

SCHEDULE 1

Regulation 3(1)

PERSONS ELIGIBLE FOR EDUCATION MAINTENANCE ALLOWANCES

1. A person who—

- (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 that person 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(1) 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;

(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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- (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
 - (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 (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 that person is a national or of which the person in relation to whom that person is a family member is a national.
5. A person who—
- (a) at the date the Scottish Ministers received their 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 that person 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 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;
 - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person 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 that person’s 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 that person was first granted temporary protection;

- (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) is a non UKEC national or the child of such a national;
- (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 period of 3 years immediately preceding that date; and
- (d) in the case where their 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 their 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.

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

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(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.

(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.