

## SCHEDULE 1

Regulation 3(1)

### PERSONS ELIGIBLE FOR ALLOWANCES

**1.** A person who—

- (a) is ordinarily resident in Scotland on the relevant date;
- (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 settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971(1) on the relevant date.

**2.—(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) 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; and
- (c) subject to sub paragraph (2), is ordinarily resident in Scotland on the relevant date.

(2) Sub paragraph (1)(c) does not apply where the person applying for support falls within paragraph (a)(iii) or (iv) of sub paragraph (1).

**3.—(1)** A person who—

- (a) is—
  - (i) the family member of a person mentioned in paragraph 2(1)(a); or
  - (ii) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers(2), as extended by the EEA 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) subject to sub paragraph (2), is ordinarily resident in Scotland on the relevant date.

(2) Sub paragraph (1)(c) does not apply where the person applying for support is a family member of a person falling within paragraph 2(1)(a)(iii) or (iv).

**4.—(1)** A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
- (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and the Scottish Ministers are satisfied that such residence was not in any sense 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;

(1) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

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

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- (c) is ordinarily resident in Scotland on the day on which the first term of the first academic year of the course actually begins;
  - (d) 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
  - (e) in the case where their ordinary residence referred to in paragraph (d) 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 (d).
- (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 with rights under Article 7 of Directive 2004/38<sup>(3)</sup> (or corresponding provisions under the EEA agreement or the Switzerland Agreement<sup>(4)</sup>); or
    - (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 person 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 person is a national or of which the person in relation to whom that person is a family member is a national.
5. A person who—
- (a) at the date the Scottish Ministers received their application for an allowance, 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.
6. 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.
7. A person who—

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<sup>(3)</sup> O.J. No. L 158, 30.04.04, p.77.

<sup>(4)</sup> Cm. 5639.

- (a) at the date the Scottish Ministers receive that person's application for an allowance 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) has not attained the age of 18 years on the relevant date; and
- (c) is ordinarily resident in Scotland on the relevant date,

provided that an allowance paid to a person only by virtue of that person qualifying under this paragraph shall not continue beyond the end of any academic year in which that person attains the age of 18 years.

**8.** A person who—

- (a) is a non UKEC national or the child 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).

**9.** A person who—

- (a) is a non UK EC national or an EU overseas territories national or a family member of either;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland or the EU overseas territories throughout the period of 3 years immediately preceding the relevant date; and
- (c) seeks an allowance in respect of a course of education at an establishment in Scotland.

**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 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;
- (c) is ordinarily resident in Scotland on the relevant date; and
- (d) in the case where their ordinary residence referred to in 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 paragraph (b).

## SCHEDULE 2

Regulation 3(2)

### ORDINARY RESIDENCE

**1.—(1)** For the purposes of paragraph 1(a) and paragraph 8(b) of Schedule 1 a person shall be treated as being ordinarily resident in Scotland on the relevant date if the Scottish Ministers are 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

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(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 for the time being—

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

(2) For the purposes of paragraph 1(a) of Schedule 1 and subject to sub paragraph (3), a person shall not be treated as being ordinarily resident in Scotland on the relevant date if the Scottish Ministers are 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) shall not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971<sup>(5)</sup> 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) shall apply in determining, for the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c), 9(b) and 10(b) of Schedule 1 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 paragraph, “the specified period”) specified period in the United Kingdom, the European Economic Area or Switzerland or the EU overseas territories (in this paragraph, “the relevant area”).

(2) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 1(b) of Schedule 1, if the Scottish Ministers are satisfied that that person was resident therein for any part of that period wholly or mainly for the purpose of receiving full time education, unless—

- (a) the person is treated as ordinarily resident in accordance with sub paragraph (5) below; or
- (b) the person 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 shall not be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 9(b) of Schedule 1 if the Scottish Ministers are satisfied that that person was resident therein for any part of that period wholly or mainly for the purpose of receiving full time education, unless that person is treated as ordinarily resident by virtue of sub paragraph (5).

(4) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the Scottish Ministers are satisfied that the person was born and has spent the greater part of their life in the relevant area and that—

- (a) their parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she 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, in the case of those qualifying by virtue of paragraph 1 or 9 of Schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.

(5) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the Scottish Ministers are satisfied that the person was not actually ordinarily resident in the relevant area for the specified period only because—

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(5) 1971 c. 77.

- (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 for the time being—
- (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 person 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; or
  - (d) has been self supporting out of their earnings for periods aggregating not less than 3 years.
- (2) A person shall be regarded as having been self supporting out of their earnings for any period during which that person—
- (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 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 person 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;
  - (e) held a Scottish Studentship or comparable award; or
  - (f) could not reasonably be expected to be self supporting out of their earnings because that person had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them.