

SCHEDULE 1

Regulation 4(2)

FEES - EXCEPTED STUDENTS

1. A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (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) an EEA frontier worker or an EEA frontier self-employed person; or
 - (iv) a Swiss frontier worker or a Swiss frontier self-employed person; and
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.
2. A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (a) is—
 - (i) the family member of a person mentioned in paragraph 1(a); or
 - (ii) has a right not to be charged higher relevant fees by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽¹⁾, as extended by the EEA agreement; and
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.
- 3.—(1) A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (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 (and the Scottish Ministers are satisfied that such residence was not in any way attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education) and settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;
 - (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
 - (d) in the case where the ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (c).

(2) For the purposes of this paragraph, a post 2011/12 student has utilised a right of residence if that post 2011/12 student—
 - (a) is—
 - (i) a United Kingdom national;
 - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38⁽²⁾ (or under corresponding provisions in the EEA agreement or the Switzerland Agreement⁽³⁾);

(1) OJ No L 257, 19.10.68, p.2 (OJ/SE 1968(II) p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L 245, 26.8.92, p.1).

(2) OJ No 158, 30.4.2004, p.77.

(3) Cm. 5639.

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- (iii) a person who has 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 post 2011/12 student who has 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 post 2011/12 student is a national or of which the person, in relation to whom that post 2011/12 student is a family member, is a national.
- (3) Sub-paragraph (1)(a) does not apply where the post 2011/12 student falls within sub-paragraph (2)(a)(ii).
- 4. A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (a) 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.
- 5. A post 2011/12 student is an excepted student if —
 - (a) that post 2011/12 student—
 - (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) that post 2011/12 student 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.
- 6. A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (a) is an Iraqi national who—
 - (i) has been granted indefinite leave to enter the United Kingdom under the Locally Engaged Staff Assistance Scheme (Direct Entry) operated by the Home Department;
 - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted 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.
- 7. A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (a) is a person who has been granted temporary protection and who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted temporary protection;

- (b) did not attain the age of 18 years prior to the beginning of the current academic year of the student's course; and
 - (c) is ordinarily resident in Scotland on the relevant date.
- 8.** A post 2011/12 student is an excepted student if that post 2011/12 student—
- (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; and
 - (e) is under 25 years old on the relevant date.
- 9.—(1)** A post 2011/12 student is an excepted student if that post 2011/12 student—
- (a) is, on the relevant date, a non UKEU national or the family member of such a national;
 - (b) is ordinarily resident in Scotland on the relevant date;
 - (c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date; and
 - (d) in the case where their 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 prior to the period of residence referred to in paragraph (c).
- (2) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EU national on the relevant date is treated as being satisfied.
- 10.—(1)** A post 2011/12 student is an excepted student if that post 2011/12 student—
- (a) is, on the relevant date, an EU national or a family member of such national; and
 - (b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.
- (2) Sub-paragraph (1)(b) does not apply to a family member of an EU national where that EU national has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.
- (3) For the purposes of this paragraph—
- (a) an EU national does not include a United Kingdom national who has not utilised a right of residence; and
 - (b) a United Kingdom national has utilised a right of residence if that person 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.
- (4) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EU national on the relevant date is treated as being satisfied.
- 11.** A post 2011/12 student is an excepted student if that post 2011/12 student—

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- (a) is the child of a Swiss national in respect of whom it is not lawful to charge higher relevant fees by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
- (c) in the case where the ordinary residence referred to in sub-paragraph (b) 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 prior to the period of residence referred to in sub-paragraph (b).

12. A post 2011/12 student is an excepted student if that post 2011/12 student was admitted to the course of education in pursuance of arrangements with an institution outside the United Kingdom for the exchange of students on a fully reciprocal basis.

13. A post 2011/12 student is an excepted student if that post 2011/12 student—

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in Scotland on the relevant date; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the relevant date.

SCHEDULE 2

Regulation 5

ORDINARY RESIDENCE

1.—(1) For the purposes of regulation 3(a) and paragraph 9(1)(b) of Schedule 1, a post 2011/12 student is to be treated as being ordinarily resident in Scotland on the relevant date if that post 2011/12 student was not actually so resident only because—

- (a) that post 2011/12 student 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 post 2011/12 student was dependent or that child's spouse or civil partner,

was temporarily—

- (i) employed outside Scotland; or
- (ii) attending a course of study or undertaking postgraduate research outside Scotland.

(2) For the purposes of regulation 3(a) and subject to sub-paragraph (3), a post 2011/12 student is not to be treated as being ordinarily resident in Scotland on the relevant date if that post 2011/12 student'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 post 2011/12 student who has acquired settled status in the United Kingdom under the Immigration Act 1971⁽⁴⁾ as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38.

2.—(1) Sub-paragraphs (2) to (5) apply in determining, for the purposes of regulation 3(b) and paragraphs 1(b), 2(b), 3(1)(c), 9(1)(c), 10(1)(b), 11(b) and 13(c) of Schedule 1, whether a post 2011/12 student is to be treated as having been or not having been ordinarily resident for the period specified in those paragraphs (in this paragraph, “the specified period”) in the United Kingdom and

(4) 1971 c.77.

Islands, the European Economic Area, Switzerland, the EU overseas territories or Turkey (in this paragraph, “the relevant area”).

(2) A post 2011/12 student is not to be treated as having been ordinarily resident in the relevant area for the specified period in regulation 3(b) if that post 2011/12 student was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education, unless the post 2011/12 student 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 post 2011/12 student 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 post 2011/12 student is not to be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 10(1)(b) of Schedule 1 if that post 2011/12 student was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education.

(4) A post 2011/12 student is to be treated as having been ordinarily resident in the relevant area for the specified period if that post 2011/12 student was born and has spent the greater part of their life in the relevant area and—

- (a) their parents or either of them have been ordinarily resident in the relevant area throughout the specified period and that post 2011/12 student is not an independent student; or
- (b) that post 2011/12 student has been ordinarily resident in the relevant area for at least one year of the specified period and, in the case of those qualifying by virtue of regulation 3 or paragraph 10 of Schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.

(5) A post 2011/12 student is to be treated as having been ordinarily resident in the relevant area for the specified period if that post 2011/12 student was not actually ordinarily resident in the relevant area for the specified period only because—

- (a) that post 2011/12 student, or their spouse or civil partner, or either of their parents; or
- (b) in the case of a dependent direct relative in the ascending line, the child upon whom that post 2011/12 student was dependent or that child’s spouse or civil partner,

was temporarily—

- (i) employed outside the relevant area; or
- (ii) attending a course of study or undertaking postgraduate research outside the relevant area.

3.—(1) In paragraph 2(4)(a), “an independent student” means a post 2011/12 student who prior to the relevant date—

- (a) has attained the age of 25 years;
- (b) is married or in a civil partnership;
- (c) has no parent living;
- (d) had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them; or
- (e) has been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A post 2011/12 student is to be regarded as having been self-supporting out of their earnings for any period during which that post 2011/12 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;

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- (b) was in receipt of benefit payable by any state authority or agency, national, regional or local, 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 body referred to in paragraphs (a) or (b) 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 post 2011/12 student is subject, or by reason of confinement, injury or sickness, paid by any state authority or agency, national, regional or local, by an employer or any former employer or by any other person; or
- (e) held an advance postgraduate or other comparable award.