

SCHEDULE 1

Regulation 3(2)

ELIGIBLE STUDENTS

1. A person who—

- (a) is ordinarily resident in Scotland on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
- (c) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971(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;
 - (iv) a Swiss frontier worker or a Swiss frontier self-employed person;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the first day of the first academic year of the course.

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

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;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the first day of the first academic year of the course; and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the first day of the first academic year of the course.

(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).

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

(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).

- 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 first day of the first academic year of the course; and
 - (e) in the case where that persons's 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 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.
5. A person who—
- (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 first day of the first academic year of the course.
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 to remain accordingly;
 - (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted leave to enter or remain, and

⁽³⁾ O.J. No. L 158, 30.04.04, p.77.

⁽⁴⁾ Cm. 5639.

- (iii) is ordinarily resident in Scotland on the first day of the first academic year of the course; 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 first day of the first academic year of the course.
7. A person who—
- (a) has been granted temporary protection, 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 first day of the first academic year of the course.
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 first day of the first academic year of the course;
 - (c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding that date; and
 - (d) in the case where that 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 European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (c).
9. 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 first day of the first academic year of the course;
 - (c) is ordinarily resident in Scotland on the first day of the first academic year of the course; and
 - (d) in the case where that person's 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).