

SCHEDULE 1

Regulation 3(1)(c)

LIABLE GRADUATES

1.—(1) In this Schedule—

“EEA Agreement” 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 migrant worker” means a person who is a national of a member State of the European Economic Area who has taken up an activity as an employed person in the United Kingdom—

- (a) under Council Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community, as extended by the EEA Agreement⁽³⁾; or
- (b) in circumstances where as a national of the United Kingdom the person has an enforceable Community right to be treated no less favourably than a national of another member State in relation to matters which are the subject of the above mentioned Council Regulation;

“European Community” means the territory comprised by the member states of the European Community as constituted from time to time;

“European Economic Area” means the European Community, and subject to the conditions laid down in the EEA Agreement, the area comprised by the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

“Islands” means the Channel Islands and the Isle of Man;

“national of a member state of the European Community” means a person who is a national for the purposes of the Community Treaties of any member state of the European Community (including the United Kingdom) as constituted from time to time;

“parent” includes a step-parent, a guardian, any other person having parental responsibility for a child and any person having care of a child, and “child” shall be construed accordingly;

“relevant day” means the first day of the first academic year of a full - time course of higher education.

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

- (a) was previously not part of the European Community or the European Economic Area, but
- (b) at any time before or after these Regulations come into force has become part of one or other or both of those areas,

shall be considered to have always been part of the European Community or the European Economic Area, as the case may be.

(3) Schedule 2 shall have effect for the purposes of determining whether a person is to be treated, for the purposes of this Schedule, as being, or having been, ordinarily resident in a place at, or for, a particular time.

2. A person who—

- (a) is ordinarily resident in Scotland on the relevant day;
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant day; and

(1) Cm. 2073.

(2) Cm. 2183.

(3) O.J. No. L 257, 19.10.68, p. 2 (O.J./S.E. 1968 (II), p.457).

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- (c) is settled in the United Kingdom within the meaning of the Immigration Act 1971⁽⁴⁾ on the relevant day.
3. A person who is an EEA migrant worker who—
- (a) is entitled to the payment of an allowance by virtue of Article 7(2) or (3) of Council Regulation (EEC) 1612/68 on freedom of movement for workers within the Community (which was extended to apply to the whole of the European Economic Area by the EEA Agreement) or, where the person is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than a national of another member state in relation to matters which are the subject of Article 7(2) and (3);
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day; and
 - (c) is ordinarily resident in Scotland on the relevant day.
4. A person who is the spouse of an EEA migrant worker and who—
- (a) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day;
 - (b) is installed in the United Kingdom with their spouse; and
 - (c) is ordinarily resident in Scotland on the relevant day.
5. A person who is the child of an EEA migrant worker and who—
- (a) is entitled to the payment of an allowance by virtue of Article 12 of the above mentioned Council Regulation or, where their migrant worker parent is a national of the United Kingdom, by virtue of an enforceable Community right to be treated no less favourably than the child of a national of another member state in relation to matters which are the subject of Article 12;
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day; and
 - (c) is ordinarily resident in Scotland on the relevant day.
6. A person who—
- (a)
 - (i) has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although the person is considered not to qualify for recognition as a refugee, it is thought right to allow them to enter or remain in the United Kingdom and they have been granted leave to enter or remain accordingly;
 - (ii) is ordinarily resident in Scotland on the relevant day; and
 - (iii) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant day; or
 - (b) is the spouse, child or step-child of a person of the kind described in sub-paragraph (a) and who meets the residence requirements specified in sub-paragraph (a)(ii) and (iii).
7. A person who—
- (a) is a national, or the child or step-child of a national, of a member state of the European Community;
 - (b) has been ordinarily resident in the European Economic Area throughout the period of 3 years immediately preceding the relevant day;

(4) 1971 c. 77.

- (c) has not been ordinarily resident in the United Kingdom and Islands throughout that 3 year period; and
- (d) seeks an allowance in respect of a full-time course of higher education at an establishment in Scotland.

SCHEDULE 2

Regulation 4(3) and Schedule 1(1)

ORDINARY RESIDENCE

1. For the purposes of paragraph 2(a) of Schedule 1–

- (a) 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 the person, their spouse or their 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 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.

2.—(1) Sub-paragraphs (2) and (3) below shall apply in determining, for the purposes of paragraphs 2(b), 3(b), 4(a), 5(b), 7(a)(iii) and 8(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 Scottish Ministers are satisfied that the person 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 Scottish Ministers are satisfied that–

- (a) the person was born and has spent the greater part of their life in the relevant area and that–
 - (i) their parents or either of them have been ordinarily resident in the relevant area throughout the specified period and the person is not an independent student; or
 - (ii) they have 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 the person, their spouse or their 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) above, “an independent student” means a person who on the relevant day–

- (a) has attained the age of 25 years;

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- (b) is married; or
 - (c) has supported himself or herself out of his or her earnings for periods aggregating not less than 3 years.
- (2) A person shall be regarded as having supported himself or herself out of his or her earnings for any period or periods during which they—
- (a) were 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;
 - (b) were 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;
 - (c) were 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;
 - (d) received any pension, allowance or other benefit paid by reason of a disability to which they are 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;
 - (e) held a Scottish Studentship or comparable award; or
 - (f) could not reasonably be expected to support himself or herself out of his or her earnings because they had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them.

SCHEDULE 3

Regulation 5(2)

EXEMPT COURSES

For the purposes of regulation 5(2)(b) a first degree course in one of the following subjects shall not be treated as falling within the said section 38—

- (a) Dental Hygiene
- (b) Dental Therapy
- (c) Chiropody
- (d) Podiatry
- (e) Dietetics
- (f) Occupational Therapy
- (g) Orthoptics
- (h) Physiotherapy
- (i) Radiography
- (j) Speech Therapy
- (k) Language Therapy
- (l) Prosthetics
- (m) Orthotics