be studying on at least a part-time basis,
- (d) be undertaking fundable higher education (as defined in section 5 of the 2005 Act) above first degree level, and
- (e) have availed himself or herself in the current academic year of the full entitlement to student support provided by Government.

(2) Paragraph 11(e) does not apply to a person who is eligible for the payment of a grant from the Higher Education Postgraduate Discretionary Fund only by virtue of paragraphs 21, 23 and 24 of Part 2 of the schedule.

### **University Childcare Fund**

**12.**—(1) To be eligible for the payment of a grant from the University Childcare Fund the person applying for support from that fund must—

- (a) be an eligible person under Part 2 of the schedule,
- (b) be deemed to have attained the age of 16 years under section 33 (school leaving dates) of the 1980 Act,
- (c) be studying on a full-time basis,
- (d) be undertaking fundable higher education (as defined in section 5 of the 2005 Act),

- (e) have availed himself or herself in the current academic year of the full entitlement to student support provided by Government, and
  - (f) have responsibility for the care of a child or children.
- (2) A person described in paragraphs 23 or 24 of Part 2 of the schedule is not eligible for the payment of a grant from the University Childcare Fund.

## PART IV REVOCATION

13. The Education (Access Funds) (Scotland) Determination 2022 (No.2) is revoked.

**Dr Roddy Macdonald**  
Deputy Director  
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Date: 27 July 2022

PART 1

Interpretation

In this schedule—

“allowance” except where the context otherwise requires, means a further education bursary paid or to be paid under the 1990 Regulations in accordance with Part II of this determination,

“asylum seeker” has the meaning in section 18 (asylum seeker: definition) of the Nationality, Immigration and Asylum Act 2002(a), and “child of an asylum seeker” shall be construed accordingly,

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

“Directive 2004/38” means Directive 2004/38/EC of the European Parliament and of the Council(c) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member States, and reference to a provision of this Directive—

- (a) is reference to the Directive as it had effect immediately before IP completion day,
- (b) is to be read, where appropriate, as if references to a “*Member State*” include the United Kingdom,

“EEA Agreement” means the agreement on the European Economic Area signed at Oporto on 2 May 1992(d), together with the protocol signed at Brussels on 17 March 1993(e), as modified or supplemented from time to time, but does not include any retained direct EU legislation,

“EEA EFTA separation agreement” means (as modified from time to time in accordance with any provision in it) the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union,”(f)

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person in Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“EEA frontier worker” means an EEA national who—

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

“EEA migrant worker” means an EEA national in the United Kingdom who is a worker but who is not an EEA frontier worker,

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(a) 2002 (c.41).  
 (b) Cm. 9171.  
 (c) OJ L 158, 30.04.04, p.77.  
 (d) CP 2073 and OJ L 1,3.1.1994,P3.  
 (e) CP 2183 and OJ L 1,3.1.1994,P572.  
 (f) CP 217

“EEA national” means a national of an EEA state,

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person but who is not an EEA frontier self-employed person,

“EEA state” means—

- (a) any Member State of the European Union, or
- (b) any other state that is party to the EEA agreement,

“employment” means full-time or part-time employment which, in a normal week, involves a significant number of hours of work and “employed” is construed accordingly, and references to employment include references to the holding of any office and to any occupation for monetary gain,

“EU national” means a person who is a national of any Member State for the purposes of the EU Treaties, of the European Union,

“EU overseas territories” means Aruba, Faeroe Islands, French Polynesia, French Southern and Antarctic Territories, Greenland, Mayotte, Netherlands Antilles (Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten), the Territory of New Caledonia and Dependencies, St Pierre et Miquelon and Wallis and Futuna Islands,

“European Economic Area” means the European Union and, subject to the conditions laid down in the EEA agreement, Iceland, Norway and Liechtenstein,

“family member” means, in relation to any person—

- (a) their spouse or civil partner, or
- (b) their direct descendants or those of their spouse or civil partner who are—
  - (i) under the age of 21, or
  - (ii) their dependants or those of their spouse or civil partner, or
- (c) their dependent direct relatives in the ascending line or those of their spouse or civil partner,

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

“parent” includes a step parent, a guardian, any other person having parental responsibilities for a child and any person having care of a child, and “child” shall be construed accordingly,

“person with protected rights” means—

- (a) a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement who—
  - (i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules,
  - (ii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of that regulation) has not ended,
  - (iii) otherwise has rights deemed to apply by virtue of Article 18(1)(d), (2) and (3) (issuance of residence documents) of the EU withdrawal agreement, Article 17(1)(d), (2) and (3) (issuance of residence documents) of the EEA EFTA separation agreement, or Article 16(1)(d), (2) and (3) (issuance of residence documents) of the Swiss citizens’ rights agreement, or
  - (iv) is an Irish national who, pursuant to section 3ZA (Irish citizens) of the Immigration Act 1971, does not require leave to enter or remain in the UK, 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,

“refugee” means a person within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28 July 1951(a), as extended by article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31 January 1967(b), and any reference to the child of a refugee includes a reference to a step-child,

“relevant date” in relation to a course, means, for a course starting in the period—

- (a) 1 August to 31 December, 1 August,
- (b) 1 January to 31 March, 1 January,
- (c) 1 April to 30 June, 1 April,
- (d) 1 July to 31 July, 1 July, in each case the relevant date being in the year of commencement of the appropriate academic year of the course,

“relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules,

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

“self-employed person” means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of either Article 7 (right of residence for more than three months) of Directive 2004/38 or Article 28 of the EEA Agreement, as the case may be, or
- (b) in relation to a Swiss national in the United Kingdom, a person who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement, but who is not a Swiss frontier self-employed person,

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

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person (within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier employed person,

“Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland, and
- (b) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar or that EEA state, as the case may be, daily or at least once a week,

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland agreement) in Scotland, and

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(a) Cmnd. 9171.

(b) Cmnd 3906.

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

(d) CP 64.



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

“Switzerland 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<sup>(a)</sup> and which came into force on 1st June 2002 and reference to a provision of the Agreement—

- (a) is reference to the Agreement as it had effect immediately before IP completion day,
- (b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,

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

“young asylum seeker” means an unaccompanied asylum-seeker under the age of 18.

## PART 2

### Eligible Persons

#### **Persons who are settled in the United Kingdom or have long residence**

1. A person who on the relevant date—

- (a) is ordinarily resident in Scotland,
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the immediately preceding 3 year period, and
- (c) is—
  - (i) settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971<sup>(b)</sup>,
  - (ii) under the age of 18 and has lived in the United Kingdom and Islands throughout the seven-year period preceding the relevant date,
  - (iii) aged 18 or above and, preceding the relevant date, has lived in the United Kingdom and Islands throughout either half their life or a period of twenty years,
  - (iv) aged 18 or above and received support by virtue of head (ii) for the academic year immediately preceding the relevant date, or
  - (v) the spouse, civil partner or child of a person described in head (i).

#### **EU nationals etc. with protected rights who have been living in the UK and Islands for three years**

2.—(1) A person with protected rights who—

- (a) is an EU national or the family member of an EU national,
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date, and
- (c) is ordinarily resident in Scotland on the relevant date.

(2) For the purposes of this paragraph—

- (a) a person referred to in sub-paragraph 1(a) does not include an EU national who is also a United Kingdom national who has not utilised a right of residence, and

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(a) Cm. 5639.

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

- (b) a United Kingdom national has utilised a right of residence if that person has—
  - (i) exercised a right under Article 7 (right of residence for more than three months) of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement in a state other than the United Kingdom, or
  - (ii) resided in a state—
    - (aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom, and
    - (bb) of which that person is a national,

in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement,
- (c) in sub-paragraph (1)(a), the reference to a “family member of an EU national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EU national” in Part 1 of this schedule.

### **Irish nationals who are settled in the United Kingdom**

- 3.** A person who—
- (a) is an Irish national,
  - (b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
  - (c) is ordinarily resident in Scotland on the relevant date,
  - (d) has been ordinarily resident in the United Kingdom, Islands and the Republic of Ireland throughout the period of three years immediately preceding the relevant date.

### **Family members of a relevant person of Northern Ireland**

- 4.** A person who—
- (a) is a family member of a relevant person of Northern Ireland as defined in paragraph (b) of the definition of “person with protected rights” in Part 1 of this schedule,
  - (b) is ordinarily resident in Scotland on the relevant date, and
  - (c) has been ordinarily resident in the United Kingdom, Islands or Ireland throughout the period of three years immediately preceding the relevant date.

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

- 5.—**(1) A person with protected rights or a qualifying frontier worker 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-head (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-head (iv) or (v),
  - (b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
  - (c) subject to sub-paragraph (3), is ordinarily resident in Scotland on the relevant date.
- (2) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers)

(EU Exit) Regulations 2020<sup>(a)</sup> who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iv), (v) or (vi).

(4) In this paragraph, any description of a person in sub-paragraph (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in Part 1 of this schedule, and sub-paragraph (1)(a)(iii) and (vi) are to be construed accordingly.

#### **Workers who benefitted from the Freedom of Movement for Workers Regulation—**

**6.** A person with protected rights who—

- (a) 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<sup>(b)</sup>, as extended by the EEA agreement,
- (b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
- (c) is ordinarily resident in Scotland on the relevant date.

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

**7.—**(1) A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,
- (b) was ordinarily resident in Scotland for at least 3 continuous years and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence before IP completion day,
- (c) was ordinarily resident on IP completion day in—
  - (i) Gibraltar or the territory comprising the European Economic Area and Switzerland, or
  - (ii) the United Kingdom or Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland,

and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the relevant date,

- (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and
- (e) is undertaking a course for which the relevant date is prior to 31 July 2028.

(2) For the purposes of this paragraph, a person has utilised a right of residence if that person—

- (a) is—
  - (i) a United Kingdom national,
  - (ii) a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding provisions under the EEA agreement or the Switzerland Agreement), or

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(a) 2020 No. 1213

(b) OJ L 141, 27.5.2011, p.1.

- (iii) a person who had a right of permanent residence arising under Directive 2004/38, and
- (b) either—
  - (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement in a state other than the United Kingdom, or
  - (ii) in the case of a person who had a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone 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.

(3) Sub-paragraph (1)(a) and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii) and is accompanying or joining that United Kingdom national in the United Kingdom.

## **Refugees**

### **8. A person who—**

- (a) at the date their application for a grant under this Determination is received by the college of further education or institution within the higher education sector, is—
  - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first recognised as a refugee, or
  - (ii) the spouse, civil partner or child of such a refugee, and
- (b) is ordinarily resident in Scotland on the relevant date.

## **Persons granted leave following on from refugee claim**

### **9. A person who—**

- (a) (i) has 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 that person is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and that person has been granted leave to enter or remain accordingly,
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such leave to enter or remain, and
- (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person of the kind described in sub paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

## **Iraqi nationals**

### **10. A person who—**

- (a) (i) is an Iraqi national who has been granted indefinite leave to enter the United Kingdom under the Locally Engaged Staff Assistance Scheme (Direct Entry) operated by the United Kingdom Home Office,
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such indefinite leave to enter the United Kingdom, and
- (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

## Syrian Nationals

### 11. A person who—

- (a) (i) is a Syrian national who has been granted humanitarian protection to enter the United Kingdom under the Syrian Vulnerable Persons Relocation Scheme operated by the United Kingdom Home Office ,
  - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such humanitarian protection to enter the United Kingdom, and
  - (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person of the kind described in subparagraph (a) and who is ordinarily resident in Scotland on the relevant date.

## Afghan Nationals

### 12. A person who—

- (a) (i) is an Afghan national who has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme<sup>(a)</sup> operated by the United Kingdom Home Office,
  - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom, and
  - (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

## Relocated Afghan Nationals

### 13. A person who—

- (a) has been granted leave under the Afghan Citizens Resettlement Scheme<sup>(b)</sup> or granted leave under the Afghan Relocations and Assistance Policy Scheme,
    - (i) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such leave, and
    - (ii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

## Ukrainian Nationals

### 14.—(1) A person who—

- (a) has made a relevant application to the United Kingdom Home Office where that relevant application is still being considered, or
  - (b) has been granted leave to remain following a relevant application, and
- is ordinarily resident in Scotland.

### (2) In this paragraph, a “relevant application” is an application to—

- (a) the Ukraine Family Scheme<sup>(c)</sup>,

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(a) A copy of the Locally Employed Staff Ex-Gratia Scheme can be viewed at [Afghanistan Locally Employed Staff Ex-Gratia Scheme - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/schemes/locally-employed-staff-ex-gratia-scheme)

(b) A copy of the Afghan Relocations and Assistance Policy Scheme can be viewed at [Afghan Relocations and Assistance Policy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/schemes/afghan-relocations-and-assistance-policy-scheme)

(c) A scheme operated by the Home Office enabling a Ukrainian national, or the immediate family member of a Ukrainian national resident in Ukraine prior to 1 January 2022 to join family members or to extend their stay in the United Kingdom.

- (b) the Ukraine Sponsorship Scheme(a),
- (c) the Ukraine Extension Scheme(b), or
- (d) the United Kingdom Home Office for leave outside the immigration rules, as defined in section 33(1) of the Immigration Act 1971(c), where that 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

by an individual who is eligible to apply for that scheme.

### **Persons granted stateless leave**

**15.** A person who—

- (a) (i) has been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the United Kingdom Home Office ,
- (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted that leave, and
- (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

### **Persons who granted discretionary leave to remain as a victim of modern slavery**

**16.—(1)** A person who—

- (a) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery,
- (b) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such discretionary leave to remain in the United Kingdom, and
- (c) is ordinarily resident in Scotland on the relevant date.

(2) For the purposes of this paragraph, “modern slavery” includes human trafficking, slavery, servitude and forced or compulsory labour.

### **Persons granted indefinite leave to remain as a victim of domestic violence or domestic abuse**

**17.** A person who—

- (a) has been granted indefinite leave to remain in the United Kingdom under any of the following provisions of the immigration rules, as defined in section 33(1) of the Immigration Act 1971—
  - (i) paragraph 289B (victims of domestic violence),
  - (ii) paragraph D-DVILR.1.1. of Appendix FM (victims of domestic abuse), or
  - (iii) paragraph 40 of Appendix Armed Forces (partners of members of HM Forces who are the victims of domestic violence),

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The current Home Office guidance in relation to the Ukraine Family Scheme is available here: Apply for a Ukraine Family Scheme visa - GOV.UK ([www.gov.uk](http://www.gov.uk))

- (a) A scheme operated by the Home Office enabling the sponsorship of Ukrainian nationals, or the immediate family member of a Ukrainian national resident in Ukraine prior to 1 January 2022 to come to the United Kingdom. The current Home Office guidance in relation to the Ukraine Sponsorship Scheme (Homes for Ukraine Scheme) is available here: Apply for a visa under the Ukraine Sponsorship Scheme (Homes for Ukraine) - GOV.UK ([www.gov.uk](http://www.gov.uk)).
- (b) A scheme opening on 3 May 2022 and operated by the Home Office enabling a Ukrainian national, or the immediate family member of a Ukrainian national, who is in the United Kingdom and had permission to stay in the United Kingdom on or before 18 March 2022 to stay in the United Kingdom. The current Home Office guidance in relation to the Ukraine Extension Scheme is available here: Ukrainian nationals in the UK: visa support - GOV.UK ([www.gov.uk](http://www.gov.uk))
- (c) <https://www.legislation.gov.uk/ukpga/1971/77/section/33>

- (b) has been ordinarily resident in the United Kingdom and Islands since that person was first granted such leave, and
- (c) is ordinarily resident in Scotland on the relevant date.

### **Persons granted Calais leave**

**18.** A person who—

- (a) has extant leave to remain in the United Kingdom under paragraph 352J, 352K, 352L or 352T (Calais leave and “leave in line” granted by virtue of being a dependent child of a person granted Calais leave) of the immigration rules, as defined in section 33(1) of the Immigration Act 1971,
- (b) has been ordinarily resident in the United Kingdom and the Islands since that person was first granted such leave, and
- (c) is ordinarily resident in Scotland on the relevant date.

### **Children of Swiss nationals**

**19.** A person who—

- (a) is the child of a Swiss national,
- (b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement,
- (c) is ordinarily resident in Scotland on the relevant date,
- (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.

### **Children of Turkish Workers**

**20.—(1)** 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) was ordinarily resident in the United Kingdom immediately before IP completion day,
- (c) is ordinarily resident in Scotland on the relevant date, and
- (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar and in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the relevant date.

**(2)** In this paragraph “Turkish worker” means a Turkish national who—

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

### **EU nationals etc with protected rights who have not been living in the UK and Islands for 3 years**

**21.** A person with protected rights who—

- (a) is either an EU national or the family member of an EU national,
- (b) seeks support in respect of a course of education at an establishment in Scotland, and
- (c) is ordinarily resident in the United Kingdom and Islands on the relevant date.

**Persons who are children of asylum seekers or young asylum seekers who applied for asylum before 2006**

22.—(1) A person who—

- (a) is the child of an asylum seeker or is a young asylum seeker,
- (b) is resident in Scotland on the relevant date,
- (c) has been resident in Scotland throughout the period of 3 years immediately preceding the relevant date,
- (d) was under 18 years old on the date when the application for asylum was made, which application must have been made prior to 1st December 2006,
- (e) is under 25 years old on the relevant date, and
- (f) seeks an allowance in respect of a course of education at an establishment in Scotland.

**Persons who are asylum seekers**

23.—(1) A person who—

- (a) is an asylum seeker, and
- (b) is ordinarily resident in Scotland on the relevant date.

**Persons who are experiencing financial hardship as a direct result of any global conflict**

24. A person who is experiencing financial hardship as a direct result of any global conflict.

## PART 3

### Ordinary Residence

**Ordinary residence on relevant date**

1.—(1) For the purposes of Part 2 of this schedule, a person is to be treated as being ordinarily resident in Scotland on the relevant date if the college of further education or institution within the higher education sector is satisfied that that person was not actually so resident only because—

- (a) that person, or their spouse or civil partner, or either of their parents, or
- (b) in the case of a dependant direct relative in the ascending line, the child upon whom that person was dependent or that child's spouse or civil partner,  
was temporarily employed outside Scotland, or attending a course of study or undertaking postgraduate research outside Scotland.

(2) Subject to sub-paragraph (3), a person is not to be treated as being ordinarily resident in Scotland on the relevant date if the college of further education or institution within the higher education sector is satisfied that that person's residence there on that date is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant date as respects any part of which its purpose was wholly or mainly that of receiving full time education.

(3) Sub-paragraph (2) does not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full time education which has led to a right of permanent residence arising under Directive 2004/38.

**Ordinary residence for specified period: general and interpretation**

2. Paragraphs 3 to 5 apply in determining, for the purposes of—

- (a) paragraph 1(b) (persons who are settled in the United Kingdom or have long residence),



- (b) paragraph 2(1)(b) (EU nationals etc. with protected rights who have been living in the UK and Islands for three years),
- (c) paragraph 3(d) (Irish nationals who are settled in the United Kingdom),
- (d) paragraph 5(1)(b) (workers, employed persons, self-employed persons and their family members),
- (e) paragraph 6(b) (workers who benefitted from the Freedom of Movement for Workers Reg
- (f) paragraph 7(1)(d) (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere),
- (g) paragraph 19(d) (children of Swiss nationals), and
- (h) paragraph 20(1)(d) (children of Turkish workers)

of this schedule whether a person is to be treated as having been or not having been ordinarily resident for the period specified in those paragraphs (in this schedule “specified period”) in the United Kingdom, the Islands, Gibraltar, Ireland, the European Economic Area or Switzerland or the EU overseas territories or Turkey (in this schedule “relevant area”).

### **Ordinary residence for specified period: exclusion for education purposes**

3.—(1) A person is not to be treated as having been ordinarily resident in the relevant area for the specified period if the college of further education or the institution within the higher education sector is satisfied that that person was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education.

(2) Sub-paragraph (2) does not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38, in which case the person must have been ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence.

(3) A person who is ordinarily resident in Scotland as a result of having moved from the Islands for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the Islands.

(4) A person who is ordinarily resident in Scotland as a result of having moved from a part of the United Kingdom other than Scotland for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the part of the United Kingdom from where they moved.

### **Ordinary residence for specified period: length of residence requirements for dependent and independent students born in the relevant area**

4.—(1) A person is to be treated as having been ordinarily resident in the relevant area for the specified period if the college of further education or institution within the higher education sector is satisfied that the person was born and has spent the greater part of their life in the relevant area and that—

- (a) one or more parent has been ordinarily resident in the relevant area throughout the specified period and that person is not an independent student, or
- (b) that person has been ordinarily resident in the relevant area for at least 1 year of the specified period and no part of that period of residence was wholly or mainly for the purpose of receiving full-time education.

(2) In paragraph 4(1)(a), “independent student” means a student who on the relevant date—

- (a) is aged 25,
- (b) is married or in a civil partnership,
- (c) has no parent living,
- (d) has the care of a person under the age of 18 years who is wholly or mainly financially dependent on them, or

- (e) has supported themselves out of their earnings for periods aggregating not less than 3 years.
- (3) In sub-paragraph 2(e) a student is regarded as having supported themselves out of their earnings for any period during which that student—
- (a) was participating in arrangements for training for the unemployed under any scheme operated, sponsored or funded by any state authority or agency (national, regional or local),
  - (b) was in receipt of benefit payable by any such state authority or agency, in respect of a person who is available for employment but who is unemployed,
  - (c) was available for employment and had complied with any requirement of registration imposed by a state authority or agency as a condition of entitlement for participation in arrangements for training or receipt of benefit,
  - (d) received any pension, allowance or other benefit paid by reason of a disability to which that person is subject, or by reason of confinement, injury or sickness, paid by any state authority or agency, by an employer or any former employer or by any other person, or
  - (e) held an advance postgraduate award or comparable award.

**Ordinary residence for specified period: temporary absence for employment or study**

5. A student is treated as having been ordinarily resident in the relevant area for the specified period if the college of further education or institution within the higher education sector is satisfied that the person was not actually so resident in the relevant area for the specified period only because—

- (a) that student, or their spouse or civil partner, or either of their parents, either of their guardians or any other person having parental responsibility for that person, or
  - (b) in the case of a dependent direct relative in the ascending line, the child upon whom that student was dependent or that child's spouse or civil partner,
- was temporarily employed outside the relevant area, or attending a course of study or undertaking postgraduate research outside the relevant area.

## EXPLANATORY NOTE

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

This determination is made under the Education (Access Funds) (Scotland) Regulations 1990 S.S.I. 1990/1534 (“the 1990 Regulations”). Under the 1990 Regulations, the Scottish Ministers are empowered to pay grants for the financial assistance of students attending colleges of further education and institutions within the higher education sector on such terms and conditions as the Scottish Ministers determine. These grants are sub-divided into sums for payment of (i) further education bursaries and (ii) discretionary funds.

Under the Education (Access Funds) (Scotland) (No.3) Direction 2022, the Scottish Ministers have directed the Scottish Further and Higher Education Council to administer further education bursaries and the discretionary funds for the financial assistance of students attending colleges of further education on their behalf. The Student Awards Agency Scotland is the executive agency of the Scottish Ministers with regard to the higher education sector and administers the discretionary funds for the financial assistance of students attending institutions within the higher education sector.

Through this determination, the Scottish Ministers are setting out the terms and conditions on which further education bursaries and discretionary funds are to be paid.

Paragraphs 3 to 6 in conjunction with the schedule set out the terms and conditions on which further education bursaries are to be paid to students attending colleges of further education.

Paragraphs 7 to 11 in conjunction with the schedule set out the terms and conditions on which discretionary funds are to be paid to students attending colleges of further education.

Paragraphs 7 and 10 to 12 in conjunction with the schedule set out the terms and conditions on which discretionary funds are to be paid to students attending institutions within the higher education sector.

Paragraph 1 of Part 2 of the schedule extends home fee status and student support for those with a relevant connection to Scotland to include the spouse, civil partner or child of the qualifying individual. This paragraph also updates the long residency criteria to ensure that individuals who were under 18 and eligible for support retain this eligibility once they reach the age of 18 and continue end-on study on a different course.

Paragraph 13 of Part 2 of the schedule extends access to the further education bursaries and the discretionary funds in this determination to Afghan nationals who have been granted leave under the Afghan Resettlement Scheme or under the Afghan Relocation and Assistance Policy Scheme. This Determination also continues to allow those who have made a relevant application to the Home Office or been granted leave to remain following a relevant application, under the Ukraine Family Scheme, the Ukraine Sponsorship Scheme (Homes for Ukraine Scheme), or the Ukraine Extension Scheme as well as those who have made a relevant application to the Home Office for leave outside the immigration rules but left Ukraine in connection with the Russian invasion of 24 February 2022, to be eligible for access to the further education bursaries and the discretionary funds in this determination (paragraph 14 of Part 2 of the schedule).

Paragraph 23 of Part 2 of the schedule now allows Asylum Seekers to also access the Higher Education Undergraduate Discretionary Fund and the Postgraduate Discretionary Fund and paragraph 24 of Part 2 of the schedule allows those persons who are experiencing financial hardship as a direct result of global conflict access to the Further Education Discretionary Fund, the College Childcare Fund, the Higher Education Undergraduate Discretionary Fund and the Higher Education Postgraduate Discretionary Fund. Paragraph 13 revokes the Education (Access Funds) (Scotland) Determination 2022 (No.2). Further guidance on eligibility for further education bursaries (paragraphs 3 to 6) and grants from discretionary funds (paragraphs 7 to 12) is available from the Scottish Further and Higher Education Funding Council and the Student Awards Agency Scotland.