

## SCHEDULES

### SCHEDULE 2

Regulation 9(1)(a)

#### Categories of eligible student

##### **Category 1 – Persons settled in the United Kingdom**

- 1.—(1) A person—
  - (a) who on the first day of the first academic year of the course—
    - (i) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence, and
    - (ii) is ordinarily resident in Wales,
  - (b) 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, and
  - (c) whose residence in the United Kingdom and Islands has not, during any part of the period referred to in paragraph (b), been wholly or mainly for the purpose of receiving full-time education (unless the person is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 9(2)).
- (2) 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 Wales 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 sub-paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the EEA and Switzerland immediately before the period of ordinary residence referred to in sub-paragraph (c).

##### **Category 2 – Refugees and their family members**

- 2.—(1) A person who—
  - (a) is a refugee,
  - (b) 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) is ordinarily resident in Wales on the first day of the first academic year of the course.
- (2) A person who—
  - (a) is the spouse or civil partner of a refugee,
  - (b) was the spouse or civil partner of the refugee on the date on which the refugee made the application for asylum,

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- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom, and
  - (d) is ordinarily resident in Wales on the first day of the first academic year of the course.
- (3) A person who—
- (a) is the child of a refugee or the child of the spouse or civil partner of a refugee,
  - (b) 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) was under 18 years old on the date on which the refugee made the application for asylum,
  - (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom, and
  - (e) is ordinarily resident in Wales on the first day of the first academic year of the course.

**Category 3 – Persons with leave to enter or remain and their family members**

- 3.—(1) A person—
- (a) with leave to enter or remain,
  - (b) who is ordinarily resident in Wales 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—
    - (i) the application for asylum, or
    - (ii) the application for discretionary leave, where no application for asylum was made,
  - (c) who is ordinarily resident in Wales 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—
    - (i) the application for asylum, or
    - (ii) the application for discretionary leave, where no application for asylum was made,was under 18 years old and 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 is ordinarily resident in Wales 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.
- (4) In this paragraph, a “person with leave to enter or remain” means a person (“P”)—

- (a) who has—
  - (i) 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 P is considered not to qualify for recognition as a refugee it is thought right to allow P to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave, or
  - (ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that it is thought right to allow P to enter or remain in the United Kingdom on the grounds of discretionary leave,
- (b) who has been granted leave to enter or to remain accordingly,
- (c) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002), and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since P was granted leave to enter or remain.

#### **Category 4 – Workers, employed persons, self-employed persons and their family members**

- 4.—(1) A person who—
- (a) is one of the following—
    - (i) an EEA migrant worker or an EEA self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course;
    - (ii) a Swiss employed person or a Swiss self-employed person, who is ordinarily resident in Wales on the first day of the first academic year of the course;
    - (iii) a family member of a person mentioned in sub-paragraph (i) or (ii), who is ordinarily resident in Wales on the first day of the first academic year of the course;
    - (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;
    - (vi) a family member of a person mentioned in sub-paragraph (iv) or (v), and
  - (b) has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.
- (2) A person who—
- (a) is ordinarily resident in Wales on the first day of the first academic year of the course,
  - (b) has been ordinarily resident in the territory comprising the EEA 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 10 of Regulation (EU) No. 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union, as extended by the EEA Agreement<sup>(1)</sup>.
- (3) In sub-paragraph (1)—
- “EEA frontier self-employed person” (*“person hunangyflogedig trawsffiniol AEE”*) means an EEA national who—

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(1) OJ No L141, 27.05.2011, p. 1.

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- (a) is a self-employed person in Wales, 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, at least once a week;

“EEA frontier worker” (“*gweithiwr trawsffiniol AEE*”) means an EEA national who—

- (a) is a worker in Wales, 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, at least once a week;

“EEA migrant worker” (“*gweithiwr mudol AEE*”) means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA self-employed person” (“*person hunangyflogedig AEE*”) means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“family member” (“*aelod o deulu*”) 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 under the age of 21 or who are 21 or over and are dependants of the person or the person's spouse or civil partner, or
  - (iii) dependent direct relatives in the ascending line of the person or that of the person's spouse or civil partner;
- (b) in relation to a Swiss frontier employed person, a Swiss 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;

“Swiss employed person” (“*person cyflogedig Swisaidd*”) means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” (“*person cyflogedig trawsffiniol Swisaidd*”) means a Swiss national who—

- (a) is an employed person in Wales, 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, at least once a week;

“Swiss frontier self-employed person” (“*person hunangyflogedig trawsffiniol Swisaidd*”) means a Swiss national who—

- (a) is a self-employed person in Wales, 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, at least once a week;

“Swiss self-employed person” (“*person hunangyflogedig Swisaidd*”) means a Swiss national who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom.

- (4) For the purposes of sub-paragraph (3)—

“EEA national” (“*gwladolyn AEE*”) means a national of an EEA State other than the United Kingdom;

“employed person” (“*person cyflogedig*”) means an employed person within the meaning of Annex 1 to the Swiss Agreement;

“self-employed person” (“*person hunangyflogedig*”) 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;

“worker” (“*gweithiwr*”) means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be.

### **Category 5 – Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere**

5.—(1) A person who—

- (a) is settled in the United Kingdom,
- (b) was ordinarily resident in Wales 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 course begins,
- (d) has been ordinarily resident in the territory comprising the EEA 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 EEA 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 sub-paragraph (3) or (4) applies to the person.

(3) This sub-paragraph applies to a person who is—

- (a) a United Kingdom national,
- (b) 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
- (c) a person who has a right of permanent residence,

who 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.

(4) This paragraph applies to a person (“P”)—

- (a) who is settled in the United Kingdom and has a right of permanent residence, and
- (b) who goes to the state within the territory comprising the EEA and Switzerland of which P is a national or of which the person in relation to whom P is a family member is a national.

(5) For the purposes of sub-paragraph (4), P is a family member of another person (“Q”) if P—

- (a) is Q’s spouse or civil partner,
- (b) is a direct descendant of Q or of Q’s spouse or civil partner and P—
  - (i) is under the age of 21, or
  - (ii) is 21 or over and a dependant of Q or of Q’s spouse or civil partner, or

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- (c) where Q is an EU national who falls within Article 7(1)(b) of Directive 2004/38, is a dependent direct relative in Q's ascending line or that of Q's spouse or civil partner.

### **Category 6 – EU nationals**

#### **6.—(1) A person—**

##### **(a) who is either—**

- (i) an EU national on the first day of the first academic year of the course, other than a person who is a United Kingdom national who has not exercised a right of residence, or
- (ii) a family member of such a person,

##### **(b) who is undertaking a designated course in Wales,**

##### **(c) who has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course, and**

##### **(d) whose ordinary residence in the territory comprising the EEA 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 (unless the person is treated as being ordinarily resident in that territory in accordance with paragraph 9(2)).**

#### **(2) A person who—**

##### **(a) is an EU national other than a United Kingdom national on the first day of the first academic year of the course,**

##### **(b) is ordinarily resident in Wales 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 EEA and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).**

(3) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state, the requirement in sub-paragraph (1)(a) or (2)(a) is treated as being satisfied.

(4) For the purposes of sub-paragraph (1)(a), a United Kingdom national has not exercised a right of residence if that person has not 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.

(5) For the purposes of sub-paragraph (1)(a), a person ("P") is a family member of another person ("Q") if—

##### **(a) P is Q's spouse or civil partner,**

##### **(b) P is a direct descendant of Q or of Q's spouse or civil partner and P—**

###### **(i) is under the age of 21, or**

###### **(ii) is 21 or over and a dependant of Q or of Q's spouse or civil partner, or**

##### **(c) in a case where Q is an EU national who falls within Article 7(1)(b) of Directive 2004/38, P is a dependent direct relative in Q's ascending line or that of Q's spouse or civil partner.**

### **Category 7 – Children of Swiss nationals**

7.—(1) 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 Wales on the first day of the first academic year of the course,
- (c) has been ordinarily resident in the territory comprising the EEA 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 sub-paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the EEA and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (c).

### **Category 8 – Children of Turkish workers**

8.—(1) A person who—

- (a) is the child of a Turkish worker,
- (b) is ordinarily resident in Wales on the first day of the first academic year of the course, and
- (c) has been ordinarily resident in the territory comprising the EEA, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.

(2) In this paragraph, “Turkish worker” means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom and Islands, and
- (b) is, or has been, lawfully employed in the United Kingdom.

### **Ordinary residence – additional provision**

9.—(1) 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 present course, or
- (b) a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the present course,

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

(2) For the purposes of this Schedule, a person (“P”) is to be treated as ordinarily resident in Wales, the United Kingdom and Islands or in the territory comprising the EEA, Switzerland and Turkey if P would have been so resident but for the fact that—

- (a) P,
- (b) P’s spouse or civil partner,
- (c) P’s parent, or
- (d) in the case of a dependent direct relative in the ascending line, P’s child or child’s spouse or civil partner,

is or was temporarily employed outside Wales, the United Kingdom and Islands or the territory comprising the EEA, Switzerland and Turkey.

(3) For the purposes of sub-paragraph (2), temporary employment outside Wales, the United Kingdom and Islands or the territory comprising the EEA, Switzerland and Turkey includes—

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- (a) in the case of members of the armed forces, any period which they serve outside the United Kingdom as members of such forces;
  - (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside the territory comprising the EEA and Switzerland as members of such forces;
  - (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the EEA, Switzerland and Turkey as members of such forces.
- (4) For the purposes of this Schedule, an eligible student who is a prisoner is to be considered to be ordinarily resident in the part of the United Kingdom where the prisoner resided prior to sentencing.
- (5) For the purposes of this Schedule, an area which—
- (a) was previously not part of the EU or the EEA, but
  - (b) at any time before or after these Regulations come into force becomes part of one or other or both of these territories,
- is to be considered to have always been a part of the EEA.

#### **Further provision on ordinary residence: care leavers**

**10.**—(1) A care leaver is treated as being ordinarily resident in Wales on the first day of the first academic year of the present course even if, on that day, the care leaver—

- (a) is looked after outside Wales (in a case where regulation 49(c)(i) applies to the student), or
- (b) is residing outside Wales under a special guardianship order (in a case where regulation 49(c)(ii) applies to the student),

under arrangements made by a Welsh local authority.

(2) In paragraph (1)—

“care leaver” (“*person sy’n ymadael â gofal*”) has the meaning given in regulation 49;

“looked after” (“*derbyn gofal*”) has the meaning given in section 74 of the Social Services and Well-being (Wales) Act 2014;

“Welsh local authority” (“*awdurdod lleol Cymreig*”) means a local authority within the meaning given by section 197(1) of that Act.

#### **Interpretation**

**11.** In this Schedule—

“Directive 2004/38” (“*Cyfarwyddeb 2004/38*”) means [Directive 2004/38/EC](#) of the European Parliament and of the Council of 29th April 2004 on the rights of citizens of the Union and their family members to move and reside freely in the territory of the member States<sup>(2)</sup>;

“EEA” (“*AEE*”) means the European Economic Area, that is to say the territory comprised by the EEA States;

“Islands” (“*Ynysoedd*”) means the Channel Islands and the Isle of Man;

“parent” (“*rhiant*”) 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;

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(2) OJ No L158, 30.04.2004, p.77-123.



“refugee” (“*ffoadur*”) means a person who is recognised by Her Majesty’s government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28 July 1951<sup>(3)</sup> as extended by its 1967 Protocol<sup>(4)</sup>;

“right of permanent residence” (“*hawl i breswyllo’n barhaol*”) means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“settled” (“*wedi setlo*”) has the meaning given by section 33(2A) of the Immigration Act 1971<sup>(5)</sup>;

“Swiss Agreement” (“*Cytundeb y Swistir*”) means the Agreement between the EU 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 21 June 1999<sup>(6)</sup> and which came into force on 1 June 2002.

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(3) Cmnd. 9171.

(4) Cmnd. 3906, the Protocol entered into force on 4 October 1967.

(5) 1971 c.77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

(6) Cm. 4904 and OJ No L1 14, 30.04.02, p6.