

SCHEDULE 2

Regulation 3(2)

ORDINARY RESIDENCE

1. For the purposes of paragraph 1(a) of Schedule 1—

- (a) a person shall be treated as being ordinarily resident in the area of the education authority on the qualifying day if the education authority are satisfied that he was not so resident only because he, his spouse or his parents was for the time being—
 - (i) employed outside Scotland; or
 - (ii) attending a course of study or undertaking postgraduate research outside Scotland; and
- (b) a person shall not be treated as being ordinarily resident in the area of the education authority on the qualifying day if the education authority are satisfied that his residence there on that day is in any sense attributable to, or connected with, any period of residence within 3 years immediately preceding the relevant date as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

2.—(1) Sub-paragraphs (2) and (3) below shall apply in determining, for the purposes of paragraphs 1(b), 2(b) and 4(b) and (c) of Schedule 1, whether a person is to be treated as having been or not having been ordinarily resident for the period specified in those paragraphs (“the specified period”) in either the British Islands or the European Economic Area.

(2) A person shall not be treated as having been ordinarily resident in the British Islands or European Economic Area for the specified period if the education authority are satisfied that he was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education.

(3) A person shall be treated as having been “ordinarily resident” in the British Islands or in the European Economic Area for the specified period if the education authority are satisfied that—

- (a) the person was born and spent the greater part of his life in the British Islands or, as the case may be, the European Economic Area and that either—
 - (i) his parents or either of them have been ordinarily resident in the British Islands or, as the case may be, the European Economic Area throughout the specified period and he himself is not an independent person; or
 - (ii) whether or not he is an independent person, he has been ordinarily resident for at least one year of the specified period in the British Islands or, as the case may be, the European Economic Area provided that the education authority are also satisfied that he has not been so resident for any part of that period wholly or mainly for the purpose of receiving full-time education; and
- (b) the person was not so resident only because he, his spouse, or his parent was for the time being—
 - (i) employed outside the British Islands or, as the case may be, the European Economic Area; or
 - (ii) attending a course of study or undertaking post graduate research outside the British Islands or, as the case may be, the European Economic Area.

(4) In paragraph 2(3)(a)(i) an “independent person” means a person who prior to the relevant date has—

- (a) attained the age of 25 years; or
- (b) been married for at least 2 years; or
- (c) supported himself out of his earnings for periods aggregating not less than 3 years; or

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- (d) no parent living.
- (5) A person will be regarded as having supported himself out of his earnings for any period or periods for which—
- (a) he was in receipt of training in pursuance of training programmes and schemes operated from time to time by or on behalf of the Manpower Services Commission, the Training Commission, the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise; or
 - (b) before 1st July 1992 he was in receipt of unemployment benefit under section 14(1)(a) of the Social Security Act 1975(1); or
 - (c) on or after 1st July 1992 he was in receipt of unemployment benefit under section 25(1) of and Part I of Schedule 4 to the Social Security Contributions and Benefits Act 1992(2); or
 - (d) before 24th November 1980(3) he was for the purposes of section 5 of the Supplementary Benefits Act 1976(4) registered for employment; or
 - (e) on or after 24th November 1980 but before 18th October 1982(5), he was for the purposes of section 5 of the said Act of 1976 available for employment and, where applicable, registered for employment; or
 - (f) on or after 18th October 1982 but before 11th April 1988(6), he was for the purposes of section 5(1) of the said Act of 1976 available for employment and, where applicable, registered for employment; or
 - (g) on or after 11th April 1988 but before 9th October 1989(7), he was for the purposes of section 20(3)(d)(i) and 20(4) of the Social Security Act 1986(8) available for employment and, where applicable, also registered for employment; or
 - (h) on or after 9th October 1989 but before 1st July 1992(9) he was for the purpose of section 20(3)(d)(i) and 20(4) of the Social Security Act 1986 available for and actively seeking employment and where applicable, also registered for employment; or
 - (i) on or after 1st July 1992 he was for the purpose of section 124(1)(d)(i) and 124(3) of the Social Security Contributions and Benefits Act 1992 available for and actively seeking employment and, where applicable, also registered for employment; or
 - (j) he held a Scottish Studentship or comparable award; or
 - (k) before 1st July 1992(10) he received sickness benefit, invalidity pension, maternity allowance or severe disablement allowance under section 14(1)(b), 15(1)(b), 22(1) or 36(1) of the Social Security Act 1975(11) or statutory sick pay under Part I of the Social

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- (1) 1975 c. 14. On that date the Social Security Contributions and Benefits Act 1992 (c. 4) section 25(1) and Schedule 4, Part I, amended and consolidated the said section 14(1)(a).
 - (2) 1992 c. 4.
 - (3) On that date Schedule 2 to the Social Security Act 1980 (c. 30), which made relevant amendments to the Supplementary Benefits Act 1976 (c. 71), came into force by virtue of S.I. 1980/729.
 - (4) 1976 c. 71.
 - (5) On that date section 38 of the Social Security and Housing Benefits Act 1982 (c. 24), which made relevant amendments to the Supplementary Benefits Act 1976, came into force by virtue of S.I. 1982/893.
 - (6) On that date the relevant parts of section 20 of the Social Security Act 1986 (c. 50) came into force by virtue of S.I. 1987/1853.
 - (7) On that date section 13(1) of the Social Security Act 1989 (c. 24), which amended section 20(3)(d)(i) of the Social Security Act 1986 (c. 50) to insert after the words “available for” the words “and actively seeking”, came into force by virtue of S.I. 1989/1238.
 - (8) 1986 c. 50.
 - (9) On that date section 20(3)(d)(i) and 20(4) of the Social Security Act 1986 were consolidated as section 124(1)(d)(i) and 124(3) of the Social Security Contributions and Benefits Act 1992 (c. 4).
 - (10) On that date the Social Security Act 1975 was repealed by the Social Security Contributions and Benefits Act 1992 (c. 4) and the said sections of the Social Security Act 1975 were consolidated as sections 31(1), 33(1), 35(1) and 68(1) of that Act and Part I of the Social Security and Housing Benefits Act 1982 and Part V of the Social Security Act 1986 were consolidated respectively as Parts XI and XII of that Act.
 - (11) Section 22 was substituted by the Social Security Act 1986, Schedule 4, paragraph 13; section 36 was substituted by section 11 of the Health and Social Security Act 1984 (c. 48).

Security and Housing Benefits Act 1982⁽¹²⁾ or statutory maternity pay under Part V of the Social Security Act 1986; or

- (l) on or after 1st July 1992 he received maternity allowance or severe disability allowance under section 35(1) or 68(1) of the Social Security Contributions and Benefits Act 1992 or statutory sickness benefit under Part XI of or statutory maternity allowance under Part XII of the Social Security Contributions and Benefits Act 1992; or
- (m) on or after 1st July 1992 but before 13th April 1995⁽¹³⁾ he received sickness benefit or invalidity pension under section 31(1) or 33(1) of the Social Security Contributions and Benefits Act 1992; or
- (n) on or after 13th April 1995 he received incapacity benefit under section 30A(1) of the Social Security Contributions and Benefits Act 1992⁽¹⁴⁾; or
- (o) he had the care of a person under the age of 18 years who was dependent on him.

⁽¹²⁾ 1982 c. 24.

⁽¹³⁾ On that date sections 31(1) and 33(1) of the Social Security Contributions and Benefits Act 1992 were repealed by the Social Security (Incapacity for Work) Act 1994 (c. 18), s.11 and sch. 2, by virtue of S.I. 1994/2926.

⁽¹⁴⁾ Section 30A of the Social Security Contributions and Benefits Act 1992 was inserted by section 1 of the Social Security (Incapacity of Work) Act 1994 and came into force on 13th April 1995 by virtue of S.I. 1994/2926.