

SCHEDULE 2

Regulation 5

Ordinary Residence

Students with a relevant connection with Scotland: ordinary residence on relevant date

1.—(1) For the purposes of regulation 3(a) (relevant connection with Scotland), a student is to be treated as being ordinarily resident in Scotland on the relevant date if that student was not actually so resident only because—

- (a) that 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 student 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) For the purposes of regulation 3(a) and subject to sub-paragraph (3), a student is not to be treated as being ordinarily resident in Scotland on the relevant date if that 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 student 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

2. Paragraphs 3 to 5 apply in determining, for the purposes of regulation 3(b) (relevant connection with Scotland) and paragraphs 1(1)(b) (EU nationals etc. with protected rights who have been living in the UK for three years), 2(d) (Irish nationals who are settled in the United Kingdom), 3(c) (family members of a relevant person of Northern Ireland), 4(1)(b) (workers, employed persons, self-employed persons and their family members), 5(b) (workers who benefitted from the Freedom of Movement for Workers Regulation), 6(1)(d) (persons who are settled in the United Kingdom and have exercised a right of residence elsewhere), 19(c) (children of Swiss nationals) and 20(1)(d) (children of Turkish workers) of schedule 1, whether a student is to be treated as having been or not having been ordinarily resident for the period specified in that regulation or those paragraphs (in this schedule, "specified period") in the United Kingdom, Ireland, Gibraltar, the European Economic Area, Switzerland or Turkey (in this schedule, "relevant area").

Ordinary residence for specified period: exclusion for educational purposes

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

(2) Sub-paragraph (1) does not apply to a student 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 student must have been ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland immediately prior to the start of that period of residence.

(3) A student 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: residence requirements for students born in the relevant area

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

- (a) one or more parent has been ordinarily resident in the relevant area throughout the specified period and that student is not an independent student, or
- (b) that 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 (relevant connection with Scotland) or paragraph 1 (EU nationals etc. with protected rights) of schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.

(2) In sub paragraph (1)(a), “independent student” means a student who prior to the relevant date—

- (a) is aged 25,
- (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 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.

(3) In sub paragraph 2(e) a student is to be regarded as having been self-supporting 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 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 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.

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

5. A student is to be treated as having been ordinarily resident in the relevant area for the specified period if that student was not actually ordinarily 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, 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.