

SCHEDULE 2

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.

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“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.