

SCHEDULE 2

Regulation 10

ELIGIBLE STUDENTS

PART 1

Interpretation

1.—(1) For the purposes of this Schedule—

“Directive 2004/38” (“*Cyfarwyddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“EC national” (“*Gwladolyn y GE*”) means a national of a Member State of the European Community;

“EEA Agreement” (“*Cytundeb yr AEE*”) means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽¹⁾ as adjusted by the Protocol signed at Brussels on 17th March 1993⁽²⁾;

“EEA frontier self-employed person” (“*person hunangyflogedig y ffin o'r AEE*”) has the meaning given by sub-paragraph (2);

“EEA frontier worker” (“*gweithiwr y ffin o'r AEE*”) has the meaning given by sub-paragraph (3);

“EEA migrant worker” (“*gweithiwr mudol o'r AEE*”) means an EEA national who is or, in the case of an EEA national who applies for support after the moving date, was a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” (“*gwladolyn yr AEE*”) means a national of an EEA State other than the United Kingdom;

“EEA self-employed person” (“*person hunangyflogedig o'r AEE*”) means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“EEA State” (“*Gwladwriaeth yr AEE*”) means a Member State of the European Economic Area;

“employed person” (“*person cyflogedig*”) means an employed person within the meaning of Annex 1 to the Switzerland Agreement;

“European Economic Area” (“*Ardal Economaidd Ewropeaidd*”) means the area comprised by the European Community, the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

“family member”, (“*aelod o deulu*”) unless otherwise indicated, means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
 - (i) his or her spouse or civil partner;
 - (ii) his or her child or the child of his or her spouse or civil partner; or
 - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;

(1) Cm. 2073.

(2) Cm. 2183.

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- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
 - (i) his or her spouse or civil partner; or
 - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to an EC national who falls within article 7(1) (c) of Directive 2004/38—
 - (i) his or her spouse or civil partner; or
 - (ii) direct descendants of his or hers or of his or her spouse or civil partner who are—
 - (aa) under the age of 21;
 - (bb) dependants of his or hers or of his or her spouse or civil partner;
- (d) in relation to an EC national who falls within article 7(1) (b) of Directive 2004/38—
 - (i) his or her spouse or civil partner;
 - (ii) direct descendants of his or hers or of his or her spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or hers or of his or her spouse or civil partner;
 - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
 - (i) his or her spouse or civil partner; or
 - (ii) direct descendants of his or hers or of his or her spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or hers or of his or her spouse or civil partner;

“right of permanent residence” (“*hawl i breswyllo'n barhaol*”) means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“self-employed person” (“*person hunangyflogedig*”) means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

“settled” (“*wedi setlo*”) has the meaning given by section 33(2A) of the Immigration Act 1971(3);

“Swiss Agreement” (“*Cytundeb y Swistir*”) means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21 June 1999(4) and which came into force on 1 June 2002;

“Swiss employed person” (“*person cyflogedig Swisaidd*”) means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” (“*person cyflogedig Swisaidd y ffin*”) has the meaning given in sub-paragraph (4);

“Swiss frontier self-employed person” (“*person hunangyflogedig Swisaidd y ffin*”) has the meaning given in sub-paragraph (5);

(3) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

(4) Cm. 4904.

“Swiss self-employed person” (“*person hunangyflogedig Swisaidd*”) means a Swiss national who is or, in the case of a person who applies for support after the moving date, was a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom;

“Turkish worker” (“*gweithiwr Twrcaidd*”) means a Turkish national who on the relevant date—

- (a) was ordinarily resident in the United Kingdom and Islands; and
- (b) was, or had been, lawfully employed in the United Kingdom.

“United Kingdom national” (“*gwladolyn y Deyrnas Unedig*”) means a person who falls to be treated as a national of the United Kingdom for the purposes of the Community Treaties;

“worker” (“*gweithiwr*”) means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be.

(2) “EEA frontier self-employed person” (“*person hunangyflogedig y ffin o'r AEE*”) means an EEA national who—

- (a) is a self-employed person in Wales; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week.

(3) “EEA frontier worker” (“*gweithiwr y ffin o'r AEE*”) means an EEA national who—

- (a) is a worker in Wales; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week.

(4) “Swiss frontier employed person” (“*person cyflogedig Swisaidd y ffin*”) means a Swiss national who—

- (a) is an employed person in Wales; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week.

(5) “Swiss frontier self-employed person” (“*person hunangyflogedig Swisaidd y ffin*”) means a Swiss national who—

- (a) is a self-employed person in Wales; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week.

(6) For the purposes of this Schedule, “parent” includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” is to be construed accordingly.

(7) For the purposes of this Schedule, a person is to be treated as ordinarily resident in Wales, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area, Switzerland and Turkey if he or she would have been so resident but for the fact that—

- (a) he or she;
- (b) his or her spouse or civil partner;
- (c) his or her parent; or
- (d) in the case of a dependent direct relative in the ascending line, his or her child or child’s spouse or civil partner,

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is or was temporarily employed outside the area in question.

(8) For the purposes of sub-paragraph (7), temporary employment outside of Wales, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area, Switzerland and Turkey includes—

- (a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces;
- (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside the territory comprising the European Economic Area and Switzerland as members of such forces; and
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

PART 2

Categories

Persons who are settled in the United Kingdom

2.—(1) A person who—

- (a) is settled in the United Kingdom on the relevant date other than by reason of having acquired a right of permanent residence;
- (b) is ordinarily resident in Wales on the relevant date;
- (c) had been ordinarily resident throughout the three-year period preceding the relevant date in the United Kingdom and Islands; and
- (d) had not during any part of the period referred to in paragraph (c) been ordinarily resident in the United Kingdom and Islands wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(7).

3. A person—

- (a) who is settled in the United Kingdom on the relevant date by reason of having acquired the right of permanent residence;
- (b) who is ordinarily resident in Wales on the relevant date;
- (c) who had been ordinarily resident in the United Kingdom throughout the three-year period preceding the relevant date; and
- (d) who, in a case where his or her 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 before the period of ordinary residence referred to in paragraph (c).

Refugees and persons with leave to enter or remain

4.—(1) A person—

- (a) who is a refugee;
- (b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was recognised as a refugee; and

- (c) who is ordinarily resident in Wales on the relevant date.
- (2) A person—
 - (a) who is the spouse or civil partner of a refugee;
 - (b) who was the spouse or civil partner of the refugee on the date on which the refugee made his or her application for asylum;
 - (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was given leave to remain in the United Kingdom; and
 - (d) who is ordinarily resident in Wales on the relevant date.
- (3) A person—
 - (a) who is the child of a refugee or the child of the spouse or civil partner of a refugee;
 - (b) who, on the date on which the refugee made his or her application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date;
 - (c) who was under 18 on the date on which the refugee made his or her application for asylum;
 - (d) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was given leave to remain in the United Kingdom; and
 - (e) who is ordinarily resident in Wales on the relevant date.
- 5.—(1) A person—
 - (a) with leave to enter or remain;
 - (b) who is ordinarily resident in Wales on the relevant date; and
 - (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the relevant date.
- (2) A person—
 - (a) who is the spouse or civil partner of a person with leave to enter or remain;
 - (b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made his or her application for asylum;
 - (c) who is ordinarily resident in Wales on the relevant date; and
 - (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the relevant date.
- (3) A person—
 - (a) who is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain;
 - (b) who, on the date on which the person with leave to enter or remain made his or her application for asylum, was the child of that person or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date;
 - (c) who was under 18 on the date on which the person with leave to enter or remain made his or her application for asylum;
 - (d) who is ordinarily resident in Wales on the relevant date; and
 - (e) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the relevant date.

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

- 6.—(1) A person who—

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- (a) on the relevant date, 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 paragraph (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 in (iv) or (v);
 - (vii) subject to sub-paragraph (2), is ordinarily resident in Wales on the relevant date;
 - (viii) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date.

(2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

7. A person who—

- (a) is ordinarily resident in Wales on the relevant date;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date; and
- (c) is entitled to support by virtue of article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽⁵⁾, as extended by the EEA Agreement.

Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

8.—(1) A person who—

- (a) is settled in the United Kingdom;
- (b) left the United Kingdom and exercised a right of residence after having been settled in the United Kingdom;
- (c) is ordinarily resident in Wales on the relevant date;
- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date; and
- (e) in a case where his or her ordinary residence referred to in paragraph (b) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if he or she is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who has the right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if he or she goes to the state within the territory comprising the European Economic Area and Switzerland of which he or she is a national or of which the person in relation to whom he or she is a family member is a national.

(5) OJ No L257, 19.10.1968, p.2 (OJ/SE 1968 (ii) p.475).

EC nationals

9.—(1) A person who—

- (a) on the relevant date, is either—
 - (i) an EC national; or
 - (ii) a family member of such a person;
- (b) is ordinarily resident in Wales on the relevant date;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date; and
- (d) subject of sub-paragraph (2), whose ordinary residence in the territory comprising the European Economic Area and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the European Economic Area and Switzerland in accordance with paragraph 1(7).

10.—(1) A person who—

- (a) on the relevant date, is an EC national other than a United Kingdom national;
- (b) is ordinarily resident in Wales on the relevant date;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the relevant date; and
- (d) in a case where his or her 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 before the period of ordinary residence referred to in paragraph (c).

Children of Swiss nationals

11. A person who—

- (a) on the relevant date, is the child of a Swiss national who is entitled to support from the Secretary of State by virtue of article 3(6) of Annex 1 to the Swiss Agreement;
- (b) is ordinarily resident in Wales on the relevant date;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where his or her 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 before the period of ordinary residence referred to in paragraph (c).

Children of Turkish workers

12. A person who—

- (a) on the relevant date, was the child of a Turkish worker;
- (b) was ordinarily resident in Wales on the relevant date; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.

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