

## SCHEDULE 1

Regulation 4(2)

### Fees - Excepted Students

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

- 1.—(1) A student is an excepted student if that student is a person with protected rights who —
- (a) is either an EU national or the family member of an EU national,
  - (b) has been ordinarily resident in the United Kingdom throughout the period of 3 years immediately preceding the relevant date, and
  - (c) is ordinarily resident in the United Kingdom 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,
  - (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) 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 regulation 2(1) (interpretation).

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

2. A student is an excepted student if that student—
- (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(1) on the relevant date,
  - (c) is ordinarily resident in Scotland on the relevant date, and
  - (d) has been ordinarily resident in the United Kingdom or Ireland throughout the period of three years immediately preceding the relevant date.

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

3. A student is an excepted student if that student—
- (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”,
  - (b) is ordinarily resident in Scotland on the relevant date, and

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(1) 1971 c. 77.

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- (c) has been ordinarily resident in the United Kingdom or Ireland throughout the period of three years immediately preceding the relevant date.

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

4.—(1) A student is an excepted student if that student is 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, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding 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>(2)</sup> who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) In this paragraph, any description of a person in sub-paragraphs (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 regulation 2, and sub-paragraphs (1)(a)(iii) and (vi) are to be construed accordingly.

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

5. A student is an excepted student if that student—

- (a) is a person with protected rights who has a right not to be charged higher relevant fees 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>(3)</sup>, as extended by the EEA agreement,
- (b) has been ordinarily resident in the United Kingdom, 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**

6.—(1) A student is an excepted student if that 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 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

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(2) [2020 No. 1213](#).

(3) [OJ L 141, 27.5.2011, p.1](#).

- 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—
- (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
  - (ii) in the United Kingdom 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, 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, 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 student has utilised a right of residence if that student—
- (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(4) (or corresponding provisions under the EEA agreement or the Switzerland agreement)), or
  - (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 student 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 student is a national or of which the person in relation to whom that student 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 student falls within sub-paragraph (2) (a)(ii) and is accompanying or joining that national in the United Kingdom.

## **Refugees**

7. A student is an excepted student if that student—
- (a) is—
- (i) a refugee who has been ordinarily resident in the United Kingdom 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.

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(4) OJ No 158, 30.4.2004c, p.77.

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

8. A student is an excepted student if—
- (a) that 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 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 student is the spouse, civil partner or child of a person described in sub paragraph (a) and is ordinarily resident in Scotland on the relevant date.

### **Iraqi nationals**

9. A student is an excepted student if that 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 Office,
    - (ii) has been ordinarily resident in the United Kingdom 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 described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.

### **Syrian nationals**

10. A student is an excepted student if that student—
- (a) is a Syrian national who—
    - (i) has been granted humanitarian protection to enter the United Kingdom under the Syrian Vulnerable Persons Relocation Scheme operated by the Home Office,
    - (ii) has been ordinarily resident in the United Kingdom 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 described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.

### **Afghan nationals**

11. A student is an excepted student if that student—
- (a) is an Afghan national who—
    - (i) has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme<sup>(5)</sup> operated by the Home Office,

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(5) A copy of the Locally Employed Staff Ex-Gratia Scheme can be viewed at <https://www.gov.uk/government/publications/afghanistan-locally-employed-staff-ex-gratia-scheme?msclkid=eb3bcf90c7b011ec9e31d7ef58015018>.

- (ii) has been ordinarily resident in the United Kingdom 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 described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.

### **Relocated Afghan citizens**

**12.** A student is an excepted student—

- (a) if that student—
  - (i) has been granted leave under the Afghan Citizens Resettlement Scheme<sup>(6)</sup> or granted leave under the Afghan Relocations and Assistance Policy Scheme<sup>(7)</sup>,
  - (ii) has been ordinarily resident in the United Kingdom at all times since that person was first granted such leave, and
  - (iii) is ordinarily resident in Scotland on the relevant date, or
- (b) if that student is the spouse, civil partner or child of a person described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.

### **Ukrainian nationals**

**13.—(1)** A student is an excepted student if that student—

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

**(2)** In this paragraph, a ‘relevant application’ is an application to—

- (a) the Ukraine Family Scheme<sup>(8)</sup>,
- (b) the Ukraine Sponsorship Scheme<sup>(9)</sup>,
- (c) the Ukraine Extension Scheme<sup>(10)</sup>, or
- (d) the Home Office for leave outside the immigration rules, as defined in section 33(1) of the Immigration Act 1971<sup>(11)</sup>, where that person—

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<sup>(6)</sup> A copy of the Afghan Citizens Resettlement Scheme can be viewed at <https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme?msclid=e4215a4cc7a311ec8a237e55741dcde6>.

<sup>(7)</sup> A copy of the Afghan Relocations and Assistance Policy Scheme can be viewed at <https://www.gov.uk/government/publications/afghan-relocations-and-assistance-policy?msclid=2a8bc686c7a511ec8a2b8132cb36424d>.

<sup>(8)</sup> 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. The current Home Office guidance in relation to the Ukraine Family Scheme is available here: <https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme?msclid=d2811a9ac7a511ec885bf3a88e71ccca>.

<sup>(9)</sup> 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: <https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme?msclid=ecaf79fac7a511ecbf7adee0a78bac5b>.

<sup>(10)</sup> A scheme opening on 3 May 2022 and operated by the Home Office enabling 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 scheme enables the partner or children of the Ukrainian national to apply to stay in the United Kingdom provided they are already in the United Kingdom as the Ukrainian national’s ‘dependants’. The current Home Office guidance in relation to the Ukraine Extension Scheme is available here: <https://www.gov.uk/guidance/support-for-family-members-of-british-nationals-in-ukraine-and-ukrainian-nationals-in-ukraine-and-the-uk?msclid=08bb96fec7a611ecb081f266e6480fd0>.

<sup>(11)</sup> 1971 c. 77.

*Status: This is the original version (as it was originally made).*

- (i) was residing in the 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 to that scheme.

#### **Persons granted stateless leave**

**14.** A student is an excepted student if that student—

- (a) has—
  - (i) been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Office, and
  - (ii) been ordinarily resident in the United Kingdom 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 described in sub-paragraph (a) and is ordinarily resident in Scotland on the relevant date.

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

**15.—(1)** A student is an excepted student if that student—

- (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 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**

**16.** A student is an excepted student if that student—

- (a) has been granted indefinite leave to remain in the United Kingdom under any of the following provisions of the immigration rules<sup>(12)</sup>, 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 victim of domestic violence),
- (b) has been ordinarily resident in the United Kingdom since that person was first granted such leave, and
- (c) is ordinarily resident in Scotland on the relevant date.

#### **Persons granted Calais leave**

**17.** A student is an excepted student if that student—

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(12) The immigration rules can be viewed at <https://www.gov.uk/guidance/immigration-rules?mselkid=b1df136cc7ce11ecb8f75116c530e06c>.

- (a) has extant leave to remain in the United Kingdom under paragraphs 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 since that person was first granted such leave, and
- (c) is ordinarily resident in Scotland on the relevant date.

### **Persons who are children of asylum seekers and young asylum seekers**

- 18.**—(1) A student is an excepted student if that 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) was under 18 years old on the date when the application for asylum was made, which application must have been made prior to 1 December 2006, and
  - (d) is under 25 years old on the relevant date.
- (2) In this paragraph—
- “child of an asylum seeker” means a person who is the child of an asylum seeker as defined in section 18 of the Nationality, Immigration and Asylum Act 2002<sup>(13)</sup>, and
- “young asylum seeker” means an unaccompanied asylum-seeker who is under the age of 18.

### **Children of Swiss nationals**

- 19.** A student is an excepted student if that student—
- (a) is the child of a Swiss national,
  - (b) is entitled to support in the United Kingdom by virtue of Article 18(2) (related rights) of the Swiss citizens’ rights agreement, and
  - (c) has been ordinarily resident in the United Kingdom, 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 student is an excepted student if that student—
- (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, Gibraltar or 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
  - (b) is, or has been, lawfully employed in the United Kingdom.

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(13) 2002 c. 41.

## 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.

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