SCHEDULE 2 Regulation 4(3) and Schedule 1 paragraph 1(3)

ORDINARY RESIDENCE

1.—(1) For the purposes of paragraph 2(a) and paragraph 7(b) of Schedule 1 a person shall be treated as being ordinarily resident in Scotland on the relevant day if the Scottish Ministers are satisfied that they were 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 relative in the ascending line, their child or child's spouse or civil partner,

was for the time being–

(c) employed outside Scotland; or

(d) attending a course of study or undertaking postgraduate research outside Scotland.

(2) For the purposes of paragraph 2(a) of Schedule 1 and subject to sub-paragraph (3), a person shall not be treated as being ordinarily resident in Scotland on the relevant day if the Scottish Ministers are satisfied that their 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.

(3) Sub-paragraph (2) shall 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.

2.—(1) Sub-paragraphs (2) to (5) below shall apply in determining, for the purposes of paragraphs 2(b), 3(1)(b), 4(1)(b), 5(1)(d), 7(c), 8(b) and 9(b) 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 paragraph, "the specified period") in the United Kingdom, the European Economic Area or Switzerland or the EU overseas territories (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 in paragraph 2(b) of Schedule 1 if the Scottish Ministers 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, unless–

(a) the person is treated as ordinarily resident in accordance with sub-paragraph (5); or

(b) the person 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 territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence.

(3) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 8(b) of Schedule 1 if the Scottish Ministers are satisfied that that person was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education, unless that person is treated as ordinarily resident by virtue of sub paragraph (5).

(4) A person shall 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) their parents or either of them have 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, in the case of those qualifying by virtue of paragraph 2 or 8 of Schedule 1, no part of that period of residence was wholly or mainly for the purpose of receiving full-time education.

(5) A person shall 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 not actually so resident in the relevant area for the specified period only because–

(a) that person, or their spouse or civil partner, or either of their parents; or

(b) in the case of a dependant relative in the ascending line, their child or child's spouse or civil partner,

was for the time being–

(c) employed outside the relevant area; or

(d) attending a course of study or undertaking postgraduate research outside the relevant area.

3.—(1) In paragraph 2(4)(a) above, "an independent student" means a person who on the relevant day–

(a) has attained the age of 25 years;

(b) is married or in a civil partnership; or

(c) has been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A person shall be regarded as having been self-supporting out of their earnings for any period or periods during which that person–

(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; or

(b) was in receipt of benefit payable by any state authority or agency, national, regional or local, in respect of a person who is available for employment but who is unemployed; or

(c) was available for employment and had complied with any requirement of registration imposed by a body referred to in paragraphs (a) or (b) as a condition of entitlement for participation in arrangements for training or receipt of benefit; or

(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, national, regional or local, by an employer or any former employer, or by any other person; or

(e) held a Scottish Studentship or comparable award; or

(f) could not reasonably be expected to be self-supporting out of their earnings because that person had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them.