

SCHEDULE

PART 1

Interpretation

Interpretation: general

1.—(1) In this Schedule—

“Directive 2004/38” means [Directive 2004/38/EC](#) of the European Parliament and of the Council of 29th April 2004⁽¹⁾ on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“EEA Agreement” means the European Economic Area Agreement signed at Porto on 2 May 1992 and which came into force on 1 January 1994;

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the person’s residence in Switzerland or that EEA State daily or at least once a week;

“EEA frontier worker” means an EEA national who—

- (a) is a worker in the United Kingdom; and
- (b) resides in Switzerland or the territory of another EEA State other than the United Kingdom and returns to the person’s residence in Switzerland or that EEA State 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;

“employment” means full-time or part-time employment;

“European Community” means the territory comprised by the Member States of the European Community as was constituted from time to time;

“EU national” means a national of a Member State of the European Union;

“European Economic Area” means the area comprised by the EEA States;

“family member” means—

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

(1) OJ L158, 30.4.2004, p77-123.

Status: This is the original version (as it was originally made).

- (iii) dependent direct relatives in the person's ascending line 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) the person's spouse or civil partner; or
 - (ii) the person's child or the child of the person's spouse or civil partner;
- (c) in relation to an EU national who falls within Article 7(1)(c) of Directive 2004/38—
 - (i) the 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 of the person's spouse or civil partner;
- (d) in relation to an EU national who falls within Article 7(1)(b) of Directive 2004/38—
 - (i) the 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;
 - (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.

“the Islands” means the Channel Islands and the Isle of Man;

“overseas territories” means Anguilla; Aruba; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Montserrat; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten); Pitcairn, Henderson, Ducie and Oeno Islands; South Georgia and the South Sandwich Islands; St Barthélemy; St Helena and Dependencies (Ascension Island and Tristan da Cunha); St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; Turks and Caicos Islands and Wallis and Futuna;

“right of permanent residence” means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“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(2)

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

“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 and which came into force on 1 June 2002⁽³⁾;

“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 the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the person’s residence in Switzerland or that EEA State daily or at least once a week;

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the person’s residence in Switzerland or that EEA State 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) In this Schedule, an area which—

- (a) was previously not part of the European Union or the European Economic Area; but
- (b) at any time before or after these Regulations come into force has become part of one or the other or both of those areas,

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

Interpretation: ordinarily resident

2.—(1) This paragraph applies for the purposes of this Schedule to determine whether a person is to be treated as ordinarily resident in a given place.

(2) A person (“A”) is to be treated as ordinarily resident in the United Kingdom, the United Kingdom and Islands, in the territory comprising the European Economic Area and Switzerland, in the territory comprising the European Economic Area, Switzerland and the overseas territories, or in the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories 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.

(3) A person who is ordinarily resident in the United Kingdom as a result of having moved from the Islands for the purpose of undertaking a course is to be considered to be ordinarily resident in the Islands.

(3) Cm. 4904.

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

(4) A person is not to be treated as ordinarily resident in a place unless that person lawfully resides in that place.

(5) In sub-paragraph (2)—

- (a) “parent” means a parent, guardian or any other person having parental responsibility for a child, and “child” is to be construed accordingly; and
- (b) “temporarily employed” includes in the case of members of the regular naval, military or air forces of—
 - (i) the Crown, any period which they serve outside the United Kingdom as members of such forces;
 - (ii) an EEA State or Switzerland, any period which they serve outside the territory comprising the European Economic Area and Switzerland as members of such forces; and
 - (iii) Turkey, any period which they serve outside the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.