

SCHEDULE 2

Regulation 3(2)

ORDINARY RESIDENCE

1. For the purposes of paragraph 1(a) of Schedule 1—

- (a) a person shall be treated as being ordinarily resident in Scotland on the relevant day if the Secretary of State is satisfied that he was not actually so resident only because he, his spouse or his parent was for the time being—
 - (i) employed outside Scotland; or
 - (ii) attending a course of study or undertaking postgraduate research outside Scotland;and
- (b) a person shall not be treated as being ordinarily resident in Scotland on the relevant day if the Secretary of State is satisfied that his residence there on that day is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant day as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

2.—(1) Sub-paragraphs (2) and (3) below shall apply in determining, for the purposes of paragraphs 1(b), 2(b), 3(a), 4(b), 6(a)(iii) and 7(b) and (c) of Schedule 1, whether a person is to be treated as having been or not having been ordinarily resident for the specified period in either the United Kingdom or the European Economic Area (hereinafter referred to in this paragraph as “the relevant area”).

(2) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period if the Secretary of State is satisfied that he was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education.

(3) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the Secretary of State is satisfied that—

- (a) the person was born and has spent the greater part of his life in the relevant area and that—
 - (i) his parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he himself is not an independent student; or
 - (ii) he 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; or
- (b) the person was not actually ordinarily resident in the relevant area for the specified period only because he, his spouse or his parent 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(3)(a)(i), “an independent student” means a person who prior to the relevant day has—

- (a) attained the age of 25 years;
- (b) been married for at least 2 years;
- (c) no parent living; or
- (d) supported himself out of his earnings for periods aggregating not less than 3 years.

(2) A person shall be regarded as having supported himself out of his earnings for any period or periods during which he—

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- (a) was in receipt of training in pursuance of programmes and schemes operated from time to time by the Manpower Services Commission, the Training Commission, the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise;
- (b) before 1st July 1992 was in receipt of unemployment benefit under section 14(1)(a) of the Social Security Act 1975(1);
- (c) on or after 1st July 1992 was in receipt of unemployment benefit under section 25(1) of, and Part I of Schedule 4 to, the Social Security Contributions and Benefits Act 1992(2);
- (d) before 24th November 1980(3), was for the purposes of section 5 of the Supplementary Benefits Act 1976(4) registered for employment;
- (e) on or after 24th November 1980 but before 18th October 1982(5), was for the purposes of section 5 of the said Act of 1976 available for employment and, where applicable, registered for employment;
- (f) on or after 18th October 1982 but before 11th April 1988(6), was for the purposes of section 5(1) of the said Act of 1976 available for employment and, where applicable, registered for employment;
- (g) on or after 1st April 1988 but before 9th October 1989(7) was for the purposes of section 20(3)(d)(i) and (4) of the Social Security Act 1986(8) available for employment and, where applicable, also registered for employment;
- (h) on or after 9th October 1989 but before 1st July 1992(9), was for the purposes of section 20(3)(d)(i) and (4) of the Social Security Act 1986 available for employment and, where applicable, also registered for employment;
- (i) on or after 1st July 1992 was, for the purposes of section 124(1)(d)(i) and (3) of the Social Security Contributions and Benefits Act 1992, available for, and actively seeking, employment and, where applicable, also registered for employment;
- (j) before 1st July 1992(10) received sickness benefit, invalidity pension, maternity allowance or severe disablement allowance under section 14(1)(b), 15(1)(b), 22(1) or 36(1) of the Social Security Act 1975(11) or statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982(12) or statutory maternity pay under Part V of the Social Security Act 1986;
- (k) on or after 1st July 1992 received maternity allowance or severe disability allowance under section 35(1) or 68(1) of the Social Security Contributions and Benefits Act 1992

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- (1) 1975 c. 14. On that date the Social Security Contributions and Benefits Act 1992 (c. 4), section 25(1) and Schedule 4, Part I amended and consolidated the said section 14(1)(a).
 - (2) 1992 c. 4.
 - (3) On that date Schedule 2 to the Social Security Act 1980 (c. 30), which made relevant amendments to the Supplementary Benefits Act 1976 (c. 71), came into force by virtue of S.I. 1980/729.
 - (4) 1976 c. 71.
 - (5) On that date section 38 of the Social Security and Housing Benefits Act 1982 (c. 24), which made relevant amendments to section 5 of the Supplementary Benefits Act 1976, came into force by virtue of S.I. 1982/893.
 - (6) On that date the relevant parts of section 20 of the Social Security Act 1986 (c. 50) came into force by virtue of S.I. 1987/1853.
 - (7) On that date section 13(1) of the Social Security Act 1989 (c. 24), which amended section 20(3)(d)(i) of the Social Security Act 1986 (c. 50) to insert after the words “available for” the words “and actively seeking”, came into force by virtue of S.I. 1989/1238.
 - (8) 1986 c. 50.
 - (9) On that date section 20(3)(d)(i) and (4) of the Social Security Act 1986 was consolidated as section 124(1)(d)(i) and (3) of the Social Security Contributions and Benefits Act 1992.
 - (10) On that date the said sections of the Social Security Act 1975 were consolidated as sections 31(1), 33(1), 35(1) and 68(1) of the Social Security Contributions and Benefits Act 1992 and Part I of the Social Security and Housing Benefits Act 1982 and Part V of the Social Security Act 1986 were consolidated respectively as Parts XI and XII of that Act.
 - (11) Section 22 was substituted by the Social Security Act 1986, Schedule 4, paragraph 13; section 36 was substituted by the Health and Social Security Act 1984 (c. 48), section 11.
 - (12) 1982 c. 24.

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or statutory sickness benefit under Part XI of, or statutory maternity allowance under Part XII of, the said Act of 1992;

- (l) on or after 1st July 1992 but before 13th April 1995⁽¹³⁾ received sickness benefit or invalidity pension under section 31(1) or 33(1) of the said Act of 1992;
- (m) on or after 13th April 1995 received incapacity benefit under section 30A(1) of the said Act of 1992⁽¹⁴⁾;
- (n) held a Scottish Studentship or comparable award; or
- (o) had the care of a person under the age of 18 years who was dependent on him;

and any reference in this sub-paragraph to a provision contained in the Social Security Contributions and Benefits Act 1992 is a reference to that provision as from time to time in force.

(13) On that date sections 31(1) and 33(1) of the Social Security Contributions and Benefits Act 1992 were repealed by the Social Security (Incapacity for Work) Act 1994 (c. 18), section 11 and Schedule 2, by virtue of S.I. 1994/2926.

(14) Section 30A was inserted by the Social Security (Incapacity for Work) Act 1994, section 1 and came into force on 13th April 1995 by virtue of S.I. 1994/2926.