

SCHEDULE

1. For the purposes of this Schedule —

“Directive 2004/38” (“*Cyfarwyddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004⁽¹⁾ on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“EC national” (“*gwladolyn o'r GE*”) means a national of a Member State of the European Community;

“EEA frontier self-employed person” (“*person hunangyflogedig ffin yr AEE*”) 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 his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA frontier worker” (“*gweithiwr ffin yr AEE*”) means an EEA national who—

- (a) is a worker in United Kingdom; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA migrant worker” (“*gweithiwr mudol AEE*”) means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” (“*gwladolyn o'r AEE*”) means a national of an EEA State other than the United Kingdom;

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

“EEA State” (“*Gwladwriaeth AEE*”) means a Member State of the European Economic Area;

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

“family member” (“*aelod o deulu*”) means (unless otherwise indicated) —

- (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) his or her spouse or civil partner;
 - (ii) his or her child or the child of his or her spouse or civil partner; or
 - (iii) dependent direct relatives in his or her ascending line or that of his or her 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) his or her spouse or civil partner; or
 - (ii) his or her child or the child of his or her spouse or civil partner;
- (c) in relation to an EC national who falls within Article 7(1)(c) of Directive 2004/38 —
 - (i) his or her spouse or civil partner; or
 - (ii) direct descendants of his or her or of his or her spouse or civil partner who are—

⁽¹⁾ OJ L158, 30.4.2004, p.77-123.

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

“person with leave to enter or remain” (“*person sydd â chaniatâd i ddod i mewn neu i aros*”) means a person—

- (a) who has been informed by a person acting under the authority of the Secretary of the State for the Home Department that, although he or she is considered not to qualify for recognition as a refugee, it is thought right to allow him or her to enter or remain in the United Kingdom;
- (b) who has been granted leave to enter or to remain accordingly; and
- (c) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002)(2); and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since he or she was granted leave to enter or remain;

“refugee” (“*ffoadur*”) 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 July 1951(3) as extended by the Protocol thereto which entered into force on 4 October 1967(4);

“right of permanent residence” (“*hawl i breswyllo'n barhaol*”) means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“self-employed person” (“*person hunan-gyflogedig*”) 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;

(2) 002 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, and the Immigration, Asylum and Nationality Act 2006 (c. 13), section 9.

(3) Cmnd. 9171.

(4) Cmnd. 3906 (out of print; photocopies are available, free of charge, from the Student Support Division, Department for Education and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG).

“settled” (“*wedi setlo*”) has the meaning given by section 33(2A) of the Immigration Act 1971⁽⁵⁾;

“Swiss Agreement” (“*Cytundeb y Swistir*”) 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 June 1999⁽⁶⁾ and which came into force on 1 June 2002;

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

“Swiss frontier employed person” (“*person Swisaidd cyflogedig y ffin*”) 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 his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss frontier self-employed person” (“*person Swisaidd hunangyflogedig y ffin*”) 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 his or her residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

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

“Turkish worker” (“*gweithiwr o Dwrci*”) 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;

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

Persons who are settled in the United Kingdom

2.—(1) A person who on the first day of the first 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) subject to sub-paragraph (2), 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 regulation 2(4).

3. A person —

⁽⁵⁾ 1971 c. 77; section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

⁽⁶⁾ Cm. 4904.

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- (a) who is settled in the United Kingdom by virtue of having acquired the right of permanent residence on the first day of an academic year of the course;
- (b) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course;
- (c) who 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) who, in a case where his or her 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 and their family members

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 he or she was recognised as a refugee; and
- (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(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 his or her application for asylum;
- (c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was given leave to remain in the United Kingdom; and
- (d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(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 his or her 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 his or her application for asylum;
- (d) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he or she was given leave to remain in the United Kingdom; and
- (e) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

Persons with leave to enter or remain and their family members

5.—(1) A person—

- (a) with leave to enter or remain; and
- (b) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

(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 his or her application for asylum; and
 - (c) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.
- (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 his or her 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 his or her application for asylum; and
 - (d) who is ordinarily resident in the United Kingdom on the first day of the first academic year of the course.

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

- 6.—(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) subject to sub-paragraph (3), 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 and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.
- (2) A person who—
- (a) is an EC national falling within paragraph (a)(i) or (a)(iv) of sub-paragraph (1);
 - (b) subject to sub-paragraph (3), 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.
- (3) Paragraph (b) of sub-paragraphs (1) and (2) do not apply where the person falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).
7. 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 and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and

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- (c) is entitled to support by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers⁽⁷⁾, as extended by the EEA Agreement⁽⁸⁾.

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) left the United Kingdom and exercised a right of residence after having been settled in the United Kingdom;
- (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 and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (e) in a case where his or her 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 has exercised a right of residence if he or she 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 he or she goes to the state within the territory comprising the European Economic Area and Switzerland of which he or she is a national or of which the person in relation to whom he or she is a family member is a national .

EC nationals

9.—(1) A person who —

- (a) is either —
 - (i) an EC national on the first day of the first academic year of the course; or
 - (ii) a family member of a such a person;
- (b) is undertaking the course in the United Kingdom;
- (c) in the case of a person falling within sub-paragraph (1)(a)(i), 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;
- (d) in the case of a person falling within sub-paragraph (1)(a)(ii), 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

⁽⁷⁾ OJ No. L257, 19.10.1968, p.2 (OJ/SE 1968 (II) p.475).

⁽⁸⁾ “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 — Cm 2073, as adjusted by the Protocol signed at Brussels on 17 March 1993, Cm 2183.

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

(2) Paragraph (e) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the relevant territory in accordance with regulation 2(4).

10.—(1) A person who—

- (a) is an EC 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 his or her 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).

(2) Where a state accedes to the European Community 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) to be an EC national other than a United Kingdom national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

11. 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 and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where his or her 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) 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 and Turkey throughout the three year period preceding the first day of the first academic year of the course.