SCHEDULE 1 Regulations 5, 116, 133 and 150

ELIGIBLE STUDENTS

PART 1

Interpretation

1.—(1) For the purposes of this Schedule—

"EEA frontier self-employed person" means an EEA national who—

(a) is a self-employed person in England; and

(b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national's 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 in England; and

(b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national's 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 who is a worker, other than an EEA frontier worker, in the United Kingdom;

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

"EEA self-employed person" means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

"employed person" means an employed person within the meaning of Annex 1 to the Swiss Agreement;

"European Economic Area" means the area comprised by the EEA States;

unless otherwise indicated, "family member" means—

(a) in relation an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—

(i) that person's spouse or civil partner;

(ii) that person's child or the child of their spouse or civil partner; or

(iii) dependent direct relatives in the ascending line of that person or that of the person's 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) that person's spouse or civil partner; or

(ii) that person's child or the child of that person's spouse or civil partner;

(c) in relation to an EC national who falls within article 7(1)(c) of Directive 2004/38—

(i) that person's spouse or civil partner; or

(ii) direct descendants of the person or of the person's spouse or civil partner who are—

(aa) under the age of 21; or

(bb) dependants of the person or the person's spouse or civil partner;

(d) in relation to an EC national who falls within article 7(1)(b) of Directive 2004/38—

(i) that person's spouse or civil partner;

(ii) direct descendants of the person or of the person's spouse or civil partner who are—

(aa) under the age of 21; or

(bb) dependants of the person or the person's spouse or civil partner; or

(iii) dependent direct relatives in the person's ascending line or that of the person's spouse or civil partner;

(e) in relation to a United Kingdom national, for the purposes of paragraph 9—

(i) the person's spouse or civil partner; or

(ii) direct descendants of the person or the person's spouse or civil partner who are—

(aa) under the age of 21; or

(bb) dependants of the person or the person's spouse or civil partner;

"self-employed person" means—

(a) in relation to an EEA national, a person who is self-employed within the meaning of article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or

(b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

"settled" has the meaning given by section 33(2A) of the Immigration Act 1971(**1**);

"Swiss 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(**2**) and which came into force on 1st June 2002;

"Swiss employed person" means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

"Swiss frontier employed person" means a Swiss national who—

(a) is an employed person in England; and

(b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national's 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 in England; and

(b) resides in Switzerland or in the territory of an EEA State, other than the United Kingdom, and returns to the national's 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 who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom;

"worker" means a worker within the meaning of article 7 of Directive 2004/38 or the EEA Agreement as the case may be.

(2) For the purposes of this Schedule, "parent" includes a guardian, any other person having parental responsibility for a child and any person having care of a child and "child" is to be construed accordingly.

(**1**) 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c.61).
(**2**) Cm. 4904.

(3) For the purposes of this Schedule, a person who is ordinarily resident in England, Wales, Scotland, Northern Ireland or the Islands, as a result of having moved from another of those areas for the purpose of undertaking—

(a) the current course; or

(b) a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the current course,

is to be considered to be ordinarily resident in the place from which the person moved.

(4) For the purposes of this Schedule, a person ("A") is to be treated as ordinarily resident in England, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area, Switzerland and Turkey if A would have been so resident but for the fact that—

(a) A;

(b) A's spouse or civil partner;

(c) A's parent; or

(d) in the case of a dependent direct relative in the ascending line, A's child or child's spouse or civil partner,

is or was temporarily employed outside the area in question.

(5) For the purposes of sub-paragraph (4), temporary employment outside of England, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area, Switzerland and Turkey includes—

(a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces; and

(b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside of the territory comprising the European Economic Area and Switzerland as members of such forces; and

(c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

(6) For the purposes of this Schedule 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 these areas,

is to be considered to have always been a part of the European Economic Area.

PART 2

Categories

Persons who are settled in the United Kingdom

2.—(1) A person who on the first day of the first academic year of the course—

(a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;

(b) is ordinarily resident in England;

(c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and

(d) subject to sub-paragraph (2), whose residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(4).

3.—(1) A person who—

(a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;

(b) is ordinarily resident in England on the first day of the first academic year of the course;

(c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and

(d) in a case where the person's 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 before the period of ordinary residence referred to in paragraph (c).

Refugees and their family members

4.—(1) A person—

(a) who is a refugee;

(b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was recognised as a refugee; and

(c) who is ordinarily resident in England on the first day of the first academic year of the course.

(2) A person—

(a) who is the spouse or civil partner of a refugee;

(b) who was the spouse or civil partner of the refugee on the date on which the refugee made the application for asylum;

(c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or remain in the United Kingdom; and

(d) who is ordinarily resident in England on the first day of the first academic year of the course.

(3) A person—

(a) who is the child of a refugee or the child of the spouse or civil partner of a refugee;

(b) who, on the date on which the refugee made the application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date;

(c) who was under 18 on the date on which the refugee made the application for asylum;

(d) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or remain in the United Kingdom; and

(e) who is ordinarily resident in England on the first day of the first academic year of the course.

Persons with leave to enter or remain and their family members

5.—(1) A person—

(a) with leave to enter or remain;

(b) who is ordinarily resident in England on the first day of the first academic year of the course; and

(c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(2) A person—

(a) who is the spouse or civil partner of a person with leave to enter or remain;

(b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made the application for asylum;

(c) who is ordinarily resident in England on the first day of the first academic year of the course; and

(d) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

(3) A person—

(a) who is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain;

(b) who, on the date on which the person with leave to enter or remain made the application for asylum, was the child of that person or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date;

(c) who was under 18 on the date on which the person with leave to enter or remain made the application for asylum;

(d) who is ordinarily resident in England on the first day of the first academic year of the course; and

(e) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

Workers, employed persons, self-employed persons and their family members

6.—(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) a family member of a person mentioned in paragraph (i) or (ii);

(iv) an EEA frontier worker or an EEA frontier self-employed person;

(v) a Swiss frontier employed person or a Swiss frontier self-employed person; or

(vi) a family member of a person mentioned in paragraph (iv) or (v);

(b) subject to sub-paragraph (2), is ordinarily resident in England on the first day of the first academic year of the course; and

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

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

7. A person who—

(a) is ordinarily resident in England on the first day of the first academic year of the course;

(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and

(c) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers(**3**), as extended by the EEA Agreement.

Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

8.—(1) A person who—

(a) is settled in the United Kingdom;

(b) was ordinarily resident in England and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence;

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

(d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and

(e) in a case where the person's ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if that person is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who has a right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if the person goes to the state within the territory comprising the European Economic Area and Switzerland of which the person is a national or of which the person in relation to whom the person is a family member is a national.

EC nationals

9.—(1) A person who—

(a) is either—

(i) an EC national on the first day of the first academic year of the course; or

(ii) a family member of a such a person;

(b) is—

(i) attending a designated course in England; or

(ii) undertaking a compressed degree course, designated part-time course or a designated postgraduate course in England;

(**3**) OJ No L257, 19.10.1968, p2 (OJ/SE 1968 (II) p475).

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and

(d) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the European Economic Area and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the European Economic Area and Switzerland in accordance with paragraph 1(4).

(3) Where a state accedes to the European Community after the first day of the first academic year of the course and a person is a national of that state or the family member of a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EC national on the first day of the first academic year of the course is treated as being satisfied.

10.—(1) A person who—

(a) is an EC national other than a United Kingdom national on the first day of the first academic year of the course;

(b) is ordinarily resident in England on the first day of the first academic year of the course;

(c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and

(d) in a case where the person's 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 ordinary residence referred to in paragraph (c).

(2) Where a state accedes to the European Community after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EC national other than a United Kingdom national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

11. 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 Swiss Agreement;

(b) is ordinarily resident in England on the first day of the first academic year of the course;

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and

(d) in a case where the person's 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 before the period of ordinary residence referred to in paragraph (c).

Children of Turkish workers

12. A person who—

(a) is the child of a Turkish worker;

(b) is ordinarily resident in England on the first day of the first academic year of the course; and

(c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.