

SCHEDULE

Regulation 4

ELIGIBLE STUDENTS

PART 1

Interpretation

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

“Directive 2004/38” means Directive 2004/38 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⁽¹⁾;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽²⁾ together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993⁽³⁾, as modified or supplemented from time to time;

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

- (a) is a self-employed person in Northern Ireland; 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 Northern Ireland; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his 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 an EEA frontier self-employed person, in the United Kingdom;

“EEA state”, in relation to any time, means—

- (a) a state which at that time is a Member State; or
- (b) any other state which at that time is a party to the EEA Agreement;

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

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

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

“family member” unless otherwise indicated, 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) his spouse or civil partner;

(1) OJ L158, 30.4.2004.p77-123

(2) Cm 2073

(3) Cm 2183

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- (ii) direct descendants of his or of his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or his spouse or civil partner or
- (iii) dependent direct relatives in his ascending line or that of his 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) his spouse or civil partner; or
 - (ii) his child or the child of his spouse or civil partner;
- (c) in relation to an EU national who falls within the meaning of article 7(1)(c) of Directive 2004/38—
 - (i) his spouse or civil partner; or
 - (ii) direct descendants of his or of his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or his spouse or civil partner;
- (d) in relation to an EU national who falls within the meaning of article 7(1)(b) of Directive 2004/38—
 - (i) his spouse or civil partner;
 - (ii) direct descendants of his or of his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or his spouse or civil partner; or
 - (iii) dependent direct relatives in his ascending line or that of his spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 7—
 - (i) his spouse or civil partner; or
 - (ii) direct descendants of his or of his spouse or civil partner who are—
 - (aa) under the age of 21; or
 - (bb) dependants of his or his spouse or civil partner;

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

“person with leave to enter or remain” means a person—

- (a) who has been informed by a person acting under the authority of the Secretary of State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom;
- (b) who has been granted leave to enter or 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 those whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002(4); and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since he was granted leave to enter or remain;

“refugee” 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

(4) 2002 c. 41 Section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19, Schedules 2 and 4) and the Immigration, Asylum and Nationality Act 2006 (c. 13) section 9

Geneva on 28th July 1951⁽⁵⁾ as extended by the Protocol thereto which entered into force on 4th October 1967⁽⁶⁾;

“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⁽⁷⁾;

“Swiss Agreement” means the Agreement between the European Union 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⁽⁸⁾ 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 Northern Ireland; 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 in 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 Northern Ireland; 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 self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom;

“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; and

“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 and any other person having parental responsibility and “child” is to be construed accordingly.

(3) For the purposes of this Schedule, a person is to be treated as ordinarily resident in 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 he would have been so resident but for the fact that—

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

⁽⁵⁾ Cmnd. 9171

⁽⁶⁾ Cmnd. 3906

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

⁽⁸⁾ Cm. 4904

is or was temporarily employed outside the area in question.

(4) For the purposes of sub-paragraph (3), temporary employment outside of 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;
- (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.

(5) For the purposes of this Schedule an area which—

- (a) was previously not part of the EU or the European Economic Area; but
- (b) at any time before or after these Regulations come into operation 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. A person who on the first day of the course—

- (a) is settled in the United Kingdom; and
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the course.

Refugees and their family members

3.—(1) A person—

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

(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 his application for asylum; and
- (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was given leave to enter or remain in the United Kingdom.

(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 his 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 his application for asylum; and
- (d) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was given leave to enter or remain in the United Kingdom.

Persons with leave to enter or remain and their family members

- 4.—(1) A person—
 - (a) with leave to enter or remain; and
 - (b) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day 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 his application for asylum; and
 - (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day 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 his 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 his application for asylum; and
 - (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the course.

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

- 5. 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) an EEA frontier worker or an EEA frontier self-employed person;
 - (iv) a Swiss frontier employed person or a Swiss frontier self-employed person; or
 - (v) a family member of a person mentioned in paragraphs (i) to (iv); and
 - (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 course.

EU nationals

- 6. A person who—
 - (a) is either—
 - (i) an EU national on the first day of the course; or
 - (ii) a family member of such a person;
 - (b) is attending a designated course in Northern Ireland; and

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- (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 course.

Children of Swiss Nationals

- 7. 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; and
 - (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.

Children of Turkish Workers

- 8. A person who—
 - (a) is the child of a Turkish worker; and
 - (b) 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 course.