

## SCHEDULE 3

Regulations 3(3), 7(3), 11(8), 12(6), 26(2)  
and 29(2)

### ORDINARY RESIDENCE

#### **Ordinary residence on relevant date**

1.—(1) For the purposes of schedule 1 a person is to be treated as being ordinarily resident in Scotland on the relevant date if the Scottish Ministers or, for the purposes of a bursary granted under regulation 26(1) (exercise of power to grant a bursary), the education authority, 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
- (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 Scottish Ministers or applicable education authority are satisfied that their residence there on that date is attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant date which was wholly or mainly for the purpose 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 Regulation),
- (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 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 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 Scottish Ministers or, for the purposes of a bursary granted under regulation 26(1) (exercise of power to grant a bursary), the education authority are 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 (1) 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 United Kingdom, Islands, Gibraltar or in the territory comprising the European Economic Area and Switzerland immediately before 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 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) 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.
- (c) Sub-paragraph (1)(b) does not apply to those qualifying by virtue of paragraph 2 (“EU nationals etc with protected rights”) of schedule 1 in relation to student loans issued under regulation 11 (students eligible for student loans).

(2) Subject to sub-paragraph (4), “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 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 advanced postgraduate award or comparable award.
- (4) For the purposes of Part 6 (education maintenance allowances), “independent student” in subparagraph (1)(a) means a person who on the relevant date—
- (a) is married or in a civil partnership,
  - (b) has no parent or guardian living,
  - (c) does not reside with, has no regular contact with and receives no financial support from a parent or guardian,
  - (d) is a parent to whom child benefit is being paid,
  - (e) is in receipt of income support, universal credit or income-related employment and support allowance payable under Part 1 (employment and support allowance) of the Welfare Reform Act 2007<sup>(1)</sup>,
  - (f) is a person being looked after and provided with accommodation by a local authority or equivalent organisation, or
  - (g) is a person, formerly looked after by a local authority or equivalent organisation, who does not reside with, has no regular contact with and receives no financial support from a parent or guardian.

**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 Scottish Ministers are 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 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 the relevant area, or attending a course of study or undertaking postgraduate research outside the relevant area.

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(1) 2007 c. 5.