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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 323**

**EDUCATION**

**The Education (Graduate Endowment, Student Fees  
and Support) (Scotland) Amendment Regulations 2006**

<i>Made</i>	- - - -	<i>6th June 2006</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>8th June 2006</i>
<i>Coming into force</i>	- -	<i>30th June 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 49(3), 73(f), 73B and 74(1) of the Education (Scotland) Act 1980(1); sections 1 and 2 of the Education (Fees and Awards) Act 1983(2), and section 1 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001(3), and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Education (Graduate Endowment, Student Fees and Support) (Scotland) Amendment Regulations 2006 and shall come into force on 30th June 2006.

**Amendment of Nursing and Midwifery Regulations**

2. The Nursing and Midwifery Student Allowances (Scotland) Regulations 1992(4) shall be amended in accordance with Schedule 1.

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- (1) 1980 c. 44; section 73(f) was amended by the Teaching and Higher Education Act 1998 (c. 30) (“the 1998 Act”), section 29(1) and by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3(2); section 73B was inserted by the 1998 Act, section 29(2) and amended by the Education (Graduate Endowment and Student Support) (Scotland) Act 2001, section 3(3) and by the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6, paragraph 149; section 74(1) was amended by the Self Governing Schools etc. (Scotland) Act 1989 (c. 39), Schedule 10, paragraph 8(17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (2) 1983 c. 40; section 1 was relevantly amended by the Education Reform Act 1988 (c. 40), Schedule 12, paragraph 91 and the Further and Higher Education (Scotland) Act 1992 (c. 37), Schedule 9, paragraph 8; section 2(3)(a) and the word “other” in paragraph (b) were repealed by the 1998 Act and section 44(2) and Schedule 4. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (3) 2001 asp 6; section 1 was amended by the Further and Higher Education (Scotland) Act 2005 (asp 6), Schedule 2, paragraph 10.
- (4) S.I.1992/580, amended by S.S.I. 2002/423, 2003/401, 2004/469, 2005/217, 341, 545 and 572.

### **Amendment of Bursaries Regulations**

3. The Education Authority Bursaries (Scotland) Regulations 1995(5) shall be amended in accordance with Schedule 2.

### **Amendment of Fees and Awards Regulations**

4. The Education (Fees and Awards) (Scotland) Regulations 1997(6) shall be amended in accordance with Schedule 3.

### **Amendment of Students' Allowances Regulations**

5. The Students' Allowances (Scotland) Regulations 1999(7) shall be amended in accordance with Schedule 4.

### **Amendment of Student Loans Regulations**

6. The Education (Student Loans) (Scotland) Regulations 2000(8) shall be amended in accordance with Schedule 5.

### **Amendment of Graduate Endowment Regulations**

7. The Graduate Endowment (Scotland) Regulations 2001(9) shall be amended in accordance with Schedule 6.

### **Amendment of Education Maintenance Allowances Regulations**

8. The Education Maintenance Allowances (Scotland) Regulations 2004(10) shall be amended in accordance with Schedule 7 to these Regulations.

St Andrew's House,  
Edinburgh  
6th June 2006

*NICOL STEPHEN*  
A member of the Scottish Executive

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(5) S.I. 1995/1739, amended by S.I. 1997/1049, S.S.I. 2004/469, 2005/217, 341, 545 and 572.

(6) S.I. 1997/93, amended by S.I. 1997/2008 and 1998/2324, S.S.I. 2004/469, 2005/217, 341, 545 and 572.

(7) S.I. 1999/1131, amended by S.S.I. 2001/229, 2004/469, 2005/217, 341, 545 and 572.

(8) S.S.I. 2000/200, amended by S.S.I. 2001/228 and 311, 2004/469, 2005/217, 341 and 572.

(9) S.S.I. 2001/280, amended by S.S.I. 2004/469, 2005/217, 341, 545 and 572.

(10) S.S.I. 2004/273, amended by S.S.I. 2004/301 and 469, 2005/217, 341, 545 and 572.

SCHEDULE 1

Regulation 2

AMENDMENT OF THE NURSING AND MIDWIFERY  
STUDENT ALLOWANCES (SCOTLAND) REGULATIONS 1992

**Amendment of regulation 2**

**1. In regulation 2(1) (interpretation) –**

(a) for the definition of “EEA migrant worker”, substitute–

““EEA migrant worker” means an EEA national in the United Kingdom who is a worker within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier worker;” and

(b) insert the following definitions in alphabetical order in the appropriate places–

““Directive 2004/38” means Directive 2004/38/EC of the European Parliament and of the Council(11)on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;”;

““EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(12)as adjusted by the Protocol signed at Brussels on 17th March 1993(13);”;

““EEA frontier self-employed person” means an EEA national who–

(a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in the United Kingdom; and

(b) resides in Switzerland or 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;”;

““EEA frontier worker” means an EEA national who–

(a) is a worker (within the meaning of article 7 of Directive 2004/38) in the United Kingdom; and

(b) resides in Switzerland or 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;”;

““EEA national” means a national of an EEA State other than the United Kingdom;”;

““EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;”;

““family member” means–

(a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, 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;

(iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;

(11) O.J. No. L 158, 30.04.04, p.77.

(12) Cm. 2073.

(13) Cm. 2183.

*Status: This is the original version (as it was originally made).*

- (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;
  - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38—
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
    - (aa) under the age of 21;
    - (bb) dependants of him or her or his or her spouse or civil partner;
- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38—
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1—
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;”;

““non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community other than the United Kingdom;”;

““Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement , but who is not a Swiss frontier employed person;”;

““Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in the United Kingdom; 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;”;

““Swiss frontier self-employed person ” means a Swiss national who—

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in the United Kingdom ; 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;”;

““Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;”.

#### **Amendment of regulation 4**

**2.** In regulation 4 (amount of allowances)(**14**)–

- (a) in paragraph (1)(c) for “facilities.” substitute “facilities; and”; and
- (b) after sub-paragraph (c) insert–

“(d) tuition and other fees payable in respect of the holder of the allowance.

(1A) An allowance payable to, or in respect of, a person who is eligible for an allowance only by virtue of paragraph 9 of Schedule 1 may include sums only in respect of tuition and other fees payable in respect of that person.”.

#### **Amendment of Schedule 1**

**3.** For Schedule 1 (Persons eligible for allowances)(**15**) substitute–

“SCHEDULE 1

Regulation 3(1)(b)

#### **PERSONS ELIGIBLE FOR ALLOWANCES**

**1.** A person who–

- (a) is ordinarily resident in the United Kingdom 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
- (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971(**16**) on the relevant day.

**2.—(1)** A person who–

- (a) is–
  - (i) an EEA migrant worker or an EEA self-employed person;
  - (ii) a Swiss employed person or a Swiss self-employed person;
  - (iii) an EEA frontier worker or an EEA frontier self-employed person; or
  - (iv) a Swiss frontier worker or a Swiss frontier self-employed person;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and
- (c) subject to sub-paragraph (2), is ordinarily resident in the United Kingdom on the relevant day.

(2) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iii) or (iv).

**(14)** Regulation 4 was amended by [S.S.I. 2002/423](#).

**(15)** Schedule 1 was inserted by [S.S.I. 2002/423](#), regulation 8.

**(16)** [1971 c. 77](#); section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act [1981 \(c. 61\)](#).

**3.—(1)** A person who—

## (a) is—

- (i) the family member of a person mentioned in paragraph 2(1)(a); or
- (ii) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(17)</sup>, as extended by the EEA Agreement;

## (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and

## (c) subject to sub-paragraph (2), is ordinarily resident in the United Kingdom on the relevant day.

(2) Sub-paragraph (1)(c) does not apply where the person applying for support is a family member of a person falling within paragraph 2(1)(a)(iii) or (iv).

**4.—(1)** A person who—

## (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;

## (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom;

## (c) is ordinarily resident in United Kingdom on the day on which the first term of the first academic year of the course actually begins;

## (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and

## (e) in the case where his or her ordinary residence referred to in paragraph (d) 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 prior to the period of residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has utilised a right of residence if he or she—

## (a) is—

## (i) a United Kingdom national;

## (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38 (or corresponding provisions under the EEA Agreement or the Switzerland Agreement); or

## (iii) a person who has a right of permanent residence arising under Directive 2004/38; and

## (b) either—

## (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a State other than the United Kingdom; or

## (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone to the State within the territory comprising the European Economic Area and Switzerland of which he

<sup>(17)</sup> O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968(II) p.475), amended by Council Regulation (EEC) No 2434/92 (O.J. No. L 245, 26.8.92, p.1).

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. A person who—
  - (a) at the date that the Scottish Ministers received an application for an allowance from that person, is—
    - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as a refugee; or
    - (ii) the spouse, civil partner, child or step-child of such a refugee; and
  - (b) is ordinarily resident in the United Kingdom on the relevant day.
6. A person who—
  - (a)
    - (i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and he or she has been granted leave to enter or remain accordingly;
    - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted such leave to enter or remain; and
    - (iii) is ordinarily resident in the United Kingdom on the relevant day; or
  - (b) is the spouse, civil partner, child or step-child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in the United Kingdom on the relevant day.
7. A person who—
  - (a) at the date the Scottish Ministers received his or her application for an allowance has been granted temporary protection and who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted temporary protection;
  - (b) has not attained the age of 18 years on the relevant day; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the relevant day.
8. A person who—
  - (a) is a non UK EC national or the child of such a national;
  - (b) is ordinarily resident in the United Kingdom and Islands on the relevant day;
  - (c) has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the relevant day;
  - (d) seeks an allowance in respect of a course of education at an establishment in Scotland; and
  - (e) in the case where his or her ordinary residence referred to in sub-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 prior to the period of residence referred to in sub-paragraph (c).
9. A person who—
  - (a) is a non UK EC national or a family member of such a national;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and
  - (c) seeks an allowance in respect of a course of education at an establishment in Scotland.

*Status: This is the original version (as it was originally made).*

**10.** A person who—

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day;
- (c) is ordinarily resident in United Kingdom and Islands on the relevant day; and
- (d) in the case where his or her ordinary residence referred to in sub-paragraph (b) 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 prior to the period of residence referred to in sub-paragraph (b).

**11.** A person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations within the year immediately preceding the relevant day, provided that this paragraph will not apply where it would result in the payment of an allowance to a person after the end of any academic year in which that person attained the age of 18 years where that person qualified only by virtue of paragraph 7.”.

**Amendment of Schedule 2**

**4.** For Schedule 2 (Ordinary residence)(**18**) substitute—

“SCHEDULE 2

Regulation 3(2)

ORDINARY RESIDENCE

**1.—(1)** For the purposes of paragraph 1(a) and paragraph 8(b) of Schedule 1 a person shall be treated as being ordinarily resident in the United Kingdom on the relevant day if the Scottish Ministers are satisfied that he or she was not actually so resident only because that person or his or her spouse or civil partner or either of his or her parents, or in the case of a dependant relative in the ascending line, his or her child or child’s spouse or civil partner, was for the time being—

- (a) employed outside the United Kingdom; or
- (b) attending a course of study or undertaking postgraduate research outside the United Kingdom.

(2) For the purposes of paragraph 1(a) of Schedule 1 and subject to sub-paragraph (3), a person shall not be treated as being ordinarily resident in the United Kingdom on the relevant day if the Scottish Ministers are satisfied that his or her residence there on that day is in any sense attributable to, or connected with, any period of residence in the United Kingdom within 3 years immediately preceding the relevant day as respects any part of which was wholly or mainly for the purpose 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) shall apply in determining, for the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c), 9(b) and 10(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 (in this paragraph, “the relevant area”).

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(18) Schedule 2 was inserted by [S.S.I. 2002/423](#), regulation 8.



(2) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 1(b) of Schedule 1, if the Scottish Ministers are satisfied that he or she 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 9(b) of Schedule 1 if the Scottish Ministers are satisfied that he or she was resident there 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 his or her life in the relevant area and that—

- (a) his or her parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she is not an independent student; or
- (b) he or she 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 1 or 9 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 that person, or his or her spouse or civil partner, or either of his or her parents, or, in the case of a dependant relative in the ascending line, his or her child or child's spouse or civil partner, was for the time being—

- (a) employed outside the relevant area; or
- (b) attending a course of study or undertaking postgraduate research outside the relevant area.

**3.—(1)** In paragraph 2(4)(a), “an independent student” means a person who prior to the relevant day—

- (a) has attained the age of 25 years; or
- (b) is married or in a civil partnership; or
- (c) has no parent living; or
- (d) 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 during which he or she—

- (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;

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- (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;
- (d) received any pension, allowance or other benefit paid by reason of a disability to which he or she 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;
- (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 he or she had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon him or her.”.

## SCHEDULE 2

Regulation 3

### AMENDMENT OF THE EDUCATION AUTHORITY BURSARIES (SCOTLAND) REGULATIONS 1995

#### Amendment of regulation 2

##### 1. In regulation 2(1) (interpretation) –

- (a) for the definition of “EEA migrant worker”, substitute–

““EEA migrant worker” means an EEA national in the United Kingdom who is a worker within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier worker;”;

- (b) omit the definition of “national of a member state of the European Community”; and

- (c) insert the following definitions in alphabetical order in the appropriate places–

““Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council(**19**)on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;”;

““EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(**20**)as adjusted by the Protocol signed at Brussels on 17th March 1993(**21**);”;

““EEA frontier self-employed person” means an EEA national who–

- (a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or 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;”;

““EEA frontier worker” means an EEA national who–

- (a) is a worker (within the meaning of article 7 of Directive 2004/38) in Scotland; and

**(19)** O.J. No. L 158, 30.04.04, p.77.

**(20)** Cm. 2073.

**(21)** Cm. 2183.

- (b) resides in Switzerland or 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;”;
- ““EEA national” means a national of an EEA State other than the United Kingdom;”;
- ““EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;”;
- ““family member” means–
- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, 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;
    - (iii) dependent direct relatives in his or her ascending line or that of his or her 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) 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 a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
    - (i) his or her spouse or civil partner; or
    - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
      - (aa) under the age of 21;
      - (bb) dependants of him or her or his or her spouse or civil partner;
  - (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
    - (i) his or her spouse or civil partner;
    - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
      - (aa) under the age of 21;
      - (bb) dependents of him or her or his or her spouse;
    - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner; and
  - (e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1–
    - (i) his or her spouse or civil partner;
    - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
      - (aa) under the age of 21;
      - (bb) dependents of him or her or his or her spouse;
    - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;”;

*Status: This is the original version (as it was originally made).*

““non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community other than the United Kingdom;”;

““Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement , but who is not a Swiss frontier employed person;”;

““Swiss frontier employed person” means a Swiss national who–

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; 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;”;

““Swiss frontier self-employed person ” means a Swiss national who–

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland ; 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;”;

““Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;”.

**Amendment of regulation 4**

- 2. In regulation 4(2) (amount of bursaries) for “paragraph 4”, substitute “paragraph 9”.

**Amendment of Schedule 1**

- 3. For Schedule 1 (Persons eligible for bursaries) substitute–

“SCHEDULE 1

Regulation 3(1)

**PERSONS ELIGIBLE FOR BURSARIES**

- 1. A person who–
  - (a) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course of study in respect of which he or she seeks a bursary;
  - (b) has been ordinarily resident in the British Islands throughout the period of 3 years preceding the relevant date; and
  - (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971(22)on the relevant date.
- 2. A person who–
  - (a) is–
    - (i) an EEA migrant worker or an EEA self-employed person;
    - (ii) a Swiss employed person or a Swiss self-employed person;
    - (iii) an EEA frontier worker or an EEA frontier self-employed person; or

(22) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

- (iv) a Swiss frontier worker or a Swiss frontier self-employed person;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
  - (c) is—
    - (i) ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which he or she seeks a bursary; or
    - (ii) not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.
- 3. A person who—**
- (a) is—
    - (i) the family member of a person mentioned in paragraph 2(a); or
    - (ii) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(23)</sup>, as extended by the EEA Agreement;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
  - (c) is—
    - (i) ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which he or she seeks a bursary, or
    - (ii) not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.
- 4.—(1) A person who—**
- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
  - (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full-time education;
  - (c) is—
    - (i) ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which he or she seeks a bursary; or
    - (ii) not ordinarily resident on that day in the area of any education authority in Scotland and seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority;

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<sup>(23)</sup> O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968(II) p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L 245, 26.8.92, p.1).

*Status: This is the original version (as it was originally made).*

- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
  - (e) in the case where his or her ordinary residence referred to in sub-sub-paragraph (d) 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 prior to the period of residence referred to in sub-sub-paragraph (d).
- (2) For the purposes of this paragraph, a person has utilised a right of residence if he or she—
- (a) is—
    - (i) a United Kingdom national;
    - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38 (or corresponding provisions under the EEA Agreement or the Switzerland Agreement); or
    - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
  - (b) either—
    - (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a State other than the United Kingdom; or
    - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone 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. A person who—
- (a) at the date that the education authority received his or her application for a bursary is—
    - (i) a refugee who has been ordinarily resident in the British Islands at all times since he or she was first recognised as a refugee; or
    - (ii) the spouse, civil partner, or child, of such a refugee; and
  - (b) (i) is ordinarily resident in the area of the education authority on the qualifying day; or
  - (ii) seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority.
6. A person who—
- (a) (i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and he or she has been granted leave to enter or remain accordingly;
  - (ii) has been ordinarily resident in the British Islands at all times since he or she was first granted such leave to enter or remain; and
  - (iii) is ordinarily resident in the area of the education authority on the qualifying day, or seeks a bursary in respect of a course of study at an educational establishment in the area of the education authority; or

- (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who meets a residence requirement specified in sub-paragraph (a)(iii).
7. A person who—
- (a) at the date that the education authority received his or her application for a bursary has been granted temporary protection and who has been ordinarily resident in the British Islands at all times since he or she was first granted temporary protection;
  - (b) has not attained the age of 18 years on the relevant date; and
  - (c) is ordinarily resident in the area of the education authority on the qualifying day, provided that a bursary paid to a person only by virtue of that person qualifying under this paragraph shall not continue beyond the end of any academic year in which that person attains the age of 18 years.
8. A person who—
- (a) is a non UK EC national or the child of such a national;
  - (b) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course of study in respect of which he or she seeks a bursary;
  - (c) has been ordinarily resident in the British Islands throughout the three year period preceding the relevant date; and
  - (d) in the case where his or her ordinary residence referred to in sub-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 prior to the period of residence referred to in sub-paragraph (c).
9. A person who—
- (a) is a non UK EC national or the family member of such a national;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
  - (c) seeks a bursary in respect of a course of study at an establishment in the area of the education authority.
10. A person who—
- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date;
  - (c) is ordinarily resident in the area of the education authority on the qualifying day in relation to the course in respect of which he or she seeks a bursary; and
  - (d) in the case where his or her ordinary residence referred to in paragraph (b) 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 prior to the period of residence referred to in paragraph (b).
11. A person to whom, or in respect of whom, a bursary has been paid in accordance with these Regulations within the year immediately preceding the relevant date, provided that this paragraph will not apply where it would result in the payment of a bursary to a person after the end of any academic year in which that person attained the age of 18 years where that person qualified only by virtue of paragraph 7.”.

## Amendment of Schedule 2

### 4. For Schedule 2 (Ordinary residence) substitute—

#### “SCHEDULE 2

Regulation 3(2)

#### ORDINARY RESIDENCE

1.—(1) For the purposes of paragraph 1(a) and paragraph 8(b) of Schedule 1 a person shall be treated as being ordinarily resident in the area of the education authority on the qualifying day if the education authority are satisfied that he or she was not so resident only because that person, his or her spouse or civil partner or either of his or her parents, or in the case of a dependant relative in the ascending line, his or her child or child’s spouse or civil partner, was for the time being—

- (a) employed outside Scotland; or
- (b) attending a course of study or undertaking postgraduate research outside Scotland.

(2) For the purposes of paragraph 1(a) of Schedule 1 and subject to sub-paragraph (3), a person shall not be treated as being ordinarily resident in the area of the education authority on the qualifying day if the education authority are satisfied that his or her residence there on that day is in any sense attributable to, or connected with, any period of residence within 3 years immediately preceding the relevant date any part of which was wholly or mainly for the purpose 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) shall apply in determining, for the purposes of paragraphs 1(b), 2(b), 3(b), 4(1)(d), 8(c), 9(b) and 10(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 British Islands, the European Economic Area or Switzerland (in this paragraph “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 1(b) of Schedule 1, if the education authority are satisfied that he or she 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 9(b) of Schedule 1 if the education authority are satisfied that he or she was resident there 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 education authority are satisfied that the person was born and spent the greater part of his or her life in the relevant area and that —

- (a) his or her parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she is not an independent person; or



- (b) he or she 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 1 or 9 of Schedule 1, no part of that period or 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 education authority are satisfied that the person was not actually so resident in the relevant area for the specified period only because that person, or his or her spouse or civil partner, or either of his or her parents, or, in the case of a dependant relative in the ascending line, his or her child or child's spouse or civil partner, was for the time being—

- (a) employed outside the relevant area; or
- (b) attending a course of study or undertaking post graduate research outside the relevant area.

**3.—(1)** In paragraph 2(4)(a) an “independent person” means a person who prior to the relevant date has—

- (a) attained the age of 25 years;
- (b) been married or in a civil partnership for at least 2 years;
- (c) supported himself or herself out of his or her earnings for periods aggregating not less than 3 years; or
- (d) no parent living.

(2) A person shall be regarded as having supported himself or herself out of his or her earnings for any period during which he or she—

- (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;
- (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;
- (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 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 he or she had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon him or her.”

## SCHEDULE 3

Regulation 4

## AMENDMENT OF THE EDUCATION (FEES AND AWARDS) (SCOTLAND) REGULATIONS 1997

**Amendment of regulation 2****1. In regulation 2(1) (interpretation) –**

- (a) for the definition of “EEA migrant worker”, substitute–

““EEA migrant worker” means an EEA national in the United Kingdom who is a worker within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier worker;”;

- (b) omit the definition of “national of a member state of the European Community”; and

- (c) insert the following definitions in alphabetical order in the appropriate places–

““Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council(**24**) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;”;

““EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(**25**) as adjusted by the Protocol signed at Brussels on 17th March 1993(**26**);”;

““EEA frontier self-employed person” means an EEA national who–

- (a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or 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;”;

““EEA frontier worker” means an EEA national who–

- (a) is a worker (within the meaning of article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or 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;”;

““EEA national” means a national of an EEA State other than the United Kingdom;”;

““EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;”;

““family member” means–

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

(24) O.J. No. 158, 30.04.04, p.77.

(25) Cm. 2073.

(26) Cm. 2183.

- (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;
  - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38—
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of him or her or his or her spouse or civil partner;
- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38—
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1 and paragraph 4 of Schedule 2—
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;”;

““non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community other than the United Kingdom;”;

““Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement , but who is not a Swiss frontier employed person;”;

““Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; 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;”;

““Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; and

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- (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;” and  
““Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;”.

**Amendment of regulation 6**

2. In regulation 6(b) (relevant connection with the United Kingdom and Islands) after “full time education”, insert “unless the person is settled as referred to in paragraph (c) as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38 and that person was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence”.

**Amendment of regulation 9**

3. In regulation 9(b) (relevant connection with Scotland) after “full time education”, insert “unless the person is settled as referred to in paragraph (c) as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38 and that person was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence”.

**Regulations 11 to 13**

- 4. Omit regulations 11 (scope of Part IV) to 13 (authorised eligibility rules).

**Amendment of Schedule 1**

- 5. For Schedule 1 (Fees – Excepted Students) substitute–

“SCHEDULE 1

Regulation 7

FEES—EXCEPTED STUDENTS

- 1. It shall not be lawful in pursuance of regulation 7 to charge higher fees in the case of a student who is an excepted student within the meaning of this Schedule.
- 2. A person shall be an excepted student if he or she–
  - (a) is–
    - (i) an EEA migrant worker or an EEA self-employed person;
    - (ii) a Swiss employed person or a Swiss self-employed person;
    - (iii) an EEA frontier worker or an EEA frontier self-employed person; or
    - (iv) a Swiss frontier worker or a Swiss frontier self-employed person; and
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three year period referred to in regulation 6(a).
- 3. A person shall be an excepted student if he or she–
  - (a) (i) is the family member of a person mentioned in paragraph 2(a); or

- (ii) has a right not to be charged higher fees by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(27)</sup>, as extended by the EEA Agreement; and
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three year period referred to in regulation 6(a).
- 4.—(1) A person shall be an excepted student if he or she—
  - (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
  - (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom;
  - (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three year period referred to in regulation 6(a); and
  - (d) in the 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 prior to the period of residence referred to in paragraph (c).
- (2) For the purposes of this paragraph, a person has utilised a right of residence if he or she—
  - (a) is—
    - (i) a United Kingdom national;
    - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38 (or corresponding provisions under the EEA Agreement or the Switzerland Agreement); or
    - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
  - (b) either—
    - (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a state other than the United Kingdom; or
    - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone 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. A person shall be an excepted student if he or she is—
  - (a) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as a refugee; or
  - (b) the spouse, civil partner, child of such a refugee.
- 6. A person shall be an excepted student if he or she—
  - (a) has—
    - (i) applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he or she is considered not to qualify for

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<sup>(27)</sup> O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968(II) p.475), amended by Council Regulation (EEC) No 2434/92 (O.J. No. L 245, 26.8.92, p.1).

*Status: This is the original version (as it was originally made).*

recognition as a refugee, it is thought right to allow him or her to enter or remain in the United Kingdom and he or she has been granted leave to enter or remain accordingly; and

(ii) been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted such leave to enter or remain; or

(b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a).

7. A person shall be an excepted student if he or she—

(a) is a person who has been granted temporary protection;

(b) did not attain the age of 18 years prior to the beginning of the current academic year of the student's course; and

(c) has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted temporary protection.

8. A person shall be an excepted student if he or she—

(a) is a non UK EC national or the child of such a national;

(b) is ordinarily resident in Scotland on the date referred to in regulation 6(a);

(c) has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding that date; and

(d) in the 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 prior to the period of residence referred to in paragraph (c).

9. A person shall be an excepted student if he or she—

(a) is a non UK EC national or the family member of such a national;

(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period referred to in regulation 6(a); and

(c) his or her residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education.

10. A person shall be an excepted student if he or she—

(a) is the child of a Swiss national in respect of whom it is not lawful to charge higher fees by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;

(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period referred to in regulation 6(a); and

(c) in the case where his or her ordinary residence referred to in sub-paragraph (b) 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 prior to the period of residence referred to in sub-paragraph (b).

11. A person shall be an excepted student if—

(a) he or she has not been ordinarily resident in the United Kingdom and Islands throughout the 3 year period referred to in regulation 6(a); or

(b) being a United Kingdom national or a non UK EC national or the child of such a person, he or she has not been ordinarily resident in the European Economic Area or Switzerland throughout that 3 year period,

by reason only that that person, his or her spouse or civil partner, or either of his or her parents, or in the case of a dependant relative in the ascending line, his or her child or child's spouse or

civil partner, was temporarily employed outside the United Kingdom and Islands or, as the case may be, outside the European Economic Area or Switzerland.

**12.** A person shall be an excepted student if he or she fails to satisfy the criteria specified in paragraph 2(b), 3(b), 4(1)(c), 8(c), 9(b) or 10(b) by reason only that that person, or his or her spouse or civil partner, or either of his or her parents, or in the case of a dependant relative in the ascending line, his or her child or child's spouse or civil partner, was temporarily employed elsewhere.

**13.** A person shall be an excepted student if he or she was admitted to his or her course in pursuance of arrangements with an institution outside the United Kingdom for the exchange of students on a fully reciprocal basis.

**14.** For the purpose of this Schedule fees shall be considered to be charged on the last date or dates on which they are required to be paid by the student, and not on the date or dates on which the student enters an agreement to pay them or on which he or she receives an account in respect of them.”.

## **Amendment of Schedule 2**

**6.** For Schedule 2 (Post-graduate agricultural studentships and Newbattle Abbey College maintenance awards – excepted candidates) substitute–

### “SCHEDULE 2

Regulation 10

#### POST-GRADUATE AGRICULTURAL STUDENTSHIPS – EXCEPTED CANDIDATES

**1.—(1)** It shall not be lawful in pursuance of regulation 10 or 13 to adopt rules of eligibility for maintenance awards which exclude from eligibility a person who is an excepted candidate within the meaning of this Schedule.

**(2)** In this Schedule, “the relevant date” means the date of a candidate’s application for a maintenance award.

**2.** A person shall be an excepted candidate if he or she–

**(a)** is–

- (i)** an EEA migrant worker or an EEA self-employed person;
- (ii)** a Swiss employed person or a Swiss self-employed person;
- (iii)** an EEA frontier worker or an EEA frontier self-employed person; or
- (iv)** a Swiss frontier worker or a Swiss frontier self-employed person; and

**(b)** has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of three years immediately preceding the relevant date.

**3.** A person shall be an excepted candidate if he or she–

**(a)** is–

- (i)** the family member of a person mentioned in paragraph 2(a); or
- (ii)** entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers, as extended by the EEA Agreement; and

**(b)** has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of three years immediately preceding the relevant date.

- 4.—(1) A person shall be an excepted candidate if he or she—
- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
  - (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and any residence in Scotland in the preceding 3 years was not wholly or mainly for the purposes of receiving full-time education;
  - (c) is ordinarily resident in Scotland on the day on which the first term of the first academic year of the course actually begins;
  - (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of three years immediately preceding the relevant date; and
  - (e) in the case where his or her ordinary residence referred to in sub-sub-paragraph (d) 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 prior to the period of residence referred to in sub-sub-paragraph (d).
- (2) For the purposes of this paragraph, a person has utilised a right of residence if he or she—
- (a) is—
    - (i) a United Kingdom national;
    - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38 (or corresponding provisions under the EEA Agreement or the Switzerland Agreement); or
    - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
  - (b) either—
    - (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a state other than the United Kingdom; or
    - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone 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. Subject to paragraph 11, a refugee ordinarily resident in the United Kingdom and Islands who has not ceased to be so resident there since he or she was recognised as a refugee, and the spouse, civil partner or child of such a refugee, shall be an excepted candidate.
6. Subject to paragraph 11, a person who—
- (a) has—
    - (i) applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow him or her to enter or remain in the United Kingdom and he or she has been granted leave to enter or remain accordingly; and



- (ii) been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted such leave to enter or remain; or
  - (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a).
- 7. A person shall be an excepted candidate if he or she—
  - (a) is a person who has been granted temporary protection;
  - (b) has not attained the age of 18 years on the relevant date; and
  - (c) has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted temporary protection.
- 8. A person shall be an excepted candidate if he or she—
  - (a) is a non UK EC national or the child of such a national;
  - (b) is ordinarily resident in Scotland on the relevant;
  - (c) has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding that date; and
  - (d) in the case where his or her ordinary residence referred to in sub-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 prior to the period of residence referred to in sub-paragraph (c).
- 9. A person shall be an excepted candidate if he or she—
  - (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three year period preceding that the relevant date;
  - (c) is ordinarily resident in Scotland on the relevant date; and
  - (d) in the case where his or her ordinary residence referred to in sub-paragraph (b) 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 prior to the period of residence referred to in sub-paragraph (b).
- 10.—(1) Subject to paragraph 11, a person shall be an excepted candidate for the purposes of Part III if he or she does not have the relevant connection with Scotland mentioned in regulation 9, by reason only that—
  - (a) that person, his or her spouse or civil partner, or either of his or her parents, or, in the case of a dependant relative in the ascending line, his or her child or child's spouse or civil partner, was temporarily employed outside Scotland; or
  - (b) that person, or his or her spouse or civil partner or either of his or her parents, or, in the case of a dependant relative in the ascending line, his or her child or child's spouse or civil partner, was temporarily receiving full-time education outside Scotland.
- (2) Subject to paragraph 11, a person shall be an excepted candidate if he or she fails to satisfy the criteria specified in paragraph 2(b), 3(b), 4(b) or 8(b) by reason only that—
  - (a) that person, or his or her spouse or civil partner, or either of his or her parents, or, in the case of a dependant relative in the ascending line, his or her child or child's spouse or civil partner, was temporarily employed outside the European Economic Area or Switzerland; or
  - (b) that person, or his or her spouse or civil partner, or either of his or her parents, or, in the case of a dependant relative in the ascending line, his or her child or child's spouse

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or civil partner, was temporarily receiving full-time education outside the European Economic Area or Switzerland.

11. Such persons as are mentioned in paragraphs 5, 6, or 10 shall be excepted candidates only where the maker of the awards has so determined.”.

### **Amendment of Schedule 3**

7. In Schedule 3 (fees awards – excepted candidates) substitute–

“SCHEDULE 3

Regulation 10

#### **FEES AWARDS – EXCEPTED CANDIDATES**

1. In this Schedule “the relevant date” means the date of a candidate’s application for a fees award.

2. It shall not be lawful in pursuance of regulation 10 or 13 to adopt rules of eligibility for fees awards which exclude from eligibility a person who is an excepted candidate within the meaning of this Schedule.

3.—(1) A person who is an excepted candidate within the meaning of Schedule 2 shall be an excepted candidate within the meaning of this Schedule.

(2) Subject to paragraph 4, a person who–

- (a) is a non UK EC national; or
- (b) a family member of such a national, shall be an excepted candidate if he or she satisfies the conditions mentioned in sub-paragraph (3).

(3) The conditions referred to in sub-paragraph (2) are that–

- (a) he or she has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period immediately preceding 1st September, 1st January or 1st April closest to the beginning of the first term of his or her intended course; and
- (b) his or her residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education.

4. A candidate who would, but for this paragraph, be an excepted candidate by virtue of paragraph 3(2) and (3) shall not be an excepted candidate in a case where rules of eligibility confine awards to candidates having a relevant connection with part only of the United Kingdom and Islands and he or she is, on the relevant date, ordinarily resident in some other part of the United Kingdom and Islands.

5. A person shall be an excepted candidate if he or she fails to satisfy the criterion specified in paragraph 3(3)(a) by reason only that–

- (a) that person, or his or her spouse or civil partner, or either of his or her parents or, in the case of a dependant relative in the ascending line, his or her child or child’s spouse or civil partner, was temporarily employed outside the European Economic Area or Switzerland, or
- (b) that person, or his or her spouse or civil partner, or either of his or her parents, or, in the case of a dependant relative in the ascending line, his or her child or child’s spouse or civil partner, was temporarily receiving full-time education outside the European Economic Area or Switzerland.”.

SCHEDULE 4

Regulation 5

AMENDMENT OF THE STUDENTS' ALLOWANCES (SCOTLAND) REGULATIONS 1999

**Amendment of regulation 2**

**1. In regulation 2(1) (interpretation) –**

- (a) for the definitions of “EEA migrant worker” and “relevant day”, substitute in the relevant places–

““EEA migrant worker” means an EEA national in the United Kingdom who is a worker within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier worker;”;

““relevant day” in relation to a course of education for which an allowance is sought means–

- (a) for a course starting in the period 1st January to 31st March, 1st January in that year;
- (b) for a course starting in the period 1st April to 30th June, 1st April in that year;
- (c) for a course starting in the period 1st July to 31st July, 1st July in that year; and
- (d) for a course starting in the period 1st August to 31st December, 1st August in that year;”;

- (b) omit the definition of “national of a member state of the European Community”; and

- (c) insert the following definitions in alphabetical order in the appropriate places–

““Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council<sup>(28)</sup> on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;”;

““EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(29)</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993<sup>(30)</sup>;”;

““EEA frontier self-employed person” means an EEA national who–

- (a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or 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;”;

““EEA frontier worker” means an EEA national who–

- (a) is a worker (within the meaning of article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or 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;”;

““EEA national” means a national of an EEA State other than the United Kingdom;”;

<sup>(28)</sup> O.J. No. L 158, 30.04.04, p.77.

<sup>(29)</sup> Cm. 2073.

<sup>(30)</sup> Cm. 2183.

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““EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;”;

““family member” means–

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, 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;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her 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) his or her spouse or civil partner;
  - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependants of him or her or his or her spouse or civil partner;
- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;”;

““non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community other than the United Kingdom;”;

““Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement , but who is not a Swiss frontier employed person;”;

““Swiss frontier employed person” means a Swiss national who–

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; 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;”;

““Swiss frontier self-employed person ” means a Swiss national who–

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland ; 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;”;

““Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;”.

#### **Amendment of regulation 4**

- 2. In regulation 4(2) (amount of allowances) for “paragraph 7” substitute “paragraph 9”.

#### **Amendment of Schedule 1**

- 3. For Schedule 1 (Persons Eligible for Allowances) substitute–

#### “SCHEDULE 1

Regulation 3(1)

#### PERSONS ELIGIBLE FOR ALLOWANCES

- 1. 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
  - (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971<sup>(31)</sup> on the relevant day.
- 2.—(1) A person who–
  - (a) is–
    - (i) an EEA migrant worker or an EEA self-employed person;
    - (ii) a Swiss employed person or a Swiss self-employed person;
    - (iii) an EEA frontier worker or an EEA frontier self-employed person; or
    - (iv) a Swiss frontier worker or a Swiss frontier self-employed person; and

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<sup>(31)</sup> 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

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(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and

(c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant day.

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

3.—(1) A person who—

(a) is—

(i) the family member of a person mentioned in paragraph 2(1)(a); or

(ii) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(32)</sup>, as extended by the EEA Agreement;

(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and

(c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant day.

(2) Paragraph (1)(c) does not apply where the person applying for support is a family member of a person falling within paragraph 2(1)(a)(iii) or (iv).

4.—(1) A person who—

(a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;

(b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full-time education;

(c) is ordinarily resident in Scotland on the day on which the first term of the first academic year of the course actually begins;

(d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and

(e) in the case where his or her ordinary residence referred to in paragraph (d) 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 prior to the period of residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has utilised a right of residence if he or she—

(a) is—

(i) a United Kingdom national; or

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<sup>(32)</sup> O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968(II) p.475), amended by Council Regulation (EEC) No 2434/92 (O.J. No. L 245, 26.8.92, p.1).

- (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38 (or corresponding provisions under the EEA Agreement or the Switzerland Agreement); or
  - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
- (b) either–
- (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a state other than the United Kingdom; or
  - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone 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. A person who–
- (a) at the date the Scottish Ministers received his or her application for an allowance, is –
    - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as a refugee; or
    - (ii) the spouse, civil partner or child of such a refugee; and
  - (b) is ordinarily resident in Scotland on the relevant day.
6. A person who–
- (a) (i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow him or her to enter or remain in the United Kingdom and he or she has been granted leave to enter or remain accordingly;
  - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted such leave to enter or remain; and
  - (iii) is ordinarily resident in Scotland on the relevant day; or
  - (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant day.
7. A person who–
- (a) at the date the Scottish Ministers received his or her application for an allowance has been granted temporary protection and who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted temporary protection;
  - (b) has not attained the age of 18 years on the relevant day; and
  - (c) is ordinarily resident in Scotland on the relevant day,

provided that an allowance paid to a person only by virtue of that person qualifying under this paragraph shall not continue beyond the end of any academic year in which that person attains the age of 18 years.

8. A person who–
- (a) is a non UK EC national or the child of such a national;
  - (b) is ordinarily resident in Scotland on the relevant day;

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- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the relevant day; and
  - (d) in the 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 prior to the period of residence referred to in paragraph (c).
- 9.** A person who—
- (a) is a non UK EC national or a family member of such a national;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and
  - (c) seeks an allowance in respect of a course of education at an establishment in Scotland.
- 10.** A person who—
- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day;
  - (c) is ordinarily resident in Scotland on the relevant day; and
  - (d) in the case where his or her ordinary residence referred to in paragraph (b) 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 prior to the period of residence referred to in paragraph (b).
- 11.** A person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations within the year immediately preceding the relevant day, provided that this paragraph will not apply where it would result in the payment of an allowance to a person after the end of any academic year in which that person attained the age of 18 years where that person qualified only by virtue of paragraph 7.”.

## **Amendment of Schedule 2**

- 4.** For Schedule 2 (Ordinary residence) substitute—

“SCHEDULE 2

Regulation 3(2)

### **ORDINARY RESIDENCE**

**1.—(1)** For the purposes of paragraph 1(a) and paragraph 8(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 he or she was not actually so resident only because that person or his or her spouse or civil partner or either of his or her parents or, in the case of a dependant relative in the ascending line, his or her child or child’s spouse or civil partner, was for the time being—

- (a) employed outside Scotland; or
- (b) attending a course of study or undertaking postgraduate research outside Scotland.

(2) For the purposes of paragraph 1(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 his or her 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) shall apply in determining, for the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c), 9(b) and 10(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”) specified period in the United Kingdom, the European Economic Area or Switzerland (in this paragraph, “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 1(b) of Schedule 1, if the Scottish Ministers are satisfied that he or she was resident therein 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) below; 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 9(b) of Schedule 1 if the Scottish Ministers are satisfied that he or she 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 his or her life in the relevant area and that—

- (a) his or her parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she is not an independent student; or
- (b) he or she 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 1 or 9 of Schedule 1, no part of that residence was wholly or mainly for the purposes 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 ordinarily resident in the relevant area for the specified period only because that person, or his or her spouse or civil partner, or either of his or her parents or, in the case of a dependant relative in the ascending line, his or her child or child’s spouse or civil partner, was for the time being—

- (a) employed outside the relevant area; or
- (b) attending a course of study or undertaking postgraduate research outside the relevant area.

3.—(1) In paragraph 2(4)(a), “an independent student” means a person who prior to the relevant day—

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

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- (b) is married or in a civil partnership;
  - (c) has no parent living;
  - (d) 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 during which he or she—
- (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 he or she 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 support himself or herself out of his or her earnings because he or she had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon him or her.”.

## SCHEDULE 5

Regulation 6

### AMENDMENT OF THE EDUCATION (STUDENT LOANS) (SCOTLAND) REGULATIONS 2000

#### **Amendment of regulation 2**

1. In regulation 2 (interpretation) –
  - (a) in sub-paragraph (1) for the definition of “EEA migrant worker”, substitute—
 

““EEA migrant worker” means an EEA national in the United Kingdom who is a worker within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier worker;”;
  - (b) insert the following definitions in alphabetical order in the appropriate places—
 

““Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council<sup>(33)</sup> on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;”;

““EEA frontier self-employed person” means an EEA national who—

    - (a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in Scotland; and

<sup>(33)</sup> O.J. No. L 158, 30.04004, p.77.

- (b) resides in Switzerland or 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;”;

““EEA frontier worker” means an EEA national who–

- (a) is a worker (within the meaning of article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or 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;”;

““EEA national” means a national of an EEA State other than the United Kingdom;”;

““EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;”;

““family member” means–

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, 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;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her 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) his or her spouse or civil partner; r
  - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependants of him or her or his or her spouse or civil partner;
- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;
  - (iii) dependent direct relatives in his or her as cending line or that of his or her spouse or civil partner; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1–
  - (i) his or her spouse or civil partner;

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- (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
  - (aa) under the age of 21;
  - (bb) dependents of him or her or his or her spouse;
- (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;”;

““non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member state of the European Community other than the United Kingdom;”;

““Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement , but who is not a Swiss frontier employed person;”;

““Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; 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;”;

““Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; 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;”;

““Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;”;

(c) For regulations 2(3) to 2(5) substitute—

“(3) For the purposes of paragraph 1(a) and 8(b) of Schedule 1 , a person shall be treated as ordinarily resident in Scotland on the first day of the first academic year of the course if the Scottish Ministers are satisfied that he or she was not actually resident only because that person, or his or her spouse or civil partner, or either of his or her parents, his or her guardian or any other person having parental responsibility for him or her, or any person having care of him or her when he or she is a child, or in the case of a dependant relative in the ascending line, his or her child or child’s spouse or civil partner, was temporarily employed outside Scotland.

(4) For the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c) and 9(b) of Schedule 1, a person shall be treated as having been ordinarily resident in the area specified and for the period specified in those paragraphs if the Scottish Ministers are satisfied that the person was not actually ordinarily resident in the relevant area for the specified period only because that person, or his or her spouse or civil partner, or either of his or her parents, his or her guardian or any other person having parental responsibility for him or her, or any person having care of him or her when he or she is a child, or, in the case of a dependant relative in the ascending line, his or her child or child’s spouse or civil partner, was for the time being temporarily employed outside the relevant area.

(5) For the purposes of paragraph 1(a) of Schedule 1 and subject to paragraph (6), a person shall not be treated as being ordinarily resident in Scotland on the first day of

the first academic year of the course if the Scottish Ministers are satisfied that his or her 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 first day of the first academic year of the course as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

(6) Paragraph (5) 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.

(7) For the purposes of paragraph 1(b) of Schedule 1, a person shall not be treated as having been ordinarily resident in the United Kingdom and Islands for the three year period, if the Scottish Ministers are satisfied that he or she 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 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.

(8) For the purposes of these Regulations 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 appropriate.”.

## **Amendment of Schedule 1**

2. For Schedule 1 (Eligible Students) substitute—

“SCHEDULE 1

Regulation 4(2)(a)

### ELIGIBLE STUDENTS

1. A person who—

- (a) is ordinarily resident in Scotland on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of three years immediately preceding the first day of the first academic year of the course; and
- (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971<sup>(34)</sup>.

2.—(1) A person who—

- (a) is—
  - (i) an EEA migrant worker or an EEA self-employed person;
  - (ii) a Swiss employed person or a Swiss self-employed person;
  - (iii) an EEA frontier worker or an EEA frontier self-employed person;

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<sup>(34)</sup> 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

*Status: This is the original version (as it was originally made).*

- (iv) a Swiss frontier worker or a Swiss frontier self-employed person;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
  - (c) subject to sub-paragraph (2), is ordinarily resident in the Scotland on the first day of the first academic year of the course.
- (2) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iii) or (iv).

**3.—(1) A person who—**

- (a) is—
    - (i) the family member of a person mentioned in paragraph 2(1)(a); or
    - (ii) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(35)</sup>, as extended by the EEA Agreement;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
  - (c) subject to sub-paragraph (2), is ordinarily resident in the Scotland on the first day of the first academic year of the course.
- (2) Sub-paragraph (1)(c) does not apply where the person applying for support is a family member of a person falling within paragraph 2(1)(a)(iii) or (iv).

**4.—(1) A person who—**

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
  - (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full-time education;
  - (c) is ordinarily resident in Scotland on the day on which the first term of the first academic year of the course actually begins;
  - (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
  - (e) in the case where his or her ordinary residence referred to in paragraph (d) 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 prior to the period of residence referred to in paragraph (d).
- (2) For the purposes of this paragraph, a person has utilised a right of residence if he or she—
- (a) is—

<sup>(35)</sup> O.J. No. L 257, 19.10.1968, p.2 (O.J./S.E. 1968(II) p.475), amended by Council Regulation (EEC) No 2434/92 (O.J. No. L 245, 26.8.92, p.1).

- (i) a United Kingdom national;
  - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38 (or corresponding provisions under the EEA Agreement or the Switzerland Agreement); or
  - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
- (b) either–
- (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a state other than the United Kingdom; or
  - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone 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. A person who–
- (a) is–
    - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as a refugee; or
    - (ii) the spouse, civil partner or child of such a refugee; and
  - (b) is ordinarily resident in Scotland on the first day of the first academic year of the course.
6. A person who–
- (a)
    - (i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow him or her to enter or remain in the United Kingdom and he or she has been granted leave to enter or to remain accordingly;
    - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted leave to enter or remain, and
    - (iii) is ordinarily resident in Scotland on the first day of the first academic year of the course; or
  - (b) is the spouse, civil partner, child or stepchild of a person of the kind described in subparagraph (a) and who is ordinarily resident in Scotland on the first day of the first academic year of the course.
7. A person who–
- (a) has been granted temporary protection, who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted temporary protection;
  - (b) has not attained the age of 18 years on the relevant date; and
  - (c) is ordinarily resident in Scotland on the first day of the first academic year of the course.
8. A person who–
- (a) is a non UK EC national or the child of such a national;
  - (b) is ordinarily resident in Scotland on the first day of the first academic year of the course;

*Status: This is the original version (as it was originally made).*

- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding that date; and
  - (d) in the 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 prior to the period of residence referred to in paragraph (c).
9. A person who—
- (a) is the child or stepchild of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course;
  - (c) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
  - (d) in the case where his or her ordinary residence referred to in paragraph (b) 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 prior to the period of residence referred to in paragraph (b).”.

## SCHEDULE 6

Regulation 7

### AMENDMENT OF THE GRADUATE ENDOWMENT (SCOTLAND) REGULATIONS 2001

#### Amendment of regulation 4

1. In regulation 4(2)(c) (exempt graduates) for “paragraph 7”, substitute “paragraph 8”.

#### Amendment of Schedule 1

2. For Schedule 1 (Liable Graduates) substitute—

### “SCHEDULE 1

Regulation 3(1)(c)

### LIABLE GRADUATES

- 1.—(1) In this Schedule—

“Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council<sup>(36)</sup> on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(37)</sup> as adjusted by the protocol signed at Brussels on 17th March 1993<sup>(38)</sup>;

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in Scotland; and

<sup>(36)</sup> O.J. No. L 158, 30.04.04, p.77.

<sup>(37)</sup> Cm. 2073.

<sup>(38)</sup> Cm. 2183.



- (b) resides in Switzerland or 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;

“EEA frontier worker” means an EEA national who–

- (a) is a worker (within the meaning of article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or 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;

“EEA migrant worker” means an EEA national in the United Kingdom who is a worker within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier worker;

“EEA national” means a national of an EEA State other than the United Kingdom;

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;

“EEA State” means a member state, Norway, Iceland or Liechtenstein;

“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 Norway, Iceland and Liechtenstein;

“family member” means–

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, 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;r
  - (iii) dependent direct relatives in his or her ascending line or that of his or her 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) his or her spouse or civil partner;
  - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependants of him or her or his or her spouse or civil partner;
- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;

*Status: This is the original version (as it was originally made).*

- (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 5 of Schedule 1—
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are—
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;
  - (iii) dependent direct relatives in his or her ascending line or that of his or her spouse or civil partner;

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

“non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member state of the European Community other than the United Kingdom;

“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;

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement, but who is not a Swiss frontier employed person;

“Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; 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;

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland ; 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;

“Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person; and

“Switzerland Agreement” 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 21st June 1999<sup>(39)</sup> and which came into force on 1st June 2002.

- (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

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<sup>(39)</sup> Cm. 5639.

- (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
- (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971<sup>(40)</sup> on the relevant day.

**3.—(1)** A person who—

- (a) is—
  - (i) an EEA migrant worker or an EEA self-employed person;
  - (ii) a Swiss employed person or a Swiss self-employed person;
  - (iii) an EEA frontier worker or an EEA frontier self-employed person;
  - (iv) a Swiss frontier worker or a Swiss frontier self-employed person;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant day.

(2) Sub-paragraph (1)(c) does not apply where the person falls within sub-paragraph (1)(a)(iii) or (iv).

**4.—(1)** A person who—

- (a) is—
  - (i) the family member of a person mentioned in paragraph 2(1)(a); or
  - (ii) is entitled to the payment of an allowance by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(41)</sup>, as extended by the EEA Agreement;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant day.

(2) Sub-paragraph (1)(c) does not apply where the person is a family member of a person falling within paragraph 2(1)(a)(iii) or (iv).

**5.—(1)** A person who—

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<sup>(40)</sup> 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

<sup>(41)</sup> O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968(II) p.475), amended by Council Regulation (EEC) No 2434/92 (O.J. No. L 245, 26.8.92, p.1).

*Status: This is the original version (as it was originally made).*

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
  - (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full-time education;
  - (c) is ordinarily resident in Scotland on the relevant day;
  - (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and
  - (e) in the case where his or her ordinary residence referred to in sub-sub-paragraph (d) 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 prior to the period of residence referred to in sub-sub-paragraph (d).
- (2) For the purposes of this paragraph, a person has utilised a right of residence if he or she—
- (a) is—
    - (i) a United Kingdom national;
    - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38 (or corresponding provisions under the EEA Agreement or the Switzerland Agreement); or
    - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
  - (b) either—
    - (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a state other than the United Kingdom; or
    - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone 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.
6. A person who—
- (a)
    - (i) has applied for refugee status but has as a result of that application 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) has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted such leave to enter or remain; and
    - (iii) is ordinarily resident in Scotland on the relevant day; or
  - (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant day.
7. A person who—

- (a) is a non UK EC national or the child of such a national;
  - (b) is ordinarily resident in Scotland on the relevant day;
  - (c) has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding that day; and
  - (d) in the 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 prior to the period of residence referred to in paragraph (c).
8. A person who—
- (a) is a non UK EC national or a family member of such a national;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day; and
  - (c) seeks an allowance in respect of a full-time course of higher education at an establishment in Scotland.
9. A person who—
- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article(6) of Annex 1 to the Switzerland Agreement;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant day;
  - (c) is ordinarily resident in Scotland on the relevant day; and
  - (d) in the case where his or her ordinary residence referred to in paragraph (b) 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 prior to the period of residence referred to in paragraph (b).”.

## **Amendment of Schedule 2**

3. For Schedule 2 (Ordinary residence) substitute—

“SCHEDULE 2

Regulation 4(3) and Schedule 1(1)

### 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 that person, or his or her spouse or civil partner, or either of his or her parents, or in the case of a dependant relative in the ascending line, his or her child or child’s spouse or civil partner, was for the time being—

- (a) employed outside Scotland; or
- (b) 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.

*Status: This is the original version (as it was originally made).*

(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 (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 he or she 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 he or she 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) his or her parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she is not an independent student; or
- (b) he or she 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 1 or 9 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 that person, or his or her spouse or civil partner, or either of his or her parents or, in the case of a dependant relative in the ascending line, his or her child or child’s spouse or civil partner, was for the time being—

- (a) employed outside the relevant area; or
- (b) 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;
- (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 he or she—
- (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 he or she 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 support himself or herself out of his or her earnings because he or she had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon him or her.”.

## SCHEDULE 7

Regulation 8

### AMENDMENT OF THE EDUCATION MAINTENANCE ALLOWANCES (SCOTLAND) REGULATIONS 2004

#### **Amendment of regulation 2**

**1.** In regulation 2(1) (interpretation) –

- (a) for the definition of “EEA migrant worker”, substitute—

““EEA migrant worker” means an EEA national in the United Kingdom who is a worker within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier worker;”;
- (b) omit the definition of “national of a member state of the European Community”; and
- (c) insert the following definitions in alphabetical order in the appropriate places—

““Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council<sup>(42)</sup> on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;”;

““EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(43)</sup> as adjusted by the Protocol signed at Brussels on 17th March 1993<sup>(44)</sup>;”;

““EEA frontier self-employed person” means an EEA national who—

  - (a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in the United Kingdom; and

<sup>(42)</sup> O.J. No. L 158, 30.04.04, p.73.

<sup>(43)</sup> Cm. 2073.

<sup>(44)</sup> Cm. 2183.

*Status: This is the original version (as it was originally made).*

- (b) resides in Switzerland or 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;”;

““EEA frontier worker” means an EEA national who–

- (a) is a worker (within the meaning of article 7 of Directive 2004/38) in the United Kingdom; and
- (b) resides in Switzerland or 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;”;

““EEA national” means a national of an EEA State other than the United Kingdom;”;

““EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;”;

““family member” means–

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, 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;
- (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;
  - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to a non UK EC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependants of him or her or his or her spouse or civil partner;
- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 4 of Schedule 1–
  - (i) his or her spouse or civil partner;
  - (ii) direct descendants of him or her or of his or her spouse or civil partner who are–
    - (aa) under the age of 21;
    - (bb) dependents of him or her or his or her spouse;”;



““non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member state of the European Community other than the United Kingdom;”;

““Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement , but who is not a Swiss frontier employed person;”;

““Swiss frontier employed person” means a Swiss national who–

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in the United Kingdom; 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;”;

““Swiss frontier self-employed person” means a Swiss national who–

- (a) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in the United Kingdom ; 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;”;

““Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;”.

#### **Amendment of regulation 4**

**2.** In regulation 4 ( amount of education maintenance allowances)(45)–

- (a) in paragraph (2) after “holder’s spouse”insert “or the holder’s civil partner”;
- (b) in paragraph (3)(b) after “her spouse”insert “or civil partner”; and
- (c) for paragraph (4) substitute–

“(4) In paragraphs (2) and (3)–

- (a) 'holder’s spouse' shall, where the Scottish Ministers consider it appropriate, include the other member of a couple who are not married to each otherbut who are living together as husband and wife; and
- (b) 'holder’s civil partner'shall, where the Scottish Ministers consider it appropriate, include the other member of a couple who are not civil partners of each other but who are living together as civil partners to each other.”.

#### **Amendment of Schedule 1**

**3.** For Schedule 1 (Persons Eligible for Education Maintenance Allowances) substitute–

“SCHEDULE 1

Regulation 3(1)

#### **PERSONS ELIGIBLE FOR EDUCATION MAINTENANCE ALLOWANCES**

**1.** A person who–

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(45) Regulation 4 was amended by [.S.S.I 2005/572](#), Article 48.

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- (a) is ordinarily resident in the United Kingdom and Islands on the qualifying date in relation to the course of education in respect of which he or she seeks an education maintenance allowance;
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years preceding the qualifying date; and
- (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971<sup>(46)</sup> on the qualifying date.

**2.—(1)** A person who is an EEA migrant worker who—

- (a) is—
  - (i) an EEA migrant worker or an EEA self-employed person;
  - (ii) a Swiss employed person or a Swiss self-employed person;
  - (iii) an EEA frontier worker or an EEA frontier self-employed person; or
  - (iv) a Swiss frontier worker or a Swiss frontier self-employed person;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying date; and
- (c) subject to sub-paragraph (2), is ordinarily resident in the United Kingdom and Islands on the qualifying date.

(2) Sub-paragraph (1)(c) does not apply where the person applying for support falls within paragraph (1)(a)(iii) or (iv).

**3.—(1)** A person who—

- (a) is
  - (i) the family member of a person mentioned in paragraph 2(1)(a); or
  - (ii) is entitled to support by virtue of Article 12 of the Free Movement Regulation;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying date; and
- (c) subject to sub-paragraph (2), is ordinarily resident in the United Kingdom and Islands on the qualifying date.

(2) Sub-paragraph (1)(c) does not apply where the person applying for support falls within paragraph 2(1)(a)(iii) or (iv).

**4.—(1)** A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
- (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom;
- (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date;
- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying date; and

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<sup>(46)</sup> 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

- (e) in the case where his or her ordinary residence referred to in paragraph (d) 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 prior to the period of residence referred to in paragraph (d).
- (2) For the purposes of this paragraph, a person has utilised a right of residence if he or she—
- (a) is—
    - (i) a United Kingdom national;
    - (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38 (or corresponding provisions under the EEA Agreement or the Switzerland Agreement); or
    - (iii) a person who has a right of permanent residence arising under Directive 2004/38; and
  - (b) either—
    - (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or the Switzerland Agreement in a state other than the United Kingdom; or
    - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone 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. A person who—
- (a) at the date the Scottish Ministers received his or her application for an education maintenance allowance is—
    - (i) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first recognised as a refugee; or
    - (ii) the spouse, civil partner, or child, of such a refugee; and
  - (b) is ordinarily resident in Scotland on the qualifying date.
6. A person who—
- (a) (i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and he or she has been granted leave to enter or remain accordingly;
  - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted such leave to enter or remain; and
  - (iii) is ordinarily resident in Scotland on the qualifying date; or
  - (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the qualifying date.
7. A person who—
- (a) at the date the Scottish Ministers received his or her application for an education maintenance allowance has been granted temporary protection and has been ordinarily resident in the United Kingdom and Islands at all times since he or she was first granted temporary protection;

*Status: This is the original version (as it was originally made).*

- (b) has not attained the age of 18 years on the qualifying date; and
  - (c) is ordinarily resident in the United Kingdom and Islands on the qualifying date, provided that an education maintenance allowance paid to a person only by virtue of that person qualifying under this paragraph shall not continue beyond the end of any academic year in which that person attains the age of 18 years.
- 8.** A person who—
- (a) subject to sub-paragraph (2), is a non UK EC national or the child of such a person;
  - (b) is ordinarily resident in the United Kingdom and Islands on the qualifying date;
  - (c) has been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding that date; and
  - (d) in the 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 prior to the period of residence referred to in paragraph (c).
- 9.** A person who—
- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the qualifying date;
  - (c) is ordinarily resident in United Kingdom and Islands on the qualifying date; and
  - (d) in the case where his or her ordinary residence referred to in paragraph (b) 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 prior to the period of residence referred to in paragraph (b).

**10.**—(1) Subject to sub-paragraph (2), a person to whom, or in respect of whom, an education maintenance allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course for which that person is currently seeking an education maintenance allowance, provided that the current application will not result in such a person being awarded an education maintenance allowance for more than 3 years.

(2) Sub-paragraph (1) shall not preclude the payment of the monetary value of 3 years education maintenance allowance over a period of 4 years.

(3) Sub-paragraph (1) shall not apply where it would result in the payment of an education maintenance allowance to a person after the end of any academic year in which that person attained the age of 18 years where that person qualified only by virtue of paragraph 7.”.

**Amendment of Schedule 2**

**4.** For Schedule 2 (Ordinary Residence) substitute—

“SCHEDULE 2

Regulation 3(2)

ORDINARY RESIDENCE

**1.**—(1) For the purposes of paragraph 1(a) and paragraph 8(b) of Schedule 1 a person shall be treated as being ordinarily resident in the United Kingdom and Islands on the qualifying date

if the Scottish Ministers are satisfied that he or she was not so resident only because that person, or his or her spouse or civil partner, or either of his or her parents was for the time being—

- (a) employed outside the United Kingdom and Islands; or
- (b) attending a course of study or undertaking postgraduate research outside the United Kingdom and Islands.

(2) For the purposes of paragraph 1(a) of Schedule 1 and subject to sub-paragraph (3), a person shall not be treated as being ordinarily resident in the United Kingdom and Islands on the qualifying date if the Scottish Ministers are satisfied that his or her residence there on that day is in any sense attributable to, or connected with, any period of residence in the United Kingdom and Islands within 3 years immediately preceding the qualifying date 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) shall apply in determining, for the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 8(c) 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 and Islands, the European Economic Area or Switzerland (in this paragraph, “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 1(b) of Schedule 1, if the Scottish Ministers are satisfied that he or she was resident therein 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 9(b) of Schedule 1 if the Scottish Ministers are satisfied that he or she 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 in and spent the greater part of his or her life in the relevant area and that —

- (a) his or her parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she is not an independent person; or
- (b) he or she has been ordinarily resident in the relevant area for at least one year of the specified period and, in the case of those qualifying by virtue of paragraph 1 or 9 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 ordinarily resident in the relevant area for the specified period only because that person, his or her spouse or civil partner, or either of his or her parents was for the time being—

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- (a) employed outside the relevant area; or
  - (b) attending a course of study or undertaking postgraduate research outside the relevant area.
3. In paragraph 2(4)(a), an “independent person” means a person who prior to the qualifying date—
- (a) has been married or in a civil partnership; or
  - (b) has no parent living.”.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations (“the Amendment Regulations”), which come into force on 30th June 2006, amend: –

- the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992 (regulation 2 and Schedule 1);
- the Education Authority Bursaries (Scotland) Regulations 1995 (regulation 3 and Schedule 2);
- the Education (Fees and Awards) (Scotland) Regulations 1997 (regulation 4 and Schedule 3);
- the Students' Allowances (Scotland) Regulations 1999 (regulation 5 and Schedule 4);
- the Education (Student Loans) (Scotland) Regulations 2000 (regulation 6 and Schedule 5);
- the Graduate Endowment (Scotland) Regulations 2001 (regulation 7 and Schedule 6); and
- the Education Maintenance Allowances (Scotland) Regulations 2004 (regulation 8 and Schedule 7),

(together “the principal Regulations”).

The principal Regulations set out in Schedules categories of person who are eligible for different types of support, except the Graduate Endowment (Scotland) Regulations 2001, which set out categories of person who are liable for the graduate endowment. The Education (Fees and Awards) (Scotland) Regulations 1997 also set out categories of person in respect of whom higher fees should not be charged. Persons in the categories must meet different ordinary residence requirements and the rules to be applied to determining ordinary residence are either contained in separate Schedules to the principal Regulations or, in the case of the Education (Fees and Awards) (Scotland) Regulations 1997 and the Education (Student Loans) (Scotland) Regulations 2000, elsewhere in the Regulations.

The Amendment Regulations restate with amendments the Schedules in the principal Regulations which contain the categories of person and the Schedules or separate regulations in the principal Regulations which contain the rules for determining the ordinary residence requirements.

The amendments are partly concerned with Directive [2004/38/EC](#) of the European Parliament and of the Council (O.J. L 158, 30.04.04, p.77) (“the Directive”) on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member states. The Regulations implement part of this Directive, so far as it relates to student support.

Certain persons who previously may have been excluded from the categories as set out in the principal Regulations are to be included in the categories as a result of the Directive. The

amendments are made to ensure that the categories and ordinary residence rules include, to the extent required by the Directive, all of those with a right of permanent residence arising by virtue of the Directive, all of those falling within the definition of worker in the Directive and all family members with rights under the Directive.

The amendments also revise the categories and the ordinary residence rules to ensure that non UK EC nationals, European Economic Area and Swiss self employed persons, European Economic Area and Swiss frontier workers, the children of Swiss nationals and UK nationals exercising free movement rights are included in the categories to the extent required by the Directive or by wider Community law.

The Amendment Regulations also amend categories in all of the principal Regulations (other than the Education (Fees and Awards) (Scotland) Regulations 1997) which cover those who have applied for refugee status but, instead of being recognised as a refugee, are allowed leave to enter or remain. The amendments remove the three year ordinary residence requirement applying to such persons, who now have a similar ordinary residence requirement to refugees, being required to be ordinary resident in the relevant area at all times since being granted their immigration status. The residence requirement of family members of such persons is also made consistent with that of family members of refugees.

The Amendment Regulations also amend the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992 to clarify that tuition fees may form part of the allowance payable under those Regulations, the Education (Fees and Awards) (Scotland) Regulations 1997 to remove obsolete provisions for payments as regards students at Newbattle Abbey College, Dalkeith and the Education Maintenance Allowances (Scotland) Regulations 2004 to correct an omission from the Civil Partnership Act 2004 (Modification of Subordinate Legislation) Order 2005 ([S.S.I. 2005/572](#)) which inserted relevant references to civil partners in those Regulations.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.