

## SCHEDULE 1

Regulation 6

### 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 29 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<sup>(1)</sup>;

“EEA Agreement” (“*Cytundeb yr AEE*”) means the Agreement on the European Economic Area signed at Oporto on 2 May 1992<sup>(2)</sup> as adjusted by the Protocol signed at Brussels on 17 March 1993<sup>(3)</sup>;

“EEA frontier self-employed person” (“*person hunangyflogedig ffin yr 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 the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA frontier worker” (“*gweithiwr ffin yr 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 the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA migrant worker” (“*gweithiwr mudol o'r AEE*”) means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” (“*gwladolyn o'r 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 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;

“EU national” (“*Gwladolyn o'r UE*”) means a national of a Member State of the European Union;

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

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

(1) OJ L158, 30.04.2004, pp.77-123.

(2) Cm. 2073.

(3) Cm. 2183.

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- (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) that person’s spouse or civil partner;
  - (ii) direct descendants of the person or of the person’s spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the person or of the person’s spouse or civil partner; or
  - (iii) dependent direct relatives in the ascending line of the person or that of the person’s spouse or civil partner;
- (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) the person’s spouse or civil partner; or
  - (ii) the person’s child or the child of the person’s spouse or civil partner;
- (c) in relation to an EU national who falls within Article 7(1)(c) of Directive 2004/38—
  - (i) the national’s spouse or civil partner; or
  - (ii) direct descendants of the national or the national’s spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the national or of the national’s spouse or civil partner;
- (d) in relation to an EU national who falls within Article 7(1)(b) of Directive 2004/38—
  - (i) the national’s spouse or civil partner;
  - (ii) direct descendants of the national or of the national’s spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the national or of the national’s spouse or civil partner; or
  - (iii) dependent direct relatives in the national’s ascending line or of the national’s spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
  - (i) the national’s spouse or civil partner; or
  - (ii) direct descendants of the national or of the national’s spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the national or of the national’s 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(4);

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

“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<sup>(5)</sup> 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 ffin y Swistir*”) 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 the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss frontier self-employed person” (“*person hunangyflogedig ffin y Swistir*”) 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 the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss self-employed person” (“*person hunangyflogedig Swisaidd*”) means a Swiss national who is 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;

“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) For the purposes of this Schedule, a person who is ordinarily resident in Wales, England, Scotland, Northern Ireland or the Islands, as a result of having moved from another of those areas for the purpose of undertaking—

- (a) the current course, the current distance learning course, the current part-time course or the current postgraduate course; or
- (b) a course which, disregarding any intervening vacation, the student undertook immediately before undertaking the course referred to in sub-paragraph (a),

is to be considered to be ordinarily resident in the place from which the person moved.

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

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

is or was temporarily employed outside the area in question.

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(5) Cm. 4904.

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(4) For the purposes of sub-paragraph (2), temporary employment outside Wales, the United Kingdom and Islands 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.

(5) For the purposes of this Schedule an area which—

- (a) was previously not part of the European Union or the European Economic Area; but
- (b) at any time before or after this Scheme comes into force has become part of one or other or both of these areas,

is to be considered to have always been part of the European Economic Area.

## **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) subject to sub-paragraph (2), 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(3).

**3.** A person who—

- (a) is settled in the United Kingdom on the relevant date by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in Wales on the relevant date;
- (c) had been ordinarily resident in the United Kingdom throughout the three-year period preceding the relevant date; and
- (d) in a case where the person's 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 their family members**

- 4.—(1) A person who—
- (a) is a refugee;
  - (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being recognised as a refugee; and
  - (c) is ordinarily resident in Wales on the relevant date.
- (2) A person who—
- (a) is the spouse or civil partner of a refugee;
  - (b) was the spouse or civil partner of the refugee on the date on which the refugee applied for asylum;
  - (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
  - (d) is ordinarily resident in Wales on the relevant date.
- (3) A person who—
- (a) is the child of a refugee or the child of the spouse or civil partner of a refugee;
  - (b) on the date on which the refugee applied 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) was under 18 on the date on which the refugee made their application for asylum;
  - (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
  - (e) is ordinarily resident in Wales on the relevant date.

## **Persons with leave to enter or remain and their family members**

- 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 who—
- (a) is the spouse or civil partner of a person with leave to enter or remain;
  - (b) was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made their application for asylum;
  - (c) is ordinarily resident in Wales on the relevant date; and
  - (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the relevant date.
- (3) A person who—
- (a) 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) on the date on which the person with leave to enter or remain applied 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) was under 18 on the date on which the person with leave to enter or remain applied for asylum;

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- (d) is ordinarily resident in Wales on the relevant date; and
- (e) 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—

- (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 sub-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 sub-paragraph (iv) or (v);
- (b) subject to sub-paragraph (2), is ordinarily resident in Wales on the relevant date; and
- (c) 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<sup>(6)</sup>, 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) was ordinarily resident in Wales and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence;
- (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 the person's ordinary residence referred to in paragraph (c) 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—

- (a) that person is a United Kingdom national, a family member of 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

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<sup>(6)</sup> OJ No L257, 19.10.1968, p.2 (OJ/SE 1968 (II) p.475).

a person who has a 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

- (b) in the case of a person who is settled in the United Kingdom and has a right of permanent residence, the person goes to the state within the territory comprising the European Economic Area and Switzerland of which the person is a national or of which the person in relation to whom the person is a family member is a national.

## **EU nationals**

**9.**—(1) A person who—

- (a) is either—
  - (i) an EU national on the relevant date, other than a person who is a United Kingdom national who has not exercised a right of residence; 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 to 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(3).

(3) For the purposes of this paragraph, a United Kingdom national has exercised a right of residence if that person has exercised a right under Article 7 of the Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom.

**10.**—(1) A person who—

- (a) on the relevant date, is an EU 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 preceding the relevant date; and
- (d) in a case where the person's 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).

(2) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national other than a United Kingdom national on the first day of the first academic year of the designated course is treated as being satisfied.

## **Children of Swiss nationals**

**11.** A person who—

- (a) on the relevant date, is the child of a Swiss national who is entitled to financial support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement;

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- (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 the person's 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.