

## SCHEDULE

Regulation 4

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

“academic year” (“*blwyddyn academaidd*”) means the period of twelve months beginning on 1 January, 1 April, 1 July or 1 September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1 January and before 1 April, on or after 1 April and before 1 July, on or after 1 July and before 1 August or on or after 1 August and on or before 31 December, respectively;

“Directive 2004/38” (“*Cyfarwyddeb 2004/38*”) means Directive 2004/38/EC of the European Parliament and of the Council of 29 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 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<sup>(2)</sup> other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State daily or at least once a week;

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

- (a) is a worker 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 national’s residence in Switzerland or that EEA State daily or at least once a week;

“EEA migrant worker” (“*gweithiwr mudol o’r 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 o’r AEE*”) means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

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

“employment” (“*cyflogaeth*”) means full-time or part-time employment;

“EU national” (“*gwladolyn o’r UE*”) means a national of a Member State of the European Union;

“European Economic Area” (“*Ardal Economaidd Ewropeaidd*”) means the area comprised by the EEA States;

“European Union” (“*yr Undeb Ewropeaidd*”) means the territory comprised by the Member States of the European Union as constituted from time to time;

“family member” (“*aelod o deulu*”) 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) direct descendants of the person or of the person’s spouse or civil partner who are—

(1) OJ L158, 30.04.2004, pp. 77-123.

(2) “EEA State” is defined in the Interpretation Act 1978 (c. 30).

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- (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 ascending line of the person or 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 national's spouse or civil partner; or
  - (ii) direct descendants of the national or the national's spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the national or the national'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 national's spouse or civil partner;
  - (ii) direct descendants of the national or the national's spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the national or the national's spouse or civil partner; or
  - (iii) dependent direct relatives in the national's ascending line or of the national's spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
  - (i) the national's spouse or civil partner; or
  - (ii) direct descendants of the national or the national's spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the national or the national's spouse or civil partner;

“the Islands” (*“yr Ynysoedd”*) means the Channel Islands and the Isle of Man;

“overseas territories” (*“tiriogaethau tramor”*) 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, Curacao, Saba, Sint Eustatius and 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 de Cunha); St Pierre et Miquelon; the Territory of New Caledonia and Dependencies; Turks and Caicos Islands and Wallis and Futuna;

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

- (a) who has—
  - (i) applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although P is considered not to qualify for recognition as a refugee, it is thought right to allow P to enter or remain in the United Kingdom on the grounds of humanitarian protection or discretionary leave; or

- (ii) not applied for refugee status but has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that it is thought right to allow P to enter or remain in the United Kingdom on the grounds of discretionary leave;
- (b) who has been granted leave to enter or to remain accordingly;
- (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)(3); and
- (d) who has been ordinarily resident in the United Kingdom and Islands throughout the period since P 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(4) as extended by the Protocol thereto which entered into force on 4 October 1967(5);

“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 hunangyflogedig”*) 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” (*“wedi setlo”*) has the meaning given by section 33(2A) of the Immigration Act 1971(6);

“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(7) and which came into force on 1 June 2002;

“Swiss employed person” (*“person cyflogedig Swisaidd”*) 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 cyflogedig ffin y Swistir”*) 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 national’s residence in Switzerland or that EEA State daily or at least once a week;

“Swiss frontier self-employed person” (*“person hunangyflogedig ffin y Swistir”*) means a Swiss national who—

- (a) is a self-employed person in the United Kingdom; and

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(3) Section 104 was amended by the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (c. 19), Schedules 2 and 4; by the Immigration, Asylum and Nationality Act 2006 (c. 13), and by the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (S.I. 2010/21), Schedule 1.

(4) Cmnd. 9171.

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

(6) Section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61).

(7) Cm. 4904 and OJ No. L114, 30.04.02, p. 6.

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- (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 daily or at least once a week;

“Swiss self-employed person” (“*person hunangyflogedig Swisaidd*”) 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 Twrcaidd*”) 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; and

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

(2) For the purposes of this Schedule, “parent” (“*rhiant*”) includes a guardian, any other person having parental responsibility for a child and any person having care of a child and “child” (“*plentyn*”) is to be construed accordingly.

(3) For the purposes of this Schedule, a person (“P” in this definition) 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 P would have been so resident but for the fact that—

- (a) P;
- (b) P's spouse or civil partner;
- (c) P's parent; or
- (d) in the case of dependent direct relative in the ascending line, P's child or child's spouse or civil partner,

is or was temporarily employed outside the area in question.

(4) For the purposes of sub-paragraph (3), temporary employment 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;
- (b) in the case of members of the regular armed forces of 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
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

(5) For the purposes of 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 these areas,

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

(6) For the purposes of this Schedule a person who is ordinarily resident in Wales, England, Scotland, Northern Ireland or the Islands having moved from one of those areas for the purpose of undertaking—

- (a) the present course; or

(b) a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the present course,  
is to be considered to be ordinarily resident in the place from which the person moved.

### **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 paragraph 1(3).

3. A person who—

- (a) 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) 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 sub-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, Switzerland and the overseas territories immediately before the period of residence referred to in sub-paragraph (c).

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

4.—(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; and
- (c) is ordinarily resident in the United Kingdom on the first day of the first 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 made an application for asylum;
- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the refugee 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—

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- (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 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 refugee 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.

**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 who—
- (a) is the spouse or civil partner of a person with leave to enter or remain;
  - (b) was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made—
    - (i) the application for asylum; or
    - (ii) the application for discretionary leave, where no application for asylum was made; and
  - (c) 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—
    - (i) the application for asylum; or
    - (ii) the application for discretionary leave, where no application for asylum was made, 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—
    - (i) the application for asylum; or
    - (ii) the application for discretionary leave, where no application for asylum was made; 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 sub-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 sub-paragraph (iv) or (v);
- (b) subject to sub-paragraph (2), 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), (v) or (vi) of that sub-paragraph.

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, Switzerland and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course; and
- (c) is entitled to support by virtue of Article 10 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on the freedom of movement for workers within the Union<sup>(8)</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) 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 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, 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” in this sub-paragraph) has exercised a right of residence—

- (a) where 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 a right of permanent residence, A 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

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<sup>(8)</sup> OJ No L141, 27.05.2011, p. 1.

- (b) where A is settled in the United Kingdom and has a right of permanent residence, 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) is either—
  - (i) an EU national on the first day of an 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) subject to sub-paragraph (2), 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) subject to sub-paragraph (3), 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 EU national—

- (a) is—
  - (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 day of 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 relevant territory in accordance with paragraph 1(3).

### **10.—(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 purpose 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 paragraph (c).

(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) to be an EU 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, 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 sub-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 sub-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, Turkey and the overseas territories throughout the three-year period preceding the first day of the first academic year of the course.