

SCHEDULE 1

PERSONS ELIGIBLE FOR ALLOWANCES

- 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 date; and
 - (e) in the case where their 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 that person—
- (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(1) (or corresponding provisions under the EEA agreement or the Switzerland Agreement(2)); 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.

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

(2) Cm. 5639.