

SCHEDULE 2

Regulation 5

ORDINARY RESIDENCE

1.—(1) For the purposes of regulation 3(a) and paragraph 9(1)(b) of Schedule 1, a post 2011/12 student is to be treated as being ordinarily resident in Scotland on the relevant date if that post 2011/12 student was not actually so resident only because—

- (a) that post 2011/12 student or their spouse or civil partner or either of their parents; or
- (b) in the case of a dependant direct relative in the ascending line, the child upon whom that post 2011/12 student was dependent or that child's spouse or civil partner,

was temporarily—

- (i) employed outside Scotland; or
- (ii) attending a course of study or undertaking postgraduate research outside Scotland.

(2) For the purposes of regulation 3(a) and subject to sub-paragraph (3), a post 2011/12 student is not to be treated as being ordinarily resident in Scotland on the relevant date if that post 2011/12 student's residence there on that date is in any sense attributable to, or connected with, any period of residence in Scotland within 3 years immediately preceding the relevant date as respects any part of which its purpose was wholly or mainly that of receiving full-time education.

(3) Sub-paragraph (2) does not apply to a post 2011/12 student who has acquired settled status in the United Kingdom under the Immigration Act 1971(1) as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38.

2.—(1) Sub-paragraphs (2) to (5) apply in determining, for the purposes of regulation 3(b) and paragraphs 1(b), 2(b), 3(1)(c), 9(1)(c), 10(1)(b), 11(b) and 13(c) of Schedule 1, whether a post 2011/12 student is to be treated as having been or not having been ordinarily resident for the period specified in those paragraphs (in this paragraph, “the specified period”) in the United Kingdom and Islands, the European Economic Area, Switzerland, the EU overseas territories or Turkey (in this paragraph, “the relevant area”).

(2) A post 2011/12 student is not to be treated as having been ordinarily resident in the relevant area for the specified period in regulation 3(b) if that post 2011/12 student was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education, unless the post 2011/12 student has acquired settled status in the United Kingdom under the Immigration Act 1971 as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38, in which case the post 2011/12 student must have been ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the start of that period of residence.

(3) A post 2011/12 student is not to be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 10(1)(b) of Schedule 1 if that post 2011/12 student was resident there for any part of that period wholly or mainly for the purpose of receiving full-time education.

(4) A post 2011/12 student is to be treated as having been ordinarily resident in the relevant area for the specified period if that post 2011/12 student was born and has spent the greater part of their life in the relevant area and—

- (a) their parents or either of them have been ordinarily resident in the relevant area throughout the specified period and that post 2011/12 student is not an independent student; or
- (b) that post 2011/12 student has been ordinarily resident in the relevant area for at least one year of the specified period and, in the case of those qualifying by virtue of regulation 3

(1) 1971 c.77.

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or paragraph 10 of Schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full time education.

(5) A post 2011/12 student is to be treated as having been ordinarily resident in the relevant area for the specified period if that post 2011/12 student was not actually ordinarily resident in the relevant area for the specified period only because—

- (a) that post 2011/12 student, or their spouse or civil partner, or either of their parents; or
- (b) in the case of a dependent direct relative in the ascending line, the child upon whom that post 2011/12 student was dependent or that child's spouse or civil partner,

was temporarily—

- (i) employed outside the relevant area; or
- (ii) attending a course of study or undertaking postgraduate research outside the relevant area.

3.—(1) In paragraph 2(4)(a), “an independent student” means a post 2011/12 student who prior to the relevant date—

- (a) has attained the age of 25 years;
- (b) is married or in a civil partnership;
- (c) has no parent living;
- (d) had the care of a person under the age of 18 years who was wholly or mainly financially dependent upon them; or
- (e) has been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A post 2011/12 student is to be regarded as having been self-supporting out of their earnings for any period during which that post 2011/12 student—

- (a) was participating in arrangements for training for the unemployed under any scheme operated, sponsored or funded by any state authority or agency, national, regional or local;
- (b) was in receipt of benefit payable by any state authority or agency, national, regional or local, in respect of a person who is available for employment but who is unemployed;
- (c) was available for employment and had complied with any requirement of registration imposed by a body referred to in paragraphs (a) or (b) as a condition of entitlement for participation in arrangements for training or receipt of benefit;
- (d) received any pension, allowance or other benefit paid by reason of a disability to which that post 2011/12 student is subject, or by reason of confinement, injury or sickness, paid by any state authority or agency, national, regional or local, by an employer or any former employer or by any other person; or
- (e) held an advance postgraduate or other comparable award.