

## SCHEDULE 1

Regulation 9

### ELIGIBLE STUDENTS

#### PART 1

##### Interpretation

**1.—(1)** For the purposes of this Schedule—

“Directive 2004/38” means Directive [2004/38/EC](#) of the European Parliament and of the Council of 29th April 2004 on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States<sup>(1)</sup>;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992<sup>(2)</sup>, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993<sup>(3)</sup>, as modified from time to time;

“EEA frontier self-employed person” has the meaning given by sub-paragraph (2);

“EEA frontier worker” has the meaning given by sub-paragraph (3);

“EEA migrant worker” means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

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

“EEA self-employed person” means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“EEA State”, in relation to any time, means—

- (a) a state which at any time is a Member State; or
- (b) any other state which at that time is a party to the EEA Agreement;

“employed person” means an employed person within the meaning of Annex 1 to the Swiss Agreement;

“EU national” means a national of a Member State;

“European Economic Area” means the area comprised by the European Union, the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein;

“family member”, unless otherwise indicated, means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
  - (i) that person’s spouse or civil partner;
  - (ii) that person’s child or the child of that person’s spouse or civil partner; or
  - (iii) dependent direct relatives in that person’s ascending line or that of the person’s 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) that person’s spouse or civil partner; or
  - (ii) that person’s child or the child of that person’s spouse or civil partner;

<sup>(1)</sup> OJ L158, 30.04.2004, pp 77-123.

<sup>(2)</sup> Cm. 2073.

<sup>(3)</sup> Cm. 2183.

*Status: This is the original version (as it was originally made).*

- (c) in relation to an EU national who falls within article 7(1)(c) of Directive 2004/38—
  - (i) that person’s spouse or civil partner; or
  - (ii) direct descendants of that person or that person’s spouse or civil partner who are—
    - (aa) under the age of 21;
    - (bb) dependants of that person or of the person’s spouse or civil partner;
- (d) in relation to an EU national who falls within article 7(1)(b) of Directive 2004/38—
  - (i) that person’s spouse or civil partner;
  - (ii) direct descendants of the person or of the person’s spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the person or of the person’s spouse or civil partner;
  - (iii) dependent direct relatives in the person’s ascending line or that of the person’s spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
  - (i) the person’s spouse or civil partner; or
  - (ii) direct descendants of the person or the person’s spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the person or of the person’s spouse or civil partner;

“Member State” means a Member State of the European Union;

“right of permanent residence” means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“self-employed person” means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

“settled” has the meaning given by section 33(2A) of the Immigration Act 1971<sup>(4)</sup>;

“Swiss Agreement” means the Agreement between the European Union 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<sup>(5)</sup> and which came into force on 1st June 2002;

“Swiss employed person” means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” has the meaning given in sub-paragraph (4);

“Swiss frontier self-employed person” has the meaning given in sub-paragraph (5);

“Swiss self-employed person” means a Swiss national who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom;

“United Kingdom national” means a person who falls to be treated as a national of the United Kingdom for the purposes of the EU Treaties;

“worker” means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement, as the case may be.

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

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

<sup>(5)</sup> Cm. 4904.

- (a) is a self-employed person in England; and
  - (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State, as the case may be, daily or at least once a week.
- (3) "EEA frontier worker" means an EEA national who—
- (a) is a worker in England; and
  - (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State, as the case may be, daily or at least once a week.
- (4) "Swiss frontier employed person" means a Swiss national who—
- (a) is an employed person in England; and
  - (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State, as the case may be, daily or at least once a week.
- (5) "Swiss frontier self-employed person" means a Swiss national who—
- (a) is a self-employed person in England; and
  - (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State, as the case may be, daily or at least once a week.
- (6) For the purposes of this Schedule, "parent" includes a guardian, any other person having parental responsibility for a child and any person having care of a child and "child" is to be construed accordingly.
- (7) For the purposes of this Schedule, a person ("A") is to be treated as ordinarily resident in England, the United Kingdom and Islands or in the territory comprising the European Economic Area and Switzerland if A would have been so resident but for the fact that—
- (a) A;
  - (b) A's spouse or civil partner;
  - (c) A's parent; or
  - (d) in the case of a dependent direct relative in the ascending line, A's child or child's spouse or civil partner,
- is or was temporarily employed outside England, the United Kingdom and Islands or, as the case may be, outside the territory comprising the European Economic Area and Switzerland.
- (8) For the purposes of sub-paragraph (7), temporary employment outside of England, the United Kingdom or the territory comprising the European Economic Area and Switzerland includes—
- (a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces; and
  - (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside of the territory comprising the European Economic Area and Switzerland as members of such forces.

## PART 2

### Categories

#### Persons who are settled in the United Kingdom

**2.—(1)** A person who—

- (a) is settled in the United Kingdom on the relevant date other than by reason of having acquired a right of permanent residence;
- (b) is ordinarily resident in England on the relevant date;
- (c) had been ordinarily resident throughout the three-year period preceding the relevant date in the United Kingdom and Islands; and
- (d) had not during any part of the period referred to in paragraph (c) been ordinarily resident in the United Kingdom and Islands wholly or mainly for the purpose of receiving fulltime education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(7).

**3.** A person who—

- (a) is settled in the United Kingdom on the relevant date by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in England on the relevant date;
- (c) who had been ordinarily resident in the United Kingdom throughout the three-year period preceding the relevant date; and
- (d) in a case where the 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 before the period of ordinary residence referred to in paragraph (c).

#### Refugees

**4.—(1)** A person—

- (a) who is a refugee;
- (b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being recognised as a refugee; and
- (c) who is ordinarily resident in England on the relevant date.

**(2)** A person—

- (a) who is the spouse or civil partner of a refugee;
- (b) who was the spouse or civil partner of the refugee on the date on which the refugee made the application for asylum;
- (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
- (d) who is ordinarily resident in England on the relevant date.

**(3)** A person—

- (a) who is the child of a refugee or the child of the spouse or civil partner of a refugee;

- (b) who, on the date on which the refugee made the application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date;
- (c) who was under 18 on the date on which the refugee made the application for asylum;
- (d) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to remain in the United Kingdom; and
- (e) who is ordinarily resident in England on the relevant date.

#### **Persons with leave to enter or remain**

**5.—(1)** A person—

- (a) with leave to enter or remain;
- (b) who is ordinarily resident in England on the relevant date; and
- (c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the relevant date.

**(2)** A person—

- (a) who is the spouse or civil partner of a person with leave to enter or remain;
- (b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made the application for asylum;
- (c) who is ordinarily resident in England on the relevant date; and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the relevant date.

**(3)** A person—

- (a) who is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain;
- (b) who, on the date on which the person with leave to enter or remain made the application for asylum, was the child of that person or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date;
- (c) who was under 18 on the date on which the person with leave to enter or remain made the application for asylum;
- (d) who is ordinarily resident in England on the relevant date; and
- (e) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the relevant date.

#### **Workers, employed persons, self-employed persons and their family members**

**6.—(1)** A person who—

- (a) on the relevant date, is—
  - (i) an EEA migrant worker or an EEA self-employed person;
  - (ii) a Swiss employed person or a Swiss self-employed person;
  - (iii) a family member of a person mentioned in paragraph (i) or (ii);
  - (iv) an EEA frontier worker or an EEA frontier self-employed person;
  - (v) a Swiss frontier employed person or a Swiss frontier self-employed person; or
  - (vi) a family member of a person in (iv) or (v);
- (b) subject to sub-paragraph (2), is ordinarily resident in England on the relevant date; and

- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date.
- (2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

**7. A person who—**

- (a) is ordinarily resident in England on the relevant date;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date; and
- (c) is entitled to support by virtue of article 12 of [Council Regulation \(EEC\) No. 1612/68](#) on the freedom of movement of workers<sup>(6)</sup>, as extended by the EEA Agreement.

**Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere**

**8.—(1) A person who—**

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in England and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence;
- (c) is ordinarily resident in England on the relevant date;
- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date; and
- (e) in a case where the person's ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person ("A") has exercised a right of residence if A is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who has the right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if A goes to the state within the territory comprising the European Economic Area and Switzerland of which A is a national or of which the person in relation to whom A is a family member is a national.

**EU nationals**

**9.—(1) A person who—**

- (a) on the relevant date, is either—
  - (i) an EU national; or
  - (ii) a family member of such a person;
- (b) is ordinarily resident in England on the relevant date;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the relevant date; and

<sup>(6)</sup> OJ No L257, 19.10.1968, p2 (OJ/SE 1968 (II) P475).

- (d) subject of sub-paragraph (2), whose ordinary residence in the territory comprising the European Economic Area and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the European Economic Area and Switzerland in accordance with paragraph 1(7).

**10.—(1) A person who—**

- (a) on the relevant date, is an EU national other than a United Kingdom national;
- (b) is ordinarily resident in England on the relevant date;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the relevant date; and
- (d) in a case whose 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 before the period of ordinary residence referred to in paragraph (c).

**Children of Swiss nationals**

**11. A person who—**

- (a) on the relevant date, is the child of a Swiss national who is entitled to support from the Secretary of State by virtue of article 3(6) of Annex 1 to the Swiss Agreement;
- (b) is ordinarily resident in England on the relevant date;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case whose 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 before the period of ordinary residence referred to in paragraph (c).

**Children of Turkish workers**

**12. A person who—**

- (a) on the relevant date, was the child of a Turkish worker;
- (b) was ordinarily resident in England on the relevant date; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.