

SCHEDULE 2

Regulation 10

POST-GRADUATE AGRICULTURAL STUDENTSHIPS – EXCEPTED CANDIDATES

1.—(1) It shall not be lawful in pursuance of regulation 10 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 that person—

(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 3 years immediately preceding the relevant date.

3. A person shall be an excepted candidate if that person—

(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 3 years immediately preceding the relevant date.

4.—(1) A person shall be an excepted candidate if that person—

(a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971(1);

(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 3 years immediately preceding the relevant date; and

(e) in the case where their 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 that person—

(a) is—

- (i) a United Kingdom national;

(1) 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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- (ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38(2) (or corresponding provisions under the EEA agreement or the Switzerland Agreement(3)); 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 that person is a national or of which the person in relation to whom that person 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 that person 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 that person 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 that person has been granted leave to enter or remain accordingly; and
 - (ii) been ordinarily resident in the United Kingdom and Islands at all times since that person 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 that person–
- (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 that person was first granted temporary protection.
8. A person shall be an excepted candidate if that person–
- (a) is a non UKEC national or the child of such a national;
 - (b) is ordinarily resident in Scotland on the relevant date;
 - (c) has been ordinarily resident in the United Kingdom and Islands throughout the 3 year period preceding that date; and
 - (d) in the case where their 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 that person–
- (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;

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

(3) Cm. 5639.

- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period preceding the relevant date;
- (c) is ordinarily resident in Scotland on the relevant date; and
- (d) in the case where their 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 that person does not have the relevant connection with Scotland mentioned in regulation 9, by reason only that that person, their spouse or civil partner, or either of their parents, or, in the case of a dependant relative in the ascending line, their child or child's spouse or civil partner, was temporarily either employed or studying outside Scotland.

(2) Subject to paragraph 11, a person shall be an excepted candidate if that person fails to satisfy the criteria specified in paragraph 2(b), 3(c), 4(d) or 8(c) by reason only that that person, or their spouse or civil partner, or either of their parents, or, in the case of a dependant relative in the ascending line, their child or child's spouse or civil partner, was temporarily either employed or studying 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.