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PROSPECTIVE

SCHEDULE 1

Regulation 3(1)

PERSONS ELIGIBLE FOR ALLOWANCES

1. A person who—
 - (a) is ordinarily resident in Scotland on the relevant date;
 - (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date; and
 - (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971(1) on the relevant date.

Commencement Information

- I1** Sch. 1 para. 1 in force at 1.8.2007, see [reg. 1](#)

- 2.—(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) 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; and
 - (c) subject to sub paragraph (2), is ordinarily resident in Scotland on the relevant date.

(2) Sub paragraph (1)(c) does not apply where the person applying for support falls within paragraph (a)(iii) or (iv) of sub paragraph (1).

Commencement Information

- I2** Sch. 1 para. 2 in force at 1.8.2007, see [reg. 1](#)

- 3.—(1) A person who—
 - (a) is—
 - (i) the family member of a person mentioned in paragraph 2(1)(a); or
 - (ii) is entitled to support by virtue of Article 12 of Council Regulation [\(EEC\) No. 1612/68](#) on the freedom of movement of workers(2), as extended by the EEA agreement;

(1) [1971 c. 77](#); section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act [1981 \(c. 61\)](#).

(2) O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968 (II) p.475), amended by Council Regulation [\(EEC\) No. 2434/92](#) (O.J. No. L 245, 26.8.92, p.1).

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- (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) subject to sub paragraph (2), is ordinarily resident in Scotland on the relevant date.

(2) Sub paragraph (1)(c) does not apply where the person applying for support is a family member of a person falling within paragraph 2(1)(a)(iii) or (iv).

Commencement Information

I3 Sch. 1 para. 3 in force at 1.8.2007, see [reg. 1](#)

4.—(1) A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;
- (b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom and, where the person is a national of the United Kingdom, was ordinarily resident in Scotland immediately prior to exercising that right and the Scottish Ministers are satisfied that such residence was not in any sense 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;
- (c) is ordinarily resident in Scotland on the day on which the first term of the first academic year of the course actually begins;
- (d) 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
- (e) in the case where their ordinary residence referred to in paragraph (d) 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 (d).

(2) For the purposes of this paragraph, a person has utilised a right of residence if that person—

- (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⁽³⁾ (or corresponding provisions under the EEA agreement or the Switzerland Agreement⁽⁴⁾); or
 - (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 person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone to the state within the territory

⁽³⁾ O.J. No. L 158, 30.04.04, p.77.

⁽⁴⁾ Cm. 5639.

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comprising the European Economic Area and Switzerland of which that person is a national or of which the person in relation to whom that person is a family member is a national.

Commencement Information

I4 Sch. 1 para. 4 in force at 1.8.2007, see [reg. 1](#)

5. A person who—

- (a) at the date the Scottish Ministers received their application for an allowance, 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.

Commencement Information

I5 Sch. 1 para. 5 in force at 1.8.2007, see [reg. 1](#)

6. A person who—

- (a)
 - (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) 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.

Commencement Information

I6 Sch. 1 para. 6 in force at 1.8.2007, see [reg. 1](#)

7. A person who—

- (a) at the date the Scottish Ministers receive that person's application for an allowance 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) has not attained the age of 18 years on the relevant date; and
- (c) is ordinarily resident in Scotland on the relevant date,

provided that an allowance paid to a person only by virtue of that person qualifying under this paragraph shall not continue beyond the end of any academic year in which that person attains the age of 18 years.

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Commencement Information

I7 Sch. 1 para. 7 in force at 1.8.2007, see [reg. 1](#)

- 8.** A person who—
- (a) is a non UKEC national or the child 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).

Commencement Information

I8 Sch. 1 para. 8 in force at 1.8.2007, see [reg. 1](#)

- 9.** A person who—
- (a) is a non UK EC national or an EU overseas territories national or a family member of either;
 - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland or the EU overseas territories throughout the period of 3 years immediately preceding the relevant date; and
 - (c) seeks an allowance in respect of a course of education at an establishment in Scotland.

Commencement Information

I9 Sch. 1 para. 9 in force at 1.8.2007, see [reg. 1](#)

- 10.** 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 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;
 - (c) is ordinarily resident in Scotland on the relevant date; and
 - (d) in the case where their ordinary residence referred to in 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 paragraph (b).

Commencement Information

I10 Sch. 1 para. 10 in force at 1.8.2007, see [reg. 1](#)

Document Generated: 2023-04-25

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Changes and effects yet to be applied to :

- Sch. 1 para. 1 coming into force by [S.S.I. 2007/153 reg. 1](#)
- Sch. 1 para. 2 coming into force by [S.S.I. 2007/153 reg. 1](#)
- Sch. 1 para. 3 coming into force by [S.S.I. 2007/153 reg. 1](#)
- Sch. 1 para. 4 coming into force by [S.S.I. 2007/153 reg. 1](#)
- Sch. 1 para. 5 coming into force by [S.S.I. 2007/153 reg. 1](#)
- Sch. 1 para. 6 coming into force by [S.S.I. 2007/153 reg. 1](#)
- Sch. 1 para. 7 coming into force by [S.S.I. 2007/153 reg. 1](#)
- Sch. 1 para. 8 coming into force by [S.S.I. 2007/153 reg. 1](#)
- Sch. 1 para. 9 coming into force by [S.S.I. 2007/153 reg. 1](#)
- Sch. 1 para. 10 coming into force by [S.S.I. 2007/153 reg. 1](#)
- Sch. 1 para. 4(1)(c) omitted by [S.S.I. 2007/503 reg. 3\(4\)\(a\)\(i\)](#)
- sch. 1 para. 3(1)(a)(i) omitted by [S.S.I. 2021/28 reg. 18\(b\)\(ii\)](#)
- sch. 1 para. 3(2) omitted by [S.S.I. 2021/28 reg. 18\(b\)\(v\)](#)
- sch. 1 para. 8 omitted by [S.S.I. 2021/28 reg. 18\(d\)](#)
- Sch. 1 para. 4(1)(b) substituted by [S.S.I. 2009/188 reg. 16\(a\)](#)
- Sch. 1 para. 9 substituted by [S.S.I. 2009/188 reg. 16\(b\)](#)
- Sch. 1 para. 8 substituted by [S.S.I. 2012/72 reg. 29\(4\)](#)
- Sch. 1 para. 9 substituted by [S.S.I. 2012/72 reg. 29\(5\)](#)
- sch. 1 para. 1(c) substituted by [S.S.I. 2017/180 reg. 14](#)
- sch. 1 para. 2 substituted by [S.S.I. 2021/28 reg. 18\(a\)](#)
- sch. 1 para. 4(1) substituted by [S.S.I. 2021/28 reg. 18\(c\)\(i\)](#)
- sch. 1 para. 10 substituted by [S.S.I. 2021/28 reg. 18\(f\)](#)
- Sch. 1 para. 4(1)(a) words inserted by [S.S.I. 2012/72 reg. 29\(3\)\(a\)\(i\)](#)
- Sch. 1 para. 4(1)(b) words inserted by [S.S.I. 2012/72 reg. 29\(3\)\(a\)\(ii\)](#)
- sch. 1 para. 3(1) words inserted by [S.S.I. 2021/28 reg. 18\(b\)\(i\)](#)
- sch. 1 para. 3(1)(b) words inserted by [S.S.I. 2021/28 reg. 18\(b\)\(iii\)](#)
- sch. 1 para. 3(1)(c) words omitted by [S.S.I. 2021/28 reg. 18\(b\)\(iv\)](#)
- Sch. 1 para. 2(1)(a)(iv) words substituted by [S.S.I. 2012/72 reg. 29\(2\)](#)
- Sch. 1 para. 3(1)(a)(ii) words substituted by [S.S.I. 2013/80 reg. 23\(2\)](#)
- sch. 1 para. 4(2)(a)(ii) words substituted by [S.S.I. 2021/28 reg. 18\(c\)\(ii\)](#)
- sch. 1 para. 4(2)(a)(iii) words substituted by [S.S.I. 2021/28 reg. 18\(c\)\(iii\)](#)
- sch. 1 para. 4(2)(b)(ii) words substituted by [S.S.I. 2021/28 reg. 18\(c\)\(iv\)](#)
- Regulations revoked by [S.S.I. 2022/157 Sch. 5](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 3-68-10](#)

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 para. 4(3) inserted by [S.S.I. 2007/503 reg. 3\(4\)\(a\)\(ii\)](#)
- Sch. 1 para. 7A inserted by [S.S.I. 2007/503 reg. 3\(4\)\(b\)](#)
- Sch. 1 para. 11 inserted by [S.S.I. 2007/503 reg. 3\(4\)\(c\)](#)
- Sch. 1 para. 6A inserted by [S.S.I. 2009/309 reg. 15](#)

- Sch. 1 para. 12 inserted by S.S.I. 2012/72 reg. 29(7)
- Sch. 1 para. 6B inserted by S.S.I. 2016/82 reg. 9(3)
- sch. 1 para. 6C6D inserted by S.S.I. 2018/171 reg. 5
- sch. 1 para. 6E inserted by S.S.I. 2019/70 reg. 6(3)(a)
- sch. 1 para. 13 inserted by S.S.I. 2019/70 reg. 6(3)(b)
- sch. 1 para. 6F6G inserted by S.S.I. 2020/213 reg. 5(3)
- sch. 1 para. 9(3)(c) inserted by S.S.I. 2021/28 reg. 18(e)(iii)(bb)
- sch. 1 para. 11(aa) inserted by S.S.I. 2021/28 reg. 18(g)(ii)
- sch. 1 para. 9(2) omitted by S.S.I. 2021/28 reg. 18(e)(ii)
- sch. 1 para. 9(4) omitted by S.S.I. 2021/28 reg. 18(e)(iv)
- Sch. 1 para. 9(1)(a) substituted by S.S.I. 2013/80 reg. 23(3)(a)
- Sch. 1 para. 9(3)(b) substituted by S.S.I. 2013/80 reg. 23(3)(b)
- sch. 1 para. 9(1) substituted by S.S.I. 2021/28 reg. 18(e)(i)
- sch. 1 para. 13 substituted by S.S.I. 2021/28 reg. 18(i)
- sch. 1 para. 4(3) words inserted by S.S.I. 2021/28 reg. 18(c)(v)
- sch. 1 para. 11(a) words inserted by S.S.I. 2021/28 reg. 18(g)(i)
- sch. 1 para. 11(c) words inserted by S.S.I. 2021/28 reg. 18(g)(iii)
- sch. 1 para. 12(1) words inserted by S.S.I. 2021/28 reg. 18(h)
- Sch. 1 para. 4(3) words substituted by S.S.I. 2012/72 reg. 29(3)(b)
- Sch. 1 para. 11(b)(c) words substituted by S.S.I. 2012/72 reg. 29(6)
- sch. 1 para. 9(3)(a) words substituted by S.S.I. 2021/28 reg. 18(e)(iii)(aa)
- Sch. 2 para. 3(1)(ca) inserted by S.S.I. 2012/72 reg. 30(4)(a)
- reg. 2(3)(4) inserted by S.S.I. 2012/72 reg. 25(3)
- reg. 2(3) words inserted by S.S.I. 2016/82 reg. 9(2)
- reg. 2(3) words inserted by S.S.I. 2019/70 reg. 6(2)(a)
- reg. 2(3) words inserted by S.S.I. 2020/213 reg. 5(2)(a)
- reg. 2(3) words substituted by S.S.I. 2013/80 reg. 21(3)
- reg. 2(4) words inserted by S.S.I. 2016/82 reg. 9(2)
- reg. 2(4) words inserted by S.S.I. 2019/70 reg. 6(2)(b)
- reg. 2(4) words inserted by S.S.I. 2020/213 reg. 5(2)(b)
- reg. 2(4) words substituted by S.S.I. 2013/80 reg. 21(4)
- reg. 2(5) inserted by S.S.I. 2021/28 reg. 16(b)
- reg. 3(1A) inserted by S.S.I. 2017/180 reg. 13
- reg. 3(3)(4) inserted by S.S.I. 2012/72 reg. 26
- reg. 5(1)(c)(d) inserted by S.S.I. 2012/72 reg. 28(b)