

SCHEDULE 1

FEES - EXCEPTED STUDENTS

- 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(1) (or under corresponding provisions in the EEA agreement or the Switzerland Agreement(2));
 - (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).

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

(2) Cm. 5639.