

SCHEDULE 1

Regulation 4(2)

FEES - EXCEPTED STUDENTS

1. A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (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; and
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.
2. A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (a) is—
 - (i) the family member of a person mentioned in paragraph 1(a); or
 - (ii) has a right not to be charged higher relevant fees by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽¹⁾, as extended by the EEA agreement; and
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date.
- 3.—(1) A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date;
 - (b) was ordinarily resident in Scotland (and the Scottish Ministers are satisfied that such residence was not in any way attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education) and settled in the United Kingdom immediately before leaving the United Kingdom and who has utilised a right of residence;
 - (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
 - (d) in the case where the 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).

(2) For the purposes of this paragraph, a post 2011/12 student has utilised a right of residence if that post 2011/12 student—
 - (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⁽²⁾ (or under corresponding provisions in the EEA agreement or the Switzerland Agreement⁽³⁾);

(1) OJ No L 257, 19.10.68, p.2 (OJ/SE 1968(II) p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L 245, 26.8.92, p.1).

(2) OJ No 158, 30.4.2004, p.77.

(3) Cm. 5639.

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- (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 post 2011/12 student 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 post 2011/12 student is a national or of which the person, in relation to whom that post 2011/12 student is a family member, is a national.
- (3) Sub-paragraph (1)(a) does not apply where the post 2011/12 student falls within sub-paragraph (2)(a)(ii).
- 4. A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (a) 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 relevant date.
- 5. A post 2011/12 student is an excepted student if —
 - (a) that post 2011/12 student—
 - (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 relevant date; or
 - (b) that post 2011/12 student 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 relevant date.
- 6. A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (a) is an Iraqi national who—
 - (i) has been granted indefinite leave to enter the United Kingdom under the Locally Engaged Staff Assistance Scheme (Direct Entry) operated by the Home Department;
 - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted indefinite leave to enter the United Kingdom; and
 - (iii) is ordinarily resident in Scotland on the relevant 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 relevant date.
- 7. A post 2011/12 student is an excepted student if that post 2011/12 student—
 - (a) is a person who has been granted temporary protection and who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted temporary protection;

- (b) did not attain the age of 18 years prior to the beginning of the current academic year of the student's course; and
 - (c) is ordinarily resident in Scotland on the relevant date.
- 8.** A post 2011/12 student is an excepted student if that post 2011/12 student—
- (a) is the child of an asylum seeker or is a young asylum seeker;
 - (b) is resident in Scotland on the relevant date;
 - (c) has been resident in Scotland throughout the period of 3 years immediately preceding the relevant date;
 - (d) was under 18 years old on the date when the application for asylum was made, which application must have been made prior to 1st December 2006; and
 - (e) is under 25 years old on the relevant date.
- 9.—(1)** A post 2011/12 student is an excepted student if that post 2011/12 student—
- (a) is, on the relevant date, a non UKEU national or the family member of such a national;
 - (b) is ordinarily resident in Scotland on the relevant date;
 - (c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant 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).
- (2) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be a non UK EU national on the relevant date is treated as being satisfied.
- 10.—(1)** A post 2011/12 student is an excepted student if that post 2011/12 student—
- (a) is, on the relevant date, an EU national or a family member of such national; and
 - (b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.
- (2) Sub-paragraph (1)(b) does not apply to a family member of an EU national where that EU national has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.
- (3) For the purposes of this paragraph—
- (a) an EU national does not include a United Kingdom national who has not utilised a right of residence; and
 - (b) a United Kingdom national has utilised a right of residence if that person 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.
- (4) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EU national on the relevant date is treated as being satisfied.
- 11.** A post 2011/12 student is an excepted student if that post 2011/12 student—

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- (a) is the child of a Swiss national in respect of whom it is not lawful to charge higher relevant fees 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 relevant date; and
- (c) in the case where the ordinary residence referred to in sub-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 sub-paragraph (b).

12. A post 2011/12 student is an excepted student if that post 2011/12 student was admitted to the course of education in pursuance of arrangements with an institution outside the United Kingdom for the exchange of students on a fully reciprocal basis.

13. A post 2011/12 student is an excepted student if that post 2011/12 student—

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in Scotland on the relevant date; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the relevant date.