

## SCHEDULE

Regulation 5

### PART 1

#### Interpretation

##### Interpretation: general

##### 1.—(1) In this Schedule—

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

“EEA Agreement” means the European Economic Area Agreement signed at Porto on 2 May 1992 and which came into force on 1 January 1994;

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

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the person’s residence in Switzerland or that EEA State daily or at least once a week;

“EEA frontier worker” means an EEA national who—

- (a) is a worker in the United Kingdom; and
- (b) resides in Switzerland or the territory of another EEA State other than the United Kingdom and returns to the person’s residence in Switzerland or that EEA State daily or at least once a week;

“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;

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

“employment” means full-time or part-time employment;

“European Community” means the territory comprised by the Member States of the European Community as was constituted from time to time;

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

“European Economic Area” means the area comprised by the EEA States;

“family member” 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) the 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 the person’s spouse or civil partner; or

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(1) OJ L158, 30.4.2004, p77-123.

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- (iii) dependent direct relatives in the 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) the person's spouse or civil partner; or
  - (ii) the person's child or the child of the person's spouse or civil partner;
- (c) in relation to an EU national who falls within Article 7(1)(c) of Directive 2004/38—
  - (i) the person's spouse or civil partner; or
  - (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;
- (d) in relation to an EU national who falls within Article 7(1)(b) of Directive 2004/38—
  - (i) the 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 the person's spouse or civil partner; or
  - (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;
  - (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 the person's spouse or civil partner.

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

“overseas territories” means Anguilla; Aruba; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Faroe Islands; French Polynesia; French Southern and Antarctic Territories; Mayotte; Greenland; Montserrat; Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius, Sint Maarten); Pitcairn, Henderson, Ducie and Oeno Islands; South Georgia and the South Sandwich Islands; St Barthélemy; St Helena and Dependencies (Ascension Island and Tristan da Cunha); St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; Turks and Caicos Islands and Wallis and Futuna;

“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(2)

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

“Swiss 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 21<sup>st</sup> June 1999 and which came into force on 1 June 2002<sup>(3)</sup>;

“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” means a Swiss national who—

- (a) is an employed person in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the person’s residence in Switzerland or that EEA State daily or at least once a week;

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person in the United Kingdom; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the person’s residence in Switzerland or that EEA State daily or at least once a week;

“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;

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

(2) In this Schedule, an area which—

- (a) was previously not part of the European Union or the European Economic Area; but
- (b) at any time before or after these Regulations come into force has become part of one or the other or both of those areas,

is to be considered to have always been a part of the European Economic Area.

### **Interpretation: ordinarily resident**

2.—(1) This paragraph applies for the purposes of this Schedule to determine whether a person is to be treated as ordinarily resident in a given place.

(2) A person (“A”) is to be treated as ordinarily resident in the United Kingdom, the United Kingdom and Islands, in the territory comprising the European Economic Area and Switzerland, in the territory comprising the European Economic Area, Switzerland and the overseas territories, or in the territory comprising the European Economic Area, Switzerland, Turkey and the overseas territories 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 the area in question.

(3) A person who is ordinarily resident in the United Kingdom as a result of having moved from the Islands for the purpose of undertaking a course is to be considered to be ordinarily resident in the Islands.

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(3) Cm. 4904.

(4) A person is not to be treated as ordinarily resident in a place unless that person lawfully resides in that place.

(5) In sub-paragraph (2)—

- (a) “parent” means a parent, guardian or any other person having parental responsibility for a child, and “child” is to be construed accordingly; and
- (b) “temporarily employed” includes in the case of members of the regular naval, military or air forces of—
  - (i) the Crown, any period which they serve outside the United Kingdom as members of such forces;
  - (ii) an EEA State or Switzerland, any period which they serve outside the territory comprising the European Economic Area and Switzerland as members of such forces; and
  - (iii) Turkey, any period which they serve outside the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

## PART 2

### Qualifying Persons

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

3.—(1) A person who on the first day of the academic year of the course—

- (a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;
- (b) is ordinarily resident in the United Kingdom;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) whose residence in the United Kingdom and Islands 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) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 2(2).

4. A person who—

- (a) is settled in the United Kingdom by reason of having acquired the right of permanent residence on the first day of an academic year of the course;
- (b) is ordinarily resident in the United Kingdom 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 three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, the person was ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories immediately before the period of residence referred to in paragraph (c).

#### **Refugees and their family members**

5.—(1) A person who—

- (a) is a refugee;
  - (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was recognised as a refugee;
  - (c) is ordinarily resident in the United Kingdom on the first day of the academic year of the course.
- (2) A person who—
- (a) is the spouse or civil partner of a refugee;
  - (b) was the spouse or civil partner of the refugee on the date on which the refugee applied for asylum;
  - (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was given leave to remain in the United Kingdom; and
  - (d) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (3) A person who—
- (a) is the child of a refugee or the child of the spouse or civil partner of a refugee;
  - (b) on the date on which the refugee applied 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) was under 18 years of age on the date on which the refugee applied for asylum;
  - (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was given leave to remain in the United Kingdom; and
  - (e) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (4) In this paragraph, “refugee” means a person who is recognised by Her Majesty’s government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28<sup>th</sup> July 1951(4) as extended by the Protocol thereto which entered into force on 4<sup>th</sup> October 1967(5).

### **Persons granted humanitarian protection and their family members**

- 6.—(1) A person granted humanitarian protection who—
- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (b) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (2) A person who—
- (a) is the spouse or civil partner of a person granted humanitarian protection;
  - (b) was the spouse or civil partner of the person granted humanitarian protection on the date on which that person applied for asylum (the “asylum application date”);
  - (c) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (3) A person who—

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(4) Cmnd. 9171.

(5) Cmnd. 3906.

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

- (a) is the child of a person granted humanitarian protection or the child of the spouse or civil partner of a person granted humanitarian protection;
  - (b) on the asylum application date, was the child of that person or the child of a person who was the spouse or civil partner of the person granted humanitarian protection on that date;
  - (c) was under 18 years of age on the asylum application date;
  - (d) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (e) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (4) In this paragraph, “person granted humanitarian protection” means a person—
- (a) who, on the grounds of humanitarian protection, has been granted leave to remain under the immigration rules as defined in section 33(1) of the Immigration Act 1971;
  - (b) whose leave to remain is extant, or in respect of whose leave to remain an appeal is pending (within section 104 of the Nationality, Immigration and Asylum Act 2002)(6);
  - (c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave to remain.

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

- 7.—(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) 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 mentioned in paragraph (iv) or (v);
  - (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.
- (2) Paragraph (b) of sub-paragraph (1) does not apply where the person falls within paragraph (a) (iv), (a)(v) or (a)(vi) of that sub-paragraph.
8. A person who—
- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and

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(6) [2002 c.41](#); section 104 was amended by the Asylum and Immigration (Treatment of Claimants etc.) Act [2004 \(c.19\)](#), section 26 and Schedules 2 and 4, the Immigration, Asylum and Nationality Act [2006 \(c.13\)](#), section 9, and the Immigration Act [2014 \(c.22\)](#), Schedule 9.

- (c) is entitled to support by virtue of Article 12 of [Council Regulation \(EEC\) No. 1612/68](#)<sup>(7)</sup> on the freedom of movement of workers, as extended by the EEA Agreement.

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

**9.—(1)** A person who—

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in the United Kingdom 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 the United Kingdom on the day on which the first term of the first academic year actually begins;
- (d) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (e) in a case where the ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full-time education, the person 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) In this paragraph, a person has exercised a right of residence if the person 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 a 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 the person goes to the state within the territory comprising the European Economic Area and Switzerland of which the person is a national or of which a person in relation to whom the person is a family member is a national.

**EU nationals**

**10.—(1)** A person who—

- (a) is either—
  - (i) an EU national on the first day of an academic year of the course; or
  - (ii) a family member of such a person;
- (b) is undertaking the course in the United Kingdom;
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) whose ordinary residence in the relevant territory 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 (c) of sub-paragraph (1) does not apply to a family member of an EU national, where that national—

- (a) is—

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(7) OJ L257, 19.10.1968 p2 (OJ/SE 1968 (II) p475).

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

- (i) a United Kingdom national who has exercised a right to reside in the territory of another Member State under Article 7(1) of Directive 2004/38; or
  - (ii) not a United Kingdom national; and
  - (b) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first academic year of the course.
- (3) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the resident territory in accordance with paragraph (2)(2).

**11.—(1) A person who—**

- (a) is an EU national other than a United Kingdom national on the first day of the first academic year of the course;
  - (b) is ordinarily resident in the United Kingdom 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 three-year period immediately preceding the first day of the first academic year of the course; and
  - (d) in a case where the ordinary residence referred to in paragraph (c) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories immediately prior to the period of ordinary residence referred to in that paragraph.
- (2) Where a state accedes to the European Union after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) is treated as being satisfied.

**Children of Swiss nationals**

**12. 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 Swiss Agreement;
- (b) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, the person 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**

**13.—(1) A person who—**

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



- (2) In sub-paragraph (1)(a), “Turkish worker” means a Turkish national who—
- (a) is ordinarily resident in the United Kingdom; and
  - (b) is, or has been, lawfully employed in the United Kingdom.

**Long residence**

- 14.—**(1) A person who on the first day of the first academic year of the course—
- (a) is either—
    - (i) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the first day of the first academic year of the course; or
    - (ii) aged 18 years old or above and, preceding the first day of the first academic year of the course, has lived in the United Kingdom throughout either—
      - (aa) half their life; or
      - (bb) a period of twenty years;
  - (b) is ordinarily resident in the United Kingdom;
  - (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
  - (d) whose residence in the United Kingdom and Islands 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 United Kingdom and Islands in accordance with paragraph (2)(2).