

SCHEDULE 1

Regulations 3(1)(c) and 4(2)(c)

LIABLE GRADUATES

1.—(1) In this Schedule—

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

- (a) is a self-employed person (within the meaning of Article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or the territory of an EEA state other than the United Kingdom and returns to their 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 (within the meaning of Article 7 of Directive 2004/38) in Scotland; and
- (b) resides in Switzerland or the territory of an EEA state other than the United Kingdom and returns to their 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 in the United Kingdom who is a worker within the meaning of Article 7 of Directive 2004/38 but who is not an EEA frontier worker;

“EEA national” means a national of an EEA state other than the United Kingdom;

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person within the meaning of Article 7 of Directive 2004/38 but who is not an EEA frontier self-employed person;

“EU overseas territories” means Aruba, Faeroe Islands, French Polynesia, French Southern and Antarctic Territories, Greenland Henderson, Mayotte, Netherlands Antilles (Bonaire, Curcao, Saba, Sint Eustatius and Sint Maarten), the Territory of New Caledonia and Dependencies, St Pierre et Miquelon and Wallis and Futuna Islands;

“EU overseas territories national” means a national of any of the EU overseas territories;

“family member” means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person, an EEA self-employed person—
 - (i) their spouse or civil partner;
 - (ii) their child or the child of their spouse or civil partner;
 - (iii) their dependent direct relatives in the ascending line or those of their 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) their spouse or civil partner;
 - (ii) their child or the child of their spouse or civil partner;
- (c) in relation to a non UKEC national who is not self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38 or an EU overseas territories national—
 - (i) their spouse or civil partner;
 - (ii) their direct descendants or those of their spouse or civil partner who are—
 - (aa) under the age of 21;
 - (bb) their dependants or those of their spouse or civil partner;

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- (d) in relation to a non UK EC national who is self-sufficient within the meaning of Article 7(1)(b) of Directive 2004/38 or an EU overseas territories national—
 - (i) their spouse or civil partner;
 - (ii) their direct descendants or those of their spouse or civil partner who are—
 - (aa) under the age of 21;
 - (bb) their dependants or those of their spouse or civil partner;
 - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner; and
- (e) in relation to a United Kingdom national, for the purposes of paragraph 5 of this Schedule—
 - (i) their spouse or civil partner;
 - (ii) their direct descendants or those of their spouse or civil partner who are—
 - (aa) under the age of 21;
 - (bb) their dependants or those of their spouse or civil partner;
 - (iii) their dependent direct relatives in the ascending line or those of their spouse or civil partner;

“non UK EC national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Community other than the United Kingdom;

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement, but who is not a Swiss frontier worker;

“Swiss frontier worker” means a Swiss national who—

- (a) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland; and
- (b) resides in Switzerland or in the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or 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 (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland ; and
- (b) resides in Switzerland or in the territory of an EEA state, other than the United Kingdom, and returns to their 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 in the United Kingdom who is a self employed person (within the meaning of Annex 1 to the Switzerland Agreement), but who is not a Swiss frontier self-employed person;

“Switzerland Agreement” means the Agreement between the European Community 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⁽¹⁾ and which came into force on 1st June 2002; and

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

- (2) For the purposes of this Schedule, an area which—
 - (a) was previously not part of the European Community or the European Economic Area, but

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- (b) at any time before or after these Regulations come into force has become part of one or other or both of those areas,

shall be considered to have always been part of the European Community or the European Economic Area, as the case may be.

(3) Schedule 2 shall have effect for the purposes of determining whether a person is to be treated, for the purposes of this Schedule, as being, or having been, ordinarily resident in a place at, or for, a particular time.

2. A person who—

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

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

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

4.—(1) A person who—

- (a) is—
 - (i) the family member of a person mentioned in paragraph 3(1)(a); or
 - (ii) is entitled to the payment of an allowance by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽³⁾, 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 relevant day; and
- (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant day.

(2) Sub-paragraph (1)(c) does not apply where the person is a family member of a person falling within paragraph 3(1)(a)(iii) or (iv).

5.—(1) A person who—

- (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;

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

⁽³⁾ 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) 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 relevant day;
 - (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 day; and
 - (e) in the case where their ordinary residence referred to in sub-sub-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 sub-sub-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 (or corresponding provisions under the EEA agreement or the Switzerland Agreement); 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.
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 the person is considered not to qualify for recognition as a refugee, it is thought right to allow them to enter or remain in the United Kingdom and they have been granted leave to enter or remain accordingly;
 - (ii) has been ordinarily resident in the United Kingdom and the 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 day; 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 day.
7. A person who—
- (a) is a non UK EC national or the child of such a national;
 - (b) is ordinarily resident in Scotland on the relevant day;
 - (c) has been ordinarily resident in the United Kingdom and the Islands throughout the 3 year period preceding that day; 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).
- 8.** 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 day; and
 - (c) seeks funding in respect of fees in respect of a full-time course of higher education at an establishment in Scotland.
- 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 (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 day;
 - (c) is ordinarily resident in Scotland on the relevant day; 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).