

## SCHEDULE 1

Regulation 7

### FEES – EXCEPTED STUDENTS

1. It shall not be lawful in pursuance of regulation 7 to charge higher fees in the case of a student who is an excepted student within the meaning of this Schedule.

2. A person shall be an excepted student if that student–

(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) an EEA frontier worker or an EEA frontier self-employed person; or
- (iv) a Swiss frontier worker or a Swiss frontier self-employed person; and

(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period referred to in regulation 5(a).

3. A person shall be an excepted student if that student–

(a) is the family member of a person mentioned in paragraph 2(a); or

(b) has a right not to be charged higher fees by virtue of Article 12 of Council Regulation (EEC) No. 1612/68 on the freedom of movement of workers<sup>(1)</sup>, as extended by the EEA agreement; and

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period referred to in regulation 5(a).

4.—(1) A person shall be an excepted student if that student–

(a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971;

(b) left the United Kingdom and utilised a right of residence after having been settled in the United Kingdom;

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period referred to in regulation 5(a); and

(d) in the case where their ordinary residence referred to in sub-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 prior to the period of residence referred to in sub-sub-paragraph (c).

(2) For the purposes of this paragraph, a person has utilised a right of residence if that person–

(a) is–

(i) a United Kingdom national;

(ii) a family member of a United Kingdom national with rights under Article 7 of Directive 2004/38<sup>(2)</sup> (or corresponding provisions under the EEA agreement or the Switzerland Agreement<sup>(3)</sup>);

(iii) a person who has a right of permanent residence arising under Directive 2004/38; and

(b) either–

(1) O.J. No. L 257, 19.10.68, p.2 (O.J./S.E. 1968(II) p.475), amended by Council Regulation (EEC) No. 2434/92 (O.J. No. L 245, 26.8.92, p.1).

(2) O.J. No. 158, 30.04.04, p.77.

(3) Cm. 5639.

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- (i) has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement in a state other than the United Kingdom; or
  - (ii) in the case of a person who has a right of permanent residence in the United Kingdom arising under Directive 2004/38, has gone to the state within the territory comprising the European Economic Area and Switzerland of which that person is a national or of which the person in relation to whom that person is a family member is a national.
- 5. A person shall be an excepted student if that person is—
  - (a) a refugee who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first recognised as a refugee; or
  - (b) the spouse, civil partner, child of such a refugee.
- 6. A person shall be an excepted student if that person—
  - (a) 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 that person is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and that person has been granted leave to enter or remain accordingly; and
    - (ii) been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such leave to enter or remain; or
  - (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a).
- 7. A person shall be an excepted student if that person—
  - (a) is a person who has been granted temporary protection;
  - (b) did not attain the age of 18 years prior to the beginning of the current academic year of the student's course; and
  - (c) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted temporary protection.
- 8. A person shall be an excepted student if that person—
  - (a) is a non UKEC national or the child of such a national;
  - (b) is ordinarily resident in Scotland on the date referred to in regulation 5(a);
  - (c) has been ordinarily resident in the United Kingdom and Islands throughout the 3 year period preceding that date; and
  - (d) in the case where their 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 prior to the period of residence referred to in paragraph (c).
- 9. A person shall be an excepted student if that person—
  - (a) is a non UK EC national or an EU overseas territories national or the family member of either;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland or the EU overseas territories throughout the 3 year period referred to in regulation 5(a); and
  - (c) their residence there during any part of that 3 year period has not been wholly or mainly for the purpose of receiving full-time education.

- 10.** A person shall be an excepted student if that person—
  - (a) is the child of a Swiss national in respect of whom it is not lawful to charge higher fees by virtue of Article 3(6) of Annex 1 to the Switzerland Agreement;
  - (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the 3 year period referred to in regulation 5(a); and
  - (c) in the case where their ordinary residence referred to in sub-paragraph (b) 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 prior to the period of residence referred to in sub-paragraph (b).
- 11.** A person shall be an excepted student if—
  - (a) that person has not been ordinarily resident in the United Kingdom and Islands throughout the 3 year period referred to in regulation 5(a); or
  - (b) being a United Kingdom national or a non UK EC national or the child of such a person, that person has not been ordinarily resident in the European Economic Area and Switzerland throughout that 3 year period; or
  - (c) by reason only that that person, their spouse or civil partner, or either of their parents, or in the case of a dependant direct relative in the ascending line, the child upon whom that person was dependent or that child's spouse or civil partner, was temporarily either employed or studying outside the United Kingdom and Islands or, as the case may be, outside the European Economic Area or Switzerland.
- 12.** A person shall be an excepted student if that person fails to satisfy the criteria specified in paragraph 2(b), 3(c), 4(1)(c), 8(c), 9(b) or 10(b) by reason only that that person, or their spouse or civil partner, or either of their parents, or in the case of a dependant relative in the ascending line, their child or child's spouse or civil partner, was temporarily either employed or studying elsewhere.
- 13.** A person shall be an excepted student if that person was admitted to their course in pursuance of arrangements with an institution outside the United Kingdom for the exchange of students on a fully reciprocal basis.
- 14.** A person shall be an excepted student if that person is a British Overseas Territories national or the family member of such a national and has been ordinarily resident in either the United Kingdom or any of the British Overseas Territories throughout the 3 year period referred to in regulation 5(a).
- 15.** For the purpose of this Schedule fees shall be considered to be charged on the last date or dates on which they are required to be paid by the student, and not on the date or dates on which the student enters an agreement to pay them or on which that person receives an account in respect of them.