

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 that person was not so resident only because that person, or their spouse or civil partner, or either of their 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 their residence there on that date 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 that person 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 that person was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education, unless that person is treated as ordinarily resident by virtue of sub paragraph (5).

(4) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the Scottish Ministers are satisfied that the person was born in and spent the greater part of their life in the relevant area and that—

- (a) that person’s parents or either of them have been ordinarily resident in the relevant area throughout the specified period and that the person is not an independent person; or
- (b) that person 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 8 of Schedule 1, no part of that period of residence was wholly or mainly for the purpose of receiving full time education.

Status: This is the original version (as it was originally made).

(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, their spouse or civil partner, or either of their parents 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. In paragraph 2(4)(a), an “independent person” means a person who on the qualifying date—

- (a) is married or in a civil partnership;
- (b) has no parent or guardian living;
- (c) does not reside with, has no regular contact with and receives no financial support from a parent or guardian;
- (d) is a parent to whom child benefit is being paid;
- (e) is in receipt of income support;
- (f) is a person being looked after and provided with accommodation by a local authority or equivalent organisation; or
- (g) is a person, formerly looked after by a local authority or equivalent organisation, who does not reside with, has no regular contact with and receives no financial support from a parent or guardian.