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1.1 Who is this guide for?

This guide is aimed primarily at bursary officers working in Further Education Colleges as it refers to “The Education (Access Funds) (Scotland) Determination 2018” (referred to in this guide as the Determination). This sets out residency conditions for eligibility for student support for students studying a course of Further Education in Scotland.

1.2 How to use this guide

This guide should be referred to alongside the Determination, it is not intended to replace it and is not a legal document. It should be stressed that this is a guide only and it is the college's responsibility to refer to and interpret the Determination to decide whether an individual student is eligible for support. If you are still unclear on an individual decision after consulting the Determination, along with this guide, you can seek further advice from the Higher Education & Learner Support team in the Scottish Government, from the Scottish Funding Council, and/or seek your own legal advice.

The flow charts at the beginning of each section should be used to give some idea of which residency category a student may fall into and direct you to the relevant pages in the guide.

1.3 The legislation and guidance

The Education (Access Funds) (Scotland) Regulations 1990, as amended, provide Scottish ministers with the powers to pay what are called Access Funds – this includes FE Bursaries and the various discretionary funds. The Education (Access Funds) (Scotland) Determination 2018 sets out how these funds are to be administered on behalf of Scottish ministers including the eligibility criteria for these funds.

This guide only refers to the residency criteria for Further Education Bursaries. Separate guidance is available on the various forms of Discretionary Funds. These are set out in Schedule 1 of the Determination and references are made in this guidance to the specific paragraphs in Part 2 of this Schedule. The full text of the Schedule is reproduced in Appendix 2.

FE Bursary policy is set by the SFC and guidance on the general operation of bursaries is contained in guidance on their website. Guidance on the SFC fee waiver policy also refers to the residency conditions set out in the Determination. Para 8 of the Guidance on Fee Waiver Grant Policy (see...
above link) for 2018 – 19 sets out the residency eligibility for fee waiver grant, and includes a reference to the Determination, as well as a number of other residency criteria. As a result, this guide will also cover residency eligibility for fee waiver for courses of further education.

1.4 Definitions

The following terms are used on a regular basis in the Determination. Other terms are included in a Glossary at Appendix 1.

1.4.1 Ordinary Residence

Defined by the courts as ‘habitual and normal residence in one place’. Effectively, this means living in a country year after year by choice throughout a set period. A person who meets these criteria will be defined as ‘ordinarily resident’. A student is not ordinarily resident if they would normally live elsewhere, or, generally, if their main purpose in coming to the UK or Scotland is to study.

1.4.2 Relevant Date

The Determination refers to, for example, being ordinarily resident on the relevant date. The relevant date is the first day of the first academic year of the course for which a bursary is sought. In further education this is usually the start-date of the course.

1.4.3 Relevant Area

This is the area in which a person is expected to have been ordinarily resident for a specific period of time before a bursary can be awarded. The relevant area can either be the United Kingdom and Islands (Channel Islands and the Isle of Man) or the EU (including the EU Overseas Territories), elsewhere in the European Economic Area (EEA) and Switzerland. It can also include Turkey for those claiming support as the child of a Turkish worker. There are some circumstances under which someone who is not resident in the relevant area for the specified period, may still be considered ordinarily resident there, and these will be covered later on.

1.4.4 European Economic Area (EEA)

Many references are made to the EU and the EEA. The European Economic Area (EEA) includes three additional states in addition to the European Union (EU) member states. When the Determination refers to the EEA, it means all the EU countries plus the three EEA countries. The full list of EU and EEA countries is given at Appendix 3.

Under EC Directive 2004/38 which is referred to in the Determination, residents of EU member states have the right of free movement in other Member States. This includes the right of residence in another Member State if they work or study there for more than three months (Article 7 of Directive 2004/38, see Appendix 4). For study purposes, these rights determine what support they may be eligible for. It also
affects UK students who have lived in the EU, elsewhere in the EEA and Switzerland and are returning to the UK to study.

1.5 Fee status changes

Eligibility at the beginning of a course of education, in most cases, determines a student’s eligibility for the duration of the course. This means that if a student starts a course while ineligible to receive support on residence grounds, they will continue to be ineligible for the duration of that course and their fee status will remain at the higher overseas rate for the duration of the course.

However, eligibility can be reassessed for support and ‘home’ rate fee status if a student changes to a different course at a different level or they start the same level of course from year one, and they fulfil the general residency rules at the beginning of their new course of study.

Examples of students who can become eligible for support and ‘home’ fee status part way through their course of education without having to change course are refugees, those with Humanitarian Protection (HP) those with Discretionary Leave (DL) granted as a result of a failed asylum claim, or another form of leave granted for the same reason and their family members (see section 4.1 and 4.3), A student of a country which accedes to the EU while they are studying (such as Croatia in 2013) may also become eligible for support and ‘home’ fee status.

1.6 Further information

See Glossary and Appendices for further information on the part of the Determination which sets out the residency criteria, a list of EEA and EU countries and details of documents relating to different asylum and immigration categories.

We have also attached a link below to a document produced by the Home Office which gives further examples of documentation you may come across when assessing applications from migrant workers, refugees and asylum seekers and other nationalities:

Full guide for employers on preventing illegal working in the UK

Back to contents page
Section 2: UK students (UK nationals and those with permanent UK residence)

Is student a UK national or has indefinite leave to enter or remain in the UK?

Yes → Has the student lived in the UK for the last 3 years?

Yes → Is the student ordinarily resident (see p4) in Scotland on the relevant date?

Yes → Student may be eligible for fee waiver and bursary support. (See p8)

No → No

No → The student may be eligible if they fall into one of the following categories:
- Been temporarily absent from the UK for example due to a gap year, parent’s temporary work/study abroad (see exceptions and temporary absence p8, 9)
- Been living in the EU, EEA or Switzerland (see UK returners, p12)
- Born in and spent the greater part of their life in the UK (p8, 9)
- UK national born in and spent their whole life in the EU (see p14 may be eligible for fee waiver only).

Unlikely to be eligible if none of the above.

No → Turn to Section 3
2.1 Residency criteria for UK citizens and permanent residents

Most Scottish students who live in Scotland and want to study an FE course at a Scottish college are likely to be eligible for bursary support (subject to meeting other criteria, such as rules regarding previous study, see SFC guidance for further information.)

There are three basic conditions which they need to fulfil in order to qualify. These are set out in paragraph 1, Part 2 of Schedule 1 of the Determination (Appendix 2, p39.)

The student must:

- Be ordinarily resident in Scotland on the relevant date (the relevant date is the first day of the course; ordinary residence can be described as habitual or normal residence, by choice, over a period of time in one place and does not include residence solely for the purposes of education);
- Have been ordinarily resident in the UK and Islands for 3 years immediately prior to the relevant date; **AND**
- Be settled in the United Kingdom within the meaning given by section 33(2A)() of the Immigration Act 1971 on the first day of the first academic year of the course (for example, be a UK national or otherwise have a right to stay in the UK without time restriction, for example ‘Indefinite Leave to Remain’); **OR**
- If under the age of 18, have lived in the United Kingdom throughout the seven-year period preceding the first day of the first academic year of the course;* **OR**
- If aged 18 years old or above and, preceding the first day of the first academic year of the course, have lived in the United Kingdom throughout either half his or her life or a period of twenty years*.

* This includes people who are awaiting the Home Office making a decision on their asylum application but does not apply to people who have failed the asylum process or are residing in the UK illegally.

If the student meets all of these conditions, they may be considered to be eligible for student support. Students from the rest of the UK (England, Wales and Northern Ireland) and the Islands, unless they can show that they meet all of the above residence conditions and are not here for the purposes of education, should consult the appropriate funding body in the relevant part of the UK and Islands to see if any student support is available for them to study in Scotland. Note that students from the rest of the UK are charged the same fee rate as Scottish domiciled students even though they are not eligible for support. A higher rate of fees can only be charged to RUK students studying HE courses.

See **Appendix 5** for examples of what passport stamps or documents to expect from a student to prove settled status.
2.2 Exceptions to the ordinary residence requirements

There are some exceptions to the first two conditions described above. These are set out in Part 3 of Schedule 1 of the Determination (see p45) and deal with exceptions to ordinary residence requirements due to temporary absence on the relevant date, or during the relevant period, from the relevant area (for students who are temporarily absent from the UK but resident in the EEA/Switzerland, please see Section 2.3). These exceptions also apply to other residency categories which require a student to be ordinarily resident on a specific date and ordinarily resident in the relevant area for a specific period of time and will be referred to throughout this guidance.

2.2.1 Not ordinarily resident in Scotland on the relevant date

If the student is not ordinarily resident in Scotland on the relevant date (at the start of the course), the accepted exceptions for not doing so are:

- The student’s parents, civil partner, spouse, or the student, or a child the student depends on, was temporarily employed outside the relevant area or undertaking a course of study or Postgraduate research outside the relevant area. This may be referred to as temporary absence depending on the student’s case.

A student will not be considered as ordinarily resident in Scotland if during the three years immediately prior to the relevant date, their residence in Scotland was wholly or mainly for the purpose of receiving full-time education. The only exception to this is for EU (non UK) nationals who have gained the right to permanent residence and settled status in the UK after a period of residence for full-time education (note that...
EU nationals must have been resident in the UK for 5 years in order to gain the right to permanent residence. If this is the case, they must have been resident in the EEA or Switzerland immediately before moving to the UK.

This exception can only apply to UK students as described in paragraph 1, Part 2, Schedule 1 of the Determination, and non-UK EU nationals as described in paragraph 9, Part 2, Schedule 1 of the Determination.

Case Study

Jenny was born in Scotland, and completed her schooling here. She is now 19 and for the last 9 months has been doing voluntary work in Malawi as part of her gap year. When she returns from Malawi she plans to study at college in preparation for hopefully applying to University in a year’s time. However she is not due back in the country until just after her classes begin and will therefore not be ordinarily resident in Scotland on the relevant day.

She is concerned about whether she will be able to access bursary funding, however the college have advised her that as her absence is temporary she will be eligible for support.

2.2.2 Not resident in the UK and Islands (relevant area) throughout the 3 year period

If the student has not been living in the relevant area for the 3 years prior to starting the course the accepted exceptions for not doing so are:

- The student was born in the relevant area and spent most of his/her life there (more than 50%) and at least one of the student’s parents has been ordinarily resident in the relevant area for the three years prior to the start of the course and the student is not an independent student; OR

- The student was born in the relevant area and has spent most of his/her life there (more than 50%) and has been ordinarily resident in the relevant area for at least 1 year out of the 3 years and no part of living in the relevant area was wholly or mainly to receive full-time education; OR

- The student’s parent’s, partner or spouse, or the student, or an adult the student is dependent on(i.e. the student is not independent), was temporarily employed outside the relevant area or undertaking a course of study or Postgraduate research outside the relevant area.

These exceptions can apply to any of the residency categories except those covering refugees, asylum seekers, those with discretionary or some other form of leave, and those with temporary protection(they apply to paragraphs 1-4, and 10-13 of Part 2 of Schedule 1 of the Determination but not paragraphs 5-9).
Case Studies

Lindsay was born in Scotland and spent most of her life here. After finishing school at the age of 17, she decided to take a gap year and travel. She was eventually away in Australia and New Zealand for just over 3 years and returned to Scotland to stay with her parents and applied to college.

As Lindsay was not in the relevant area i.e. UK and Islands for 3 years before the start of her course, she may qualify for a fee waiver and living costs support (means tested) as both her parents remained in Scotland and she is not an independent student.

James was born in Scotland and spent most of his life there. After he finished school aged 18, he decided to travel around the world and was away for two years. He then returned to Scotland.

He is now 21 and has been back in Scotland for 13 months and has applied to college. James is eligible to apply for a fee waiver and living costs support (means tested) because he has lived for most of his life in Scotland and spent one year of the previous three years in Scotland before starting his course.

Norman was born and settled in Scotland. When Norman was 20 years old he took the decision to move to the USA with his partner who was undertaking a course there. After 3 years in the USA Norman came back to Scotland with his partner.

He then decided to apply to college where he filled out an application for student support. Norman may be considered to qualify for a fee waiver and living costs support (means tested) as he was living in Scotland before the start of his course, has no restrictions on being in the UK and was not in the UK and Islands for the relevant period because he went to the USA with his partner who was studying there i.e. they were temporarily absent.

2.2.3 Temporary Absence

A student is considered to be temporarily absent if they are not ordinarily resident on the relevant date, or not ordinarily resident in the relevant area for the 3 year period immediately prior to the relevant date because they, their parents, partner or spouse (or other adult they are dependent on) were either studying or temporarily working outside the relevant area. Common situations can include a student’s parents being posted abroad by their employer, or a partner carrying out a postgraduate degree abroad.
In order to prove that the student has been temporarily absent you may wish to ask for evidence. Such evidence can include: contracts of employment, proof that a home has been maintained in the UK for their own use, immigration documents from the country of employment or study showing that residence is temporary and not permanent. This list is by no means exhaustive and the decision will need to be made on a case by case basis looking at the circumstances and the evidence available.

There are special arrangements for military personnel and their families who may be temporarily absent from Scotland for periods of time due to being posted abroad or posted elsewhere in the UK. In most instances they should apply for support to the country in the UK in which the family member in the military was ordinarily resident when they joined up.
2.3 UK returners from the EU, EEA or Switzerland

Under EU regulations on free movement, people from one EU country can choose to go and live in another EU country. This is called exercising a right of residence (referred to in the Determination as utilising a right of residence). EU (including UK) nationals can also exercise their right of residence if they live in the three additional EEA countries and Switzerland.

UK nationals and their families, who have moved to an EEA country or Switzerland and then returned to the UK for study, may be eligible for student support if they meet the criteria described in paragraph 4 of Part 2 of Schedule 1 (Appendix 2). The student should apply for support to the part of the UK they were living in immediately before they left the UK. So only students who were ordinarily resident in Scotland immediately before they left the UK are able to be considered for bursary support. However, someone who left from another part of the UK and exercised a right of residence in the EEA/Switzerland and then wants to study in Scotland can be considered eligible for a fee waiver only.

For UK nationals to qualify for student support they must meet the following criteria:

- The student must be settled in the UK on the relevant date with no restrictions on staying in the UK; **AND**
- The student was ordinarily resident in Scotland (not for the purposes of education) and was settled in the UK **immediately** before leaving the UK and has utilised a right of residence (see below); **AND**
- The student left the UK and chose to live (became ordinarily resident) elsewhere in the EEA/Switzerland (i.e. utilised their right of free movement). Has been living in the EEA/Switzerland (including the UK if they have only spent a short time outwith the UK, or if they have already returned to the UK) for 3 years immediately before the relevant date; **AND**
- If the main reason for living in the EEA/Switzerland for the previous 3 years before starting their course in the UK was for the purpose of obtaining an education, they must have been ordinarily resident in the EEA/Switzerland before that.

Someone can be considered to have utilised a right of residence if they are a UK national, the family member of a UK national or someone with a right of permanent residence in the UK arising under the EU rules setting out the right to free movement (EC Directive 2004/38), and they have exercised a right of free movement under Article 7 or in the case of someone with a right of permanent residence in the UK, have gone back to their home state (or that of their family) in the EEA/ Switzerland.
Case Study

Moira was born in Scotland and lived there most of her life. Her mother is German and her father is Scottish.

She completed her primary school education in Scotland and when she was 11 years old she and her family temporarily moved to Germany for family reasons. She completed her high school education there. The family then moved back to Scotland when Moira was 19 and she decided to apply to college.

She will qualify as a UK returner and be eligible for full support because she was living in Scotland before moving to Germany, she’s exercised a right of residence, and she was resident for three years in the EEA/Switzerland (prior to starting her course).
2.4 UK student who was born & lived in the EU, EEA or Switzerland

You may come across a UK national, who has settled status in the UK, but who was born and lived their entire life in the EEA/Switzerland and now wishes to return to the UK to study. You can consider them as you would an EU national if they have been ordinarily resident in the EEA/Switzerland for the previous 3 years and they may be eligible for a fee waiver only (see section 3.1 for EU national fee waiver only awards).

2.5 Doesn’t meet any of the above criteria

If you have a UK national, who has settled status in the UK, but who is not ordinarily resident in Scotland or who has not been ordinarily resident in the UK and Islands for the previous 3 years, is not returning from the EU, EEA or Switzerland and does not meet any of the criteria for exceptions from ordinary residence, then they are unlikely to be eligible for any student support. This is because student support is based on residency rather than nationality.

**Case Study**

Claire’s family decided to emigrate to the USA from Scotland when she was ten years old. They have lived there since and are now permanent residents in the USA. Claire is now 17 and would like to return to Scotland to reconnect with some of her family and go to college while she is here. However she will not be eligible for any support as she does not meet the residency criteria even though she still has a British passport. She would need to return to the UK for at least a year before she could be considered under the “born in and spent the great part of her life in the UK, one year of residence in the UK one year out of three” exception.
Section 3 – EU, EEA, Swiss and Turkish students

Is the student an EU national (or their family member)?

Yes

Has the student been ordinarily resident in the UK and Islands for the last 3 years?

Yes

The student may be eligible for fee waiver and bursary support. See p16

No

Is the student an EEA, Swiss or Turkish national (or their family member)?

Yes

Is the student an:
• EEA migrant worker (including migrant workers who may have recently stopped working);
• EEA self-employed person, frontier worker, or self-employed frontier worker;
• Swiss employed person, self-employed person, frontier worker or frontier self-employed person;
• Family member of any of the above.
• Child of a Turkish Worker

Yes

See p19 for eligibility criteria and p23 for children of Turkish workers

No

If the student is a child of a Swiss national they may be eligible for fee waiver and bursary support if ordinarily resident in Scotland. See p24

No

If the student is not an EU national, nor a child of a Swiss national then they will not be eligible for fee waiver or bursary.

No

Is the student an EEA, Swiss national (or their family member)?

No

Turn to Section 4
3.1 EU nationals

Following the results of the referendum in which the UK voted to leave the EU, the Scottish Government has announced that eligible EU students who start their course of education in academic year 2018/2019 (or before) or 2019/2020 will continue to be eligible for a fee waiver (and bursary where appropriate) for the duration of their course.

This includes EU nationals all associated categories i.e. EEA nationals, Swiss nationals and their family members and children of Turkish migrant workers.

As already described, EU rules on free movement give students access to similar student support to Scottish domiciled students while studying in Scotland. The conditions for eligibility are set out in paragraphs 10 and 11 of Part 2, Schedule 1 of the Determination. See Appendix 5 for an example of a residence card for the UK that an EEA national might have.

In order to qualify for full support (as set out in paragraph 1 of Part 2, Schedule 1 of the Determination, Appendix 2.) they must fulfil the following criteria:

- Is a non UK EU national or the family member of such a national on the relevant date; **AND**
- Is ordinarily resident in Scotland on the relevant date; **AND**
- Has been ordinarily resident in the UK and Islands for the 3 years immediately before the relevant date; **AND**
- If they were ordinarily resident in the UK & Islands during the three years before the relevant date and their main purpose for living in the UK & Islands was to receive full time education, they must have been living (ordinarily resident) in the EEA & Switzerland immediately before their 3 year period of residence in the UK & Islands.

If a state accedes to the EU (i.e. joins the EU) after the relevant date and a person is a national of that state, then the requirement in the first bullet point of being a non UK EU national on the relevant date is treated as being satisfied. This means that someone from an accession country may become eligible for full support part-way through the course if they meet all the other eligibility criteria.

Croatia acceded to the EU on 1 July 2013, so please note that if you have any current Croatian students, they may now be eligible for fee waiver/bursary.

The exceptions to the second and third bullet points are detailed in paragraph 2.2.2.
Case Study

Francoise was born and raised in France until she was 14 and came to Scotland when her mother came to work here. Her mother was given the chance to study for a one year post graduate course in America and they moved there just after Francoise finished her schooling in Scotland when she was 18.

A year later, after her mother finished her post graduate course, Francoise wanted to return to Scotland where most of her friends were living and she applied to a college here. Francoise was eligible for support because, although she was not living in Scotland on the relevant date, she was considered temporarily absent because of her mother’s course in America.

3.2 EU Nationals – fee waiver only

EU students who have not lived in the UK and are not ordinarily resident in Scotland, (including UK nationals, and dual UK/EU nationals who have exercised a right of residence in the EEA/Switzerland, lived in their other member state in the case of joint nationals, or were born and spent their lives in the EU) may be eligible for a fee waiver only. The wording of this paragraph has changed a number of times in recent years to reflect the current understanding of the eligibility of this group.

They must meet the conditions below (as set out in Part 2, Schedule 1 of the Determination, Appendix 2.)

- Is an EU national or the family member of an EU national accompanying or joining that EU national in the United Kingdom; AND
- Has been ordinarily resident in the EEA/Switzerland or the EU overseas territories for at least 3 years immediately before the relevant date; AND
- Has applied for a fee waiver only for a course of education at an institution in Scotland.

The same comments apply as above for nationals whose state accedes to the EU, and again this will have a bearing on Croatian nationals whose state acceded on 1 July 2013.

In this category an EU national does not include a UK national who hasn’t utilised a right of residence. A UK national has utilised a right of residence if they have exercised a right of residence under Article 7 of Directive 2004/38 (see Appendix 4 for text of Article 7), the EEA agreement or the Switzerland Agreement in a state other than the UK, or they have resided in a state within the EEA/Switzerland of which they are also a national (for those who have dual UK/EU nationality) on the same basis as someone exercising a right of residence.

Exercising a right of residence as set out in Article 7 is generally considered to be a period of at least 3 months, either working, studying or self-sufficient in that state.
Note also that family members of EU nationals described in this section are **not** required to be an EU national themselves, nor do they have to fulfil the requirement of ordinary residence in the EEA/Switzerland in the 3 years immediately prior to the relevant date. **However they do have to be joining or accompanying their EUC national in the UK.**

The **exceptions** to the second bullet point are detailed in **paragraph 2.2.2.**

**Case Studies**

Michael was born and has lived in Germany all his life. He has completed his schooling there but would like to study at a Scottish institution. He comes over to Scotland straight from Germany before the start of his course and is looking to apply for support.

As Michael is an EU national, has been living in the EEA/Switzerland or the EU overseas territories for more than 3 years before the start of his course and has applied for support to study at a Scottish institution, he will be eligible to apply for a fee waiver.

Cecile is 18, has a British passport and was born and grew up in the UK. Her parents are French and moved to the UK just before she was born. She wants to go to college in Scotland prior to going to university and chooses to study in Glasgow, where her grandparents live. She will be eligible for a fee waiver only as she can be treated as a family member of an EU national who is accompanying her parents in the UK.

Hernando is Spanish but has been living with his parents in Venezuela for the past ten years. He wishes to come and study at college in Scotland and then go to a Scottish university. He claims to be eligible as the family member of an EU national, even if he doesn’t meet the residency criteria himself, as he is under 21, and his grandmother has been resident in Spain for the three year qualifying period. However due to the new requirement (2013-14 onwards) of having to join or accompany your EC national relative to the UK, Hernando will not now be eligible as his grandmother is remaining in Spain and will not be moving to the UK.
3.3 Migrant Workers (including frontier workers, self-employed workers, EEA & Swiss nationals)

3.3.1 Definitions

**EEA Migrant Worker:** A person who is a national of an EEA state (except the UK), is employed in the UK, and who has an enforceable Community right to be treated no less favourably than a UK national with regard to bursary support. These rights are set out in Article 7 of EU Directive 2004/38.

The kind of employment may be full or part-time but should involve a significant number of hours of work in a normal week.

A person can retain their legal status as migrant worker under Article 7 if they stop working if:

- they are temporarily unable to work due to illness or accident;
- they are made involuntarily unemployed after being employed for more than one year and are registered as a job-seeker (if they have been employed for less than one year they only retain their status as a migrant worker for 6 months). A student may retain their migrant worker status if they were made unemployed as a result of the completion of a fixed term contract of less than a year;
- they start a course of education or training which is linked to their previous employment.

Migrant workers who are on maternity leave will also keep their migrant worker status while on maternity leave regardless of whether they are eligible for any maternity pay, contractual or statutory. However if they choose to stay home to look after their child at the end of the maternity leave they will no longer be considered to be a migrant worker.

**EEA Frontier workers** are workers as described above who work in the UK but continue to live in the EEA/Switzerland and return to their residence there daily or at least once a week.

**EEA Self-employed persons** as the name suggests have the same rights as migrant workers but are self-employed rather than having a contract of employment with an employer.

**EEA frontier self-employed persons** are self-employed working in the UK but continue to live in the EEA/Switzerland and return to their residence there daily or at least once a week.

**Swiss employed persons** are Swiss nationals working in the UK (as for migrant workers) and have rights under Annex 1 to the Switzerland Agreement. These rights also cover Swiss frontier employed persons, Swiss self-employed persons, and Swiss frontier self-employed persons. Their rights are equivalent to those for workers from the EEA.
3.3.2 What support are migrant workers eligible for and what are the conditions?

This is a complex area, a student’s circumstances may require some investigation and it will depend on the individual’s case.

If the student is currently working and will continue to do so while they study, or has given up work in order to study, there should be a link between the nature of their current or most recent employment and their course of study, for example someone working as a hotel receptionist may want to improve their career in this area and stop work to study Hotel Management or Tourism at college. However if there is not a link, they may be considered for support if they have been made involuntarily unemployed and need to retrain.

It is up to the college to satisfy themselves that the student is a genuine migrant worker. Factors you should take into account when considering a student to qualify as a migrant worker include:

- Consider the number of hours they are working (or were working in their previous employment) where for example 16 - 20 hours a week at the minimum wage (or paid in kind such as board and lodging for an au pair) may be considered as a worker. It is not essential to work full time but part time hours must be significant. A permanent contract is not necessary, but again, there should be significant hours each week over a period of time (we would generally not include seasonal work for one part of the year only). This can include those on zero hours contracts who have relatively consistent hours week by week.
- If they are no longer working look at their previous employment history including dates and length of time worked – was the employment genuine and is the employment linked to the course if they have given up work to study?
- What the reason was for not continuing to work in their last period of employment - was it a fixed term contract, were they sacked or made involuntarily unemployed?

Paragraph 2 of Part 2 of Schedule 1 in the Determination (Appendix 2) sets out the residency criteria for EEA/Swiss migrant workers (and EEA/Swiss frontier workers, self-employed persons and frontier self-employed persons) to be eligible for student support, which are:

- Has been living (was ordinarily resident) in the EEA/Switzerland for the 3 years before the start of the course; AND
- They are living (are ordinarily resident) in Scotland on the relevant date (the start date of the course); OR
- If the student is an EEA frontier worker, an EEA frontier self-employed person or a Swiss frontier employed person or a Swiss frontier self-employed person, then they will NOT have to be ordinarily resident in Scotland on the relevant date.

The exceptions to the first bullet point are detailed in paragraph 2.2.2.
3.3.3 Family members of EEA migrant workers (including all workers described in the above section)

Family members of migrant workers may be eligible for student support. Article 12 of Council Regulation (EEC) No. 1612/68 sets out the rights of children of migrant workers and sets out that they should be treated the same in terms of access to student support, as children of citizens of the member state in which the parent is working. Family members of a migrant worker (and other categories as described above) includes: their spouse; civil partner; their direct descendants or those of their spouse or civil partner who are under 21 or dependents of them or their spouse/civil partner; and their dependent direct relatives in the ascending line or those of their spouse or civil partner (note that partners other than spouses or civil partners are not included as family members of migrant workers).

If a migrant worker family member is applying for student support, you must consider whether the person they are relying on for eligibility meets the definition of a migrant worker as set out in section 3.2.2 above.

If a student is the family member of a migrant worker then they must meet the following residency criteria (as set out in Part 2, Schedule 1 of the Determination, Appendix 2.)
• Has lived (ordinarily resident) in the EEA/Switzerland for the 3 year period immediately prior to the relevant date **AND**
• Is living (ordinarily resident) in Scotland on the relevant date **OR**
• If the student's family member is one of the following - an EEA frontier worker, an EEA frontier self-employed person, a Swiss frontier employed person or a Swiss frontier self-employed person then the student will **NOT** have to meet the condition of living in Scotland prior to the start of their course.

The **exceptions** to the first bullet point are detailed in paragraph 2.2.2.

**Case Study**

Sofia is from Greece. She lived there until she was 17 then her mother was posted abroad for 1 year to the USA as part of her job and Sofia went with her. Her mother has since started a new job in the UK and Sofia has moved with her mother to live in Edinburgh and has applied for a college course. Her mother meets all the criteria to be classed as a migrant worker. Although Sofia has not lived in the EEA for the full 3 years prior to starting the course, as this is due to temporary absence related to her mother's work she is eligible for support as the family member of a migrant worker.

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3.4 Children of Turkish workers

Children of Turkish nationals living and working in the UK may be eligible for support (as set out in Part 2, Schedule 1 of the Determination, Appendix 2.) If the parent or guardian is lawfully employed in the UK their children are able to qualify for full support if they meet the following criteria:

- is the child of a Turkish worker; **AND**
- is ordinarily resident in Scotland on the relevant date; **AND**
- has been ordinarily resident in the EEA/Switzerland or Turkey for the 3 years immediately before the relevant date.

The exceptions to the third bullet point are detailed in paragraph 2.2.2.

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3.5 Children of Swiss nationals

Children of Swiss nationals are entitled to support in the UK under Article 3 (6) of Annex 1 to the Switzerland Agreement.

To receive full support as a child of a Swiss national, the student must meet the following criteria (as set out in Part 2, Schedule 1 of the Determination, Appendix 2.)

- Is the child of a Swiss national who is entitled to support in the UK by virtue of the Switzerland agreement (note that the student does not have to be Swiss); and
- Has been ordinarily resident in the EEA and Switzerland for three years immediately prior to the relevant date; and
- Is ordinarily resident in Scotland on the relevant date; and
- In the case where their 3 year residency period in the EEA and Switzerland was wholly or mainly for education purposes, they must have been ordinarily resident in the EEA and Switzerland prior to this period of residence.

The exceptions to the second bullet point are detailed in paragraph 2.2.2.

Case Study

Johan was born in France but his mother was a Swiss National. He lived in France for all his life until his parents moved to Scotland when Johan was 18. Johan wants to attend college here to study engineering. Johan is entitled to a fee waiver as well as a bursary by virtue of being the child of a Swiss National who had spent three years prior to the start of his course in France and by being ordinarily resident in Scotland on the relevant date.

If the student meets any of the conditions to be described as an ‘independent' student, (i.e. they are 25 years old or over, or is married on the relevant date, or has supported themselves from their full-time wage for an aggregate period of three years or more, or has no parents living) current guidance suggests that they should not be considered to be a ‘child' for the purposes of this category.

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Section 4 – Other student nationalities

Does the student have refugee status?

Yes

See p27

No

Is the student an Iraqi national granted leave to remain through the Locally Engaged Staff Assistance Scheme (LESAS) otherwise known as the Iraqi Direct Entry Scheme?

Yes

See p28

No

Does the student have some form of leave as the result of a failed application for asylum, such as limited leave to remain, discretionary leave or humanitarian protection?

Yes

See p29

No

Is the student an Afghan national or a family member of an Afghan national settled in Scotland under the Afghan Locally Employed Staff Ex-Gratia Scheme (LES)

Yes

See p35

No

Is the student classed as a ‘stateless person’

Yes

See p35

No

Has the student been granted discretionary leave to remain as a Human Trafficking Survivor

Yes

See p35

No

If under 18 has the student lived in the UK throughout a the seven year period preceding the relevant date OR

If over 18 has the student lived in the UK throughout either half his/her life or a period of twenty years preceding the relevant date.

Yes

See p7

No
Is the student an asylum seeker?

Yes

Is the student under 18 and has Temporary Protection?

No

Student is unlikely to be eligible for support and may be considered as an international student for fees. May be eligible for fee waiver for part-time ESOL.

Yes

Is the student under 25 and a child of an asylum seeker or a young unaccompanied asylum seeker?

No

The student will unlikely be eligible for any bursary support but may be eligible for a fee waiver for full and part-time ESOL courses and part-time advanced & non-advanced courses and also college discretionary funds in kind (see p31).

Yes

If the student fulfils all the criteria as a young unaccompanied asylum seeker (see p31) they may be eligible for a fee waiver only.

See p30
4.1 Refugees

Nationals of any non-EEA country can apply to the Home Office for refugee status. When they enter the UK, or soon after, they will apply for ‘grant of asylum’. If their application is successful the Home Office will grant them refugee status.

A refugee is defined as a person who is recognised by the Government as such within the meaning of the Geneva Convention relating to the Status of Refugees (1957). Essentially, a person who because of fear of persecution on grounds such as race, religion, sexual orientation or politics, is outside the country of their nationality and is unable or unwilling to return.

Prior to session 2005-2006, students with refugee status were given ‘Indefinite Leave to Remain in the UK (ILR) as a refugee’. This meant that there was no time limit on their stay in the UK.

However, from August 2005 onwards, they now get leave to remain for five years and before their period of leave to remain runs out, they have to apply for Indefinite Leave to Remain (ILR). If their application for ILR is refused they will be asked to leave the UK. See Appendix 5 for examples of documents you may be shown by such a student to prove their status.

Someone who has been awarded refugee status by the Home Office may be eligible for fee waiver and bursary support if they meet the following criteria (as set out in Part 2, Schedule 1 of the Determination, Appendix 2).

- They are a refugee on the date they apply for an allowance, who has been ordinarily resident in the UK and Islands at all times since being awarded refugee status and is ordinarily resident in Scotland on the relevant date; OR
- They are the spouse, civil partner or child of a refugee as described above and is ordinarily resident in Scotland on the relevant date.

There are no exceptions to these residency criteria.

Case Study

Zara came to the UK with her parents and brother from Syria to flee the on-going civil war. She was 15 years old when the family arrived in the UK and they couldn’t return to the place of her birth.

Her family applied to the Home Office for asylum and were granted refugee status and the family have lived in Scotland ever since.

She has shown documentation such as the letter from the Home Office detailing her status or a travel document to the college staff. They then assess her application for support and she is awarded fee waiver and a bursary as she meets the above criteria.
4.2 Iraqi Nationals (LESAS)

Some Iraqi Nationals have been granted leave to enter the UK through the Locally Engaged Staff Assistance Scheme (LESAS) (also known as the Iraqi Direct Entry Scheme). LESAS was established to assist Iraqis who worked for the British armed forces and civilian missions in Iraq. After their employment they have the option to settle in the UK.

For those who were employed between 1 January 2005 and 7 August 2007, the Home Office allowed them to enter the UK as a recognised refugee under the Gateway Protection Programme (See Appendix 5 for more information on the GPP).

However, changes were made in March 2009 and it was decided that this part of LESAS would close to new applicants on 19 May 2009. For those who were employed from 8 August 2007 onwards, the Home Office now allows them to enter the UK with Indefinite Leave to Enter (ILE). Normally with ILE a student would need to meet the normal residency conditions and in particular will have to meet the 3 year residence requirement in the UK.

The Student Allowances (Scotland) 2007 regulations were amended in August 2009 so that Iraqi nationals who have been awarded ILE under the LESAS scheme may gain eligibility for fee support and living costs support from their date of entry to the UK without having to meet the normal 3 year residency requirements (note that this amendment is not included in the latest version of the Determination). See Appendix 5 for details of the documents you would expect to see from such a student.

A student who has gained ILE as a result of LESAS must meet the following residency requirements (as set out in Part 2, Schedule 1 of the Determination, Appendix 2):

- Is an Iraqi national who has been granted settled status and can live in the UK indefinitely. This has been awarded through the Locally Engaged Staff Assistance Scheme (LESAS) operated by the Home Office; AND
- Has been ordinarily resident in the UK and Islands at all times since that person was first awarded leave to enter or remain; AND
- Is ordinarily resident in Scotland on the relevant date; OR
- Is the spouse, civil partner or child of an Iraqi national as described in the points above and who is ordinarily resident in Scotland on the relevant date.

There are no exceptions to these residency criteria.

Case Study

Nadia was born and lived in Iraq all her life. Her husband worked for the British armed forces as an interpreter and the family has moved to Scotland under the Direct Entry Scheme.

Nadia wants to study Counselling at college. The family arrived in the UK in 2009, and Nadia is eligible for fee waiver under the above rules and can also apply for a bursary from her chosen college.
4.3 Some form of leave to remain as a result of a failed asylum claim

Individuals who have applied for asylum but have been refused refugee status by the Home Office may however be granted an alternative form of leave, such as limited leave to remain, Discretionary Leave or Humanitarian Protection. See Appendix 5 for examples of immigration documents such a student may show you to prove their status. If someone in this category wishes to apply for support they must meet the following residency criteria (as set out in Part 2, Schedule 1 of the Determination, Appendix 2):

- Has had their application for refugee status refused by the Home Office, however, has been granted some form of leave to enter or remain in the UK, for example, Humanitarian Protection, or Discretionary Leave; AND
- Has been ordinarily resident in the UK and Islands at all times since being awarded leave to remain and is ordinarily resident in Scotland on the relevant date; OR
- They are the spouse, civil partner or child of someone as described in the points above and are ordinarily resident in Scotland on the relevant date.

NB It is possible to be awarded Discretionary Leave for reasons other than a failed asylum claim, however such students would not be eligible for student support.

There are no exceptions to these residency criteria.

Case Study

Ami came to the UK from Somalia with his family just two years ago. They applied for asylum but were refused by the Home Office. Instead, they were granted discretionary leave to remain in the UK and were living in Scotland when this was awarded.

They have moved to Scotland and Ami wants to study a further education course and then go on to university. He has provided documentation stating that he has been awarded Limited Leave to Remain which also displays when he arrived in the UK. He may be eligible to receive fee waiver and to apply for a bursary while at college.

However, Ami’s limited leave to remain will run out towards the end of the academic year. The college should arrange a review with Ami approximately 1 month before his current leave to remain ends. Ami then needs to provide the college with proof (usually a solicitor’s letter) that he has applied for an extension to his current leave. Whilst waiting for the outcome of this extension/reapplication Ami can continue to receive support.

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4.4 Temporary Protection

A young person may be granted automatic temporary protection. In order to comply with the requirements of an EU Directive (Council Directive 2001/55/EC), the Home Office created a new category of immigration status called ‘Temporary Protection’ (TP). This directive comes into force when there is a mass movement of refugees and is an outcome of lessons learned following the Balkan conflict and the Kosovo crisis. It ensures that EU member states share the burden of receiving displaced persons following a mass movement of refugees. The EU will give direction on when this measure is in force and the Scottish Government/Scottish Funding Council will in turn inform institutions. This directive has yet to be used therefore you will not currently come across any students with this status.

The Directive sets out minimum standards that an EU member state must provide to people given TP in a member state and who cannot return to their own country at present. One of the requirements of the Directive is that EU member states must provide education to people under 18 who have been granted TP, on the same basis as they do for their own Nationals. However, this right ceases to apply when the person turns 18.

The necessary criteria are (as set out in Part 2, Schedule 1 of the Determination, Appendix 2):

- Temporary protection has been granted before they have applied for student support and the student has been ordinarily resident in the UK and Islands at all times since the temporary protection was awarded;
- Has not reached the age of 18 on the relevant date; **AND**
- Is ordinarily resident in Scotland on the relevant date.

Any allowance or support awarded will not continue beyond the academic year during which the young person reaches the age of 18.

There are **no exceptions** to these residency criteria.

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4.5 Asylum Seekers

Asylum seekers are defined as those whose applications for asylum in the United Kingdom are currently being considered by the Home Office. This group of applicants would not meet the standard residence requirements for bursary support, however, under the Funding Councils’ Fee Waiver Grant Policy, asylum seekers, their spouses and children are eligible for fee waiver for a full-time or part-time ESOL course, or for part-time advanced or non-advanced courses. Such students are also eligible to receive support in kind from the additional discretionary funds to meet travel and study costs. See Appendix 5 for sample documents asylum seekers may show you to prove their status.

4.5.1 Young unaccompanied asylum seekers and children of asylum seekers

In December 2007, amendments were made to the regulations which apply to young unaccompanied asylum seekers and children of asylum seekers giving them the right to fee support to study full and part-time higher and further education courses in Scotland.

Amendments were made because a small number of young asylum seekers and children of asylum seekers who had been living in Scotland for a number of years were experiencing significant barriers to education through no fault of their own. This was due to their asylum applications not being resolved because of delays in the immigration system. Many of these young people had completed or are completing their secondary education in Scotland; have achieved well but were denied the opportunity to continue onto university or full time college courses like their Scottish peers. Young people in this category may be eligible for fee support only for part and full-time further education and higher education study.

These amendments came into force in January 2008 and the students must meet all the following residency criteria to qualify for support under this category (as set out in Part 2, Schedule 1 of the Determination, Appendix 2):

- Is the child of an asylum seeker or is a young asylum seeker;
- Is ordinarily resident in Scotland on the relevant date;
- Has been ordinarily resident in Scotland for the 3 years immediately prior to the relevant date;
- Was under 18 on the date the application for asylum was made and this application must have been made before the 1st December 2006
- Is under 25 on the relevant date;
- Is seeking a fees only award to study at a Scottish institution.

There are no exceptions to these criteria.

You should note that due to the strict criteria operating under this category it is increasingly unlikely that you will come across any students who meet the full requirements, particularly that of applying for asylum prior to 1 December 2006.
Case Studies

Laila came to Scotland with her family from Afghanistan when she was 13 in October 2006. Her father applied for asylum and the family claim is still being processed. Laila has been attending school in Scotland and she is now 20 and wants to study an HNC course at college. As the child of an asylum seeker, who meets all the conditions she is eligible to receive fee support while studying her course.

Joseph came to Scotland from Nigeria in May 2006 when he was 16. He travelled alone and had lost contact with his parents. He applied for asylum but so far has not been granted refugee status.

Joseph initially attended a part-time ESOL course and is now fluent in English. He would like to further his career in the catering industry so decides to apply to college. At this time, Joseph is 25 and so does not meet the condition of being under 25 before the start of their course. He will therefore not qualify for full-time fee waiver as he does not meet all the criteria for a young unaccompanied asylum seeker. However he could still study at the college on a part-time basis and his fee would be waived in those circumstances.
4.6 Former Gurkhas and their family members

The Home Office made changes in 2009 to the criteria used to assess applications to settle in the UK from former members of the Brigade of Gurkhas. Any Gurkha who has served in the British Army for at least four years and has now retired or left the army can apply for permission to settle, along with their family, in the UK (Gurkhas can also transfer to another British regiment after 5 years’ service and then apply for ILR).

Further information on this issue can be found on the GOV.UK website.

Former Gurkhas and their families who have settled status in the UK as a result of this change and who wish to study in Scotland and apply for fee and student support must meet the normal residence criteria for UK nationals – in addition to being settled in the UK within the meaning given by section 33 (2A) of the Immigration Act 1971 on the relevant date, they must also be ordinarily resident in Scotland on the relevant date and have been ordinarily resident in the UK and Islands for the 3 year period immediately before the relevant date.
4.7 Syrian Vulnerable Refugee scheme

The scheme will bring 20,000 refugees to the UK by 2020. Refugees will come from camps in five countries in the region – Egypt, Iraq, Turkey, Lebanon and Jordan. People arriving under this programme were originally granted Humanitarian Protection, however, following a change in UK Government policy, those entering the UK under the scheme after July 2017 will be granted Refugee Status. Criteria for selecting refugees include those who have experienced torture, those with severe medical needs, women and girls at risk of sexual violence and those at risk because of their sexual orientation or gender identity.

The Scottish Government has committed to taking 10% of the refugees who come to the UK. This would equate to 2,000 refugees coming to Scotland over the five years of the programme if numbers remain at the current level.

To be eligible for a fee waiver and bursary the following criteria must be met:

- Is a Syrian national who has been granted humanitarian protection or refugee status the UK under the Syrian VPRS; and
- Has been ordinarily resident in the United Kingdom and Islands at all times since they were granted Humanitarian Protection or Refugee status; and
- Is ordinarily resident in Scotland on the relevant day

OR

- Is the spouse, civil partner or child of a person above and;
- Is ordinarily resident in Scotland on the relevant day

NB Syrian nationals who have not been granted entry to the UK under the VPRS may still be eligible for support if they meet one of the other criteria laid out in the regulations e.g. they have Indefinite Leave to Remain.
4.8 Afghan nationals settled under the LES Scheme

Afghan nationals who have been granted limited leave to enter the UK under the Locally Employed Staff (LES) Scheme will be eligible for student support providing they meet the following conditions:

- Has been ordinarily resident in the UK and Islands since receiving that leave;
- Are ordinarily resident in Scotland on the relevant date.

Or

- Is the spouse, civil partner, child or step child of a person above and;
- Is ordinarily resident in Scotland on the relevant date.

4.9 Stateless Persons

People entering the UK who have been granted leave to remain as a Stateless Person in accordance with paragraph 405 of the Immigration rules will be eligible for student support providing they meet the following conditions:

- Has been ordinarily resident in the UK and Islands since receiving that leave;
- Are ordinarily resident in Scotland on the relevant date.

Or

- Is the spouse, civil partner, child or step child of a person above and;
- Is ordinarily resident in Scotland on the relevant date.

4.10 Human Trafficking survivors

People entering the UK who have been granted discretionary leave to remain as a Human Trafficking survivor/victim of Modern Slavery will be eligible for student support providing they meet the following conditions:

- Have been ordinarily resident in the UK and Islands since receiving that leave;
- Are ordinarily resident in Scotland on the relevant date.

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Appendix 1 - Glossary of Terms

Asylum Seeker

Those whose applications for asylum in the United Kingdom are currently being considered by the Home Office. See Appendix 5 for more information.

Discretionary Leave

Granted to persons who have been refused refugee status and who do not have protection needs, but whom the Home Office would not seek to remove from the UK because there is a legal barrier to their removal. See Appendix 5 for more information.

ESOL

A course of study in English as a Second or Other Language. The SFC Fee waiver guidance sets out who is eligible for a fee waiver for full and part-time ESOL courses. Note that the residency criteria may be slightly different from that for bursaries, for example some non UK non EU nationals may be eligible for a part-time fee waiver for ESOL.

Human Trafficking Survivor

For the purposes of eligibility the term Human Trafficking survivor applies to all those who have been granted discretionary leave to remain in the UK due to being identified as a victim of modern slavery, including human trafficking, slavery, servitude and forced or compulsory labour.

Humanitarian Protection

Granted to those who fail to qualify for refugee status, but who can demonstrate they have protection needs. For further information see Appendix 5 or visit GOV.UK.

Indefinite leave to enter/remain

Permission to enter the UK, and permission to remain permanently in the UK, respectively. For further information visit: https://www.gov.uk/browse/visas-immigration/settle-in-the-uk See stamps in Appendix 5. This is counted as settled status.

Independent Student

A person who is 25 years old or over, or is married on the first day of their course, or has supported themselves from their full-time wage for an aggregate period of three years or more, or has no parents living.

National of a member state of the European Union

A person who is a national for the purposes of the EU Treaties of any member state of the European Union (including the United Kingdom) as constituted from time to time.

Non-UK EU Nationals
Relates to the Bidar ruling by the European Court of Justice, which extends maintenance support to non-UK EU nationals. Fee and living cost support for UK nationals living in Scotland, England, Wales and Northern Ireland will continue to be provided by the award-making body in the country in which the applicant is ordinarily resident.

**Ordinary Residence**

Defined by the courts as ‘habitual and normal residence in one place’. Effectively, this means living in a country year after year by choice throughout a set period. A person who meets these criteria will be defined as ‘ordinarily resident’. A student may not be treated as ordinarily resident if they would normally live elsewhere, and their main purpose in coming to Scotland is to study.

**Person not supporting themselves from their earnings**

Someone who participated in training for the unemployed, received unemployment benefit, registered to entitle them to participate in training or to receive benefits, received a pension, allowance or other benefit as a result of a disability, held a Scottish Studentship Award (or equivalent) or cared for a dependant under 18 and therefore could not support themselves out of their own earnings.

**Refugee**

A person who is recognised by the Government as a refugee within the meaning of the Geneva Convention relating to the Status of Refugees (1957). Essentially, a person who because of fear of persecution on grounds such as race, religion, or politics, is outside the country of their nationality and is unable or unwilling to return.

**Relevant Area**

The area in which a person is expected to have been ordinarily resident for a specific period of time before a bursary can be awarded. Schedule 2 of the Student Awards regulations names these ‘relevant areas’ as the United Kingdom and Islands and the EEA/Switzerland. For UK nationals, the relevant area is the United Kingdom and Islands. For EEA migrant workers and EU nationals, the relevant area is the European Economic Area (EEA) and Switzerland (can include the EU Overseas Territories for EU nationals and Turkey for children of Turkish workers).

**Relevant Date**

The first day of the first academic year of the course for which a bursary is sought. For FE courses this is generally the first day of the course (for HE courses this is one of four set dates throughout the academic year).

The student must be ordinarily resident in Scotland on the first day of the first academic year of the course.

**Right of Permanent Residence**

A person has the right of free movement as defined in EC Directive 2004/38, and may have a right of permanent residence if they are settled in that country for a period of 5 years.
Settled Status

A person who is settled in the United Kingdom within the meaning of the Immigration Act 1971, for example is a naturalised British Citizen, has indefinite leave to enter or remain.

Specified period

The length of time a person is expected to have been ordinarily resident in one place before a bursary can be awarded.

Temporary Absence

The student may be considered to be temporarily absent from the relevant area (eg the UK or the EU) if the student or their partner or their parents have been temporarily employed or studied abroad. If the move abroad was because the student, their partner or their parents were posted abroad by their company and they are not considered as permanent residents in that country due to the nature of their employment contract, the student may then be considered as temporarily absent from the relevant area.

Temporary Protection

Limited leave to enter or remain in the UK under Part 11A of the Immigration Rules.

Turkish Workers

A Turkish Worker is a Turkish national who is ordinarily resident in Scotland and is, or has been, lawfully employed in the UK. This can include both employment by an employer and self-employment.

Young unaccompanied asylum seekers

An unaccompanied minor or separated child, i.e. someone under the age of 18 who has no legal guardian in the UK and who has made an application for asylum
APPENDIX 2 – THE EDUCATION (ACCESS FUNDS) (SCOTLAND) DETERMINATION 2018 – SCHEDULE 1

FURTHER EDUCATION BURSARIES

Part 1

Interpretation

In this Schedule 1—

except otherwise specified or where the context otherwise requires, any reference to a paragraph or sub-paragraph is a reference to a paragraph or sub-paragraph of the Part of this Schedule in which the reference appears;

“allowance” except where the context otherwise requires, means a further education bursary paid or to be paid under the 1990 Regulations in accordance with Part II of this determination;

“child of an asylum seeker” means a person who is the child of an asylum seeker as defined in section 18 of the Nationality, Immigration and Asylum Act 2002(a);


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

(a) is a self-employed person (within the meaning of article 7 of Directive 2004/38) in Scotland; and

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

“EEA frontier worker” means an EEA national who—

(a) is a worker (within the meaning of article 7 of Directive 2004/38) in Scotland; and

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

“EEA migrant worker” means an EEA national in the United Kingdom who is a worker (within the meaning of article 7 of Directive 2004/38) but who is not an EEA frontier worker;

“EEA national” means a national of an EEA state other than the United Kingdom;

“EEA self-employed person” means an EEA national in the United Kingdom who is a self-employed person (within the meaning of article 7 of Directive 2004/38) but who is not an EEA frontier self-employed person;

“employment” means full-time or part-time employment which, in a normal week, involves a significant number of hours of work and “employed” shall be construed accordingly, and references to employment include references to the holding of any office and to any occupation for gain;

“EU national” means a person who is a national of any member State for the purposes of the EU Treaties;

“EU overseas territories” means Aruba, Faeroe Islands, French Polynesia, French Southern and Antarctic Territories, Greenland, Mayotte, Netherlands Antilles (Bonaire, Curcao, Saba, Sint Eustatius and Sint Maarten), the Territory of New Caledonia and Dependencies, St Pierre et Miquelon and Wallis and Futuna Islands;

(*) 2002 (c.41).

(†) OJ L 158, 30.04.04, p.77.
“European Economic Area” means the area of the EEA states and includes those States at any time before they became EEA states;

“family member” means, in relation to any person—

(a) their spouse or civil partner; or

(b) their direct descendants or those of their spouse or civil partner who are—

   (i) under the age of 21; or

   (ii) their dependants or those of their spouse or civil partner; or

(c) their dependent direct relatives in the ascending line or those of their spouse or civil partner;

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

“non UK EU national” means a person who is a national of any member State other than the United Kingdom;

“parent” includes a step-parent, a guardian, any other person having parental responsibilities for a child and any person having care of a child, and “child” shall be construed accordingly;

“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 28th July 1951(a) as extended by the Protocol thereto which entered into force on 4th October 1967(b);

“relevant date” means the first day of the first academic year of the course of education for which an allowance is sought;

“Scotland” excludes the local authority areas of Orkney Islands and Shetland Islands;

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex I to the Switzerland Agreement, but who is not a Swiss frontier employed person;

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

(c) is an employed person (within the meaning of Annex I to the Switzerland Agreement) in Scotland; and

(d) resides in Switzerland or in the territory of an EEA state other than the United Kingdom and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

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

(e) is a self-employed person (within the meaning of Annex I to the Switzerland Agreement) in Scotland; and

(f) resides in Switzerland or in the territory of an EEA state, other than the United Kingdom, and returns to their residence in Switzerland or that EEA state, as the case may be, daily or at least once a week;

“Swiss self-employed person” means a Swiss national in the United Kingdom who is a self-employed person within the meaning of Annex I to the Switzerland Agreement, but who is not a Swiss frontier self-employed person;

“Switzerland 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 21st June 1999(c) and which came into force on 1st June 2002;

“temporary protection” means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules(a);

“Turkish worker” means a Turkish national who—

(*) Cm. 9171.

(+) Cm. 3906 (Out of print: photocopies are available, free of charge, from the Student Awards Agency for Scotland, Gyleview House, 3 Redheughs Rigg, South Gyle, Edinburgh EH12 9HH).

(‘) Cm. 5639.
(g) is ordinarily resident in Scotland; and
(h) is, or has been, lawfully employed in the United Kingdom; and

“young asylum seeker” means an unaccompanied asylum-seeking child.

Part 2

Eligible Persons

1. A person who—
   (a) is ordinarily resident in Scotland on the relevant date;
   (b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date; and
   (c) is—
      (i) settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971[^b] on the relevant date;
      (ii) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the relevant date; or
      (iii) aged 18 years old or above and, preceding, the relevant date, has lived in the United Kingdom throughout either half his or her life or a period of twenty years.

2.—(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) an EEA frontier worker or an EEA frontier self-employed person; or
      (iv) a Swiss frontier employed person 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 period of 3 years immediately preceding the relevant date; and
   (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant date.

(2) Sub-paragraph (1)(c) does not apply where the person applying for support falls within paragraph (a)(iii) or (iv) of sub-paragraph (1).

3.—(1) A person who—
   (a) is—
      (i) the family member of a person mentioned in paragraph 2(1)(a); or
      (ii) 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 freedom of movement for workers within the Union[^a] as extended by the EEA agreement;
   (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date; and
   (c) subject to sub-paragraph (2), is ordinarily resident in Scotland on the relevant date.

(2) Sub-paragraph (1)(c) does not apply where the person applying for support is a family member of a person falling within paragraph 2(1)(a)(iii) or (iv).

4.—(1) A person who—
   (a) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date;

[^a]: OJ L 141, 27.5.2011, p.3.
(b) was ordinarily resident in Scotland (and the Scottish Ministers are satisfied that such residence was not in any sense attributable to, or connected with, any period of residence in Scotland within the 3 years immediately preceding in respect of which any part of its purpose was wholly or mainly that of receiving full time education) and settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom and who has utilised a right of residence;

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant 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).

(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(a) (or corresponding provisions under the EEA agreement or the Switzerland Agreement(b)); or

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

(b) either—

(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.

(3) Sub-paragraph (1)(a) and the requirement in sub-paragraph (1)(b) to be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 immediately before leaving the United Kingdom do not apply where the person applying for support is a person falling within sub-paragraph (2)(a)(ii).

5. A person who—

(a) at the date the college of further education received their application for an allowance, is—

(i) 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

(ii) the spouse, civil partner or child of such a refugee; and

(b) is ordinarily resident in Scotland on the relevant date.

6. A person who—

(a) (i) has 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;

(ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such leave to enter or remain; and

(iii) is ordinarily resident in Scotland on the relevant date; or

(b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

(*) OJ L 158, 30.04.04, p.77.

(†) Cm. 5639.
7. A person who—
    (a) (i) is an Iraqi national who has been granted indefinite leave to enter the United Kingdom under the Locally Engaged Staff Assistance Scheme (Direct Entry) operated by the Home Department;
        (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such indefinite leave to enter the United Kingdom; and
        (iii) is ordinarily resident in Scotland on the relevant date; or
    (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

8. A person who—
    (a) (i) is an Afghan national who has been granted limited leave to remain in the United Kingdom under the Locally Employed Staff Ex-Gratia Scheme operated by the Home Department;
        (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
        (iii) is ordinarily resident in Scotland on the relevant date; or
    (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

9. A person who—
    (a) (i) has been granted limited leave to remain in the United Kingdom as a stateless person under the immigration rules operated by the Home Department;
        (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such limited leave to remain in the United Kingdom; and
        (iii) is ordinarily resident in Scotland on the relevant date; or
    (b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

10. A person who—
    (a) at the date the college of further education receive that person’s application for an allowance has been granted temporary protection and who has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted temporary protection;
    (b) has not attained the age of 18 years on the relevant date; and
    (c) is ordinarily resident in Scotland on the relevant date,
    provided that an allowance paid to a person only by virtue of that person qualifying under this paragraph shall not continue beyond the end of any academic year in which that person attains the age of 18 years.

11. A person who—
    (a) is the child of an asylum seeker or is a young asylum seeker;
    (b) is resident in Scotland on the relevant date;
    (c) has been resident in Scotland throughout the period of 3 years immediately preceding the relevant date;
    (d) was under 18 years old on the date when the application for asylum was made, which application must have been made prior to 1st December 2006;
(e) is under 25 years old on the relevant date; and

(f) seeks an allowance in respect of a course of education at a college of further education in Scotland.

12.—(1) A person who—
(a) is, on the relevant date, a non UK EU national or the family member of such a national;
(b) is ordinarily resident in Scotland on the relevant date;
(c) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant 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).

(2) Where a state accedes to the EU after the relevant date and a person is a national of that state the requirement in sub-paragraph (1)(a) to be a non UK EU national on the relevant date is treated as having been satisfied.

13.—(1) A person who—
(a) is, on the relevant date—
(i) an EU national; or
(ii) the family member of an EU national accompanying or joining that EU national in the United Kingdom;
(b) subject to paragraph (2) has been ordinarily resident in the area comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date; and
(c) seeks an allowance in respect of a course of education at a college of further education in Scotland.

(2) Sub-paragraph (1)(b) does not apply to a family member of an EU national where that EU national has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and the EU overseas territories throughout the period of 3 years immediately preceding the relevant date.

(3) For the purposes of this paragraph—
(a) an EU national does not include a United Kingdom national who has not utilised a right of residence; and
(b) a United Kingdom national has utilised a right of residence if that person has—
(i) 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) resided in a state—
(aa) within the territory comprising the European Economic Area and Switzerland other than the United Kingdom; and
(bb) of which that person is a national,
in circumstances in which, had the person not been a national of that state, would have involved the person exercising a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA agreement or the Switzerland Agreement.

(4) Where a state accedes to the EU after the relevant date and a person is a national of that state, the requirement in sub-paragraph (1)(a) to be an EU national on the relevant date is treated as being satisfied.

14. 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 Switzerland Agreement;
(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date;
(c) is ordinarily resident in Scotland on the relevant date; and
(d) in the case where their ordinary residence referred to in 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 paragraph (b).

15. A person who—
   (a) is the child of a Turkish worker;
   (b) is ordinarily resident in Scotland on the relevant date; and
   (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the relevant date.

16. A person who—
   (a)
      (i) is a Syrian national who has been granted humanitarian protection to enter the United Kingdom under the Syrian Vulnerable Persons Relocation Scheme operated by the Home Department;
      (ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such humanitarian protection to enter the United Kingdom; and
      (iii) is ordinarily resident in Scotland on the first day of the first academic year of the course; or
   (b) is the spouse, civil partner or child of a person of the kind described in subparagraph (a) and who is ordinarily resident in Scotland on the first day of the first academic year of the course.

17.—(1) Subject to sub-paragraph (2), a person to whom, or in respect of whom, an allowance has been paid in accordance with these Regulations within the year immediately preceding the first day of the academic year of the course of education for which that person is currently seeking an allowance, provided the person is continuing to undertake the same course of education.

   (2) Where sub-paragraph (1) applies to a person to whom, or in respect of whom, an allowance has been paid in accordance with Part II of this determination (or the relevant provisions of any instrument which preceded this determination) within the year immediately preceding the first day of the academic year of the course of education for which that person is currently seeking an allowance where that person qualified only by virtue of paragraph 12 or paragraph 13, an allowance payable to, or in respect of, the person may include sums only in respect of tuition and other fees payable in respect of that person.

   (3) Sub paragraph (1) does not apply where it would result in payment of an allowance to a person after the end of any academic year in which that person attained the age of 18 years where that person qualified only by virtue of paragraph 10.

PART 3
Ordinary Residence

1. For the purposes of paragraphs 1(a), 5(b), 6(a)(iii) and (b), 7(a)(iii), 8(a)(iii) and (b), 9(a)(iii) and (b), 10(c) and 16(a)(iii) and (b) of Part 2 of this Schedule 1 a person who is ordinarily resident in Scotland as a result of having moved from a part of the United Kingdom other than Scotland or the Islands for the purpose of undertaking a course of education is to be considered to be ordinarily resident in the place from where they moved.

2.—(1) For the purposes of paragraph 1(a) and paragraph 12(1)(b) of Part 2 of this Schedule 1 a person shall be treated as being ordinarily resident in Scotland on the relevant date if the college of further education is satisfied that that person was not actually so resident only because—

   (a) that person 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 person 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 paragraph 1(a) of Part 2 of this Schedule 1 and subject to sub-paragraph (3), a person shall not be treated as being ordinarily resident in Scotland on the relevant date if the college of further education is satisfied that that person’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) shall not apply to a person who has acquired settled status in the United Kingdom under the Immigration Act 1971 \cite{a} as a result of residence for full-time education which has led to a right of permanent residence arising under Directive 2004/38.

3.—(1) Sub-paragraphs (2) to (5) shall apply in determining, for the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(c), 12(1)(c), 13(1)(b), 14(b) and 15(c) of Part 2 of this Schedule 1 whether a person 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, the European Economic Area or Switzerland or the EU overseas territories or Turkey (in this paragraph, “the relevant area”).

(2) A person shall not be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 1(b) of Part 2 of this Schedule 2, if the college of further education is satisfied that that person was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education, unless the person 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 person 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 person shall not be treated as having been ordinarily resident in the relevant area for the specified period in paragraph 13(1)(b) of Part 2 of this Schedule 1 if the college of further education is satisfied that that person was resident therein for any part of that period wholly or mainly for the purpose of receiving full-time education.

(4) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the college of further education is satisfied that the person was born and has spent the greater part of their life in the relevant area and that—

(a) their parents or either of them have been ordinarily resident in the relevant area throughout the specified period and he or she is not an independent student; or

(b) that person has been ordinarily resident in the relevant area for at least 1 year of the specified period and, in the case of those qualifying by virtue of paragraph 1 or 13 of Part 2 of this Schedule 1, no part of that residence was wholly or mainly for the purposes of receiving full-time education.

(5) A person shall be treated as having been ordinarily resident in the relevant area for the specified period if the college of further education is satisfied that the person was not actually ordinarily resident in the relevant area for the specified period only because—

(a) that person, 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 person 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.

4.—(1) In paragraph 3(4)(a), “an independent student” means a person 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 on them; or
(e) has been self-supporting out of their earnings for periods aggregating not less than 3 years.

(2) A person shall be regarded as having been self-supporting out of their earnings for any period during which that person—

(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 person 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 award or comparable award.
Appendix 3 - List of EU/EEA countries and EU Overseas Territories

**List of EU countries and date of accession:**

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of Accession</th>
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<tbody>
<tr>
<td>Austria</td>
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<td>Belgium</td>
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<tr>
<td>Bulgaria</td>
<td>2007</td>
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<tr>
<td>Croatia</td>
<td>1 July 2013</td>
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<td>Cyprus</td>
<td>2004</td>
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<td>Czech Republic</td>
<td>2004</td>
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<td>Denmark</td>
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<td>Estonia</td>
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<td>Finland</td>
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<td>France</td>
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<td>Germany</td>
<td>1952</td>
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<td>Greece</td>
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<td>Sweden</td>
<td>1995</td>
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<tr>
<td>United Kingdom</td>
<td>1973</td>
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</tbody>
</table>

**List of additional EEA countries**

- Iceland
- Liechtenstein
- Norway

**List of EU Overseas Territories**

- Aruba
- Faeroe Islands
- French Polynesia
- French Southern and Antarctic Territories
- Greenland
- Mayotte
- Netherlands Antilles (Bonaire, Curacao, Saba, Sint Eustatius and Sint Maarten)
- The Territory of New Caledonia and Dependencies
- St Pierre et Miquelon
- Wallis and Futuna Islands
Appendix 4 – Articles 6 & 7 of Directive 2004/38/EC – Exercising a right of residence


Extract from:
DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 29 April 2004

CHAPTER III

Right of residence

Article 6

Right of residence for up to three months

1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.

Article 7

Right of residence for more than three months

1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

(a) are workers or self-employed persons in the host Member State; or

(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or

(c) – are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and – have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or

(d) are family members accompanying or joining a Union citizen who satisfies the conditions...
referred to in points (a), (b) or (c).

2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

(a) he/she is temporarily unable to work as the result of an illness or accident;

(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office;

(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;

(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.

4. By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and dependent children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall apply to his/her dependent direct relatives in the ascending lines and those of his/her spouse or registered partner.
Appendix 5 – Sample documentary evidence for immigration status

This appendix shows just some examples of the documentation a student may have, these are subject to change at any time by the UKBA. If you have any queries or doubts about a student’s documentation, you should contact the UKBA directly and they may be able to assist you.

**Indefinite Leave to Remain (ILR)**

Below is an example of the most common document that you can accept as proof of ILR. This is a stamp in a person passport called a UK Residence Permit (UKRP). As you can see from the document in the:

- valid until field it should say ‘indefinite’; and
- type of permit field it should say ‘settlement’; and
- the remarks field, it should say ‘Indefinite Leave to remain in the UK’

Any other form of words in any of the fields mentioned above, is likely to mean it is a forgery.

The UKBA give ILR to someone who has been working and supporting themselves in the UK for five years or more. It does not normally extend to their dependants. So if mum and dad have it, you should not automatically presume that the child has ILR. The child needs ILR in their own right before they can receive support or ‘home’ fee status.

If they don’t have a UKRP, they may have:

- a Biometric Residence Permit (BRP). This will have the same words as on the UKRP. See page 55 for an example of a BRP; or
Indefinite Leave to Enter (ILE)

Below is an example of the most common document that you could accept as proof of ILE.

ILE is given to someone who is entering the UK to join someone with ILR. For example, mum and dad come over here to work and leave their child at school with relatives. Once the child leaves school, they come to the UK to join their parents. ILE is a form of settled status in the UK but they still require the 3 years in the UK to get support and ‘home’ fee status.

They must enter the UK within the ‘valid from’ and ‘valid until’ dates shown on the visa. You should not refuse support if the ‘valid until’ date has expired. Once in the UK, they will most likely apply for ILR.

If they don’t give you their entry clearance visa, they may give you their:

- UKRP (see the ILR section for an example of such). In remarks field it will say ‘Indefinite Leave to enter the UK’. Any other form of words in this field is likely to mean it is a forgery; or

- Immigration Status Document (ISD), see page 69 for details

The UKBA gave ILE exceptionally outside the normal immigration rules to Iraqi nationals entering the UK under the Locally Engaged Staff Assistance Scheme (LESAS). Such nationals will have an entry clearance visa that says ‘visa Iraqi staff’ and their Home Office letter will say ‘LE Iraqi staff direct entry scheme’.
Example 1 – entry clearance visa

Example 2 – home office letter

Dear [Name],

You have been granted indefinite leave to enter the United Kingdom with effect from 3 July 2008 and this means that you are free to stay in this country permanently.

This letter in itself confers no leave to enter or remain in the United Kingdom and does not constitute proof of your status.

You will receive your Immigration Status Document (ISD) within seven working days of your arrival in the United Kingdom. This will be endorsed with 'no time limit' attached to your stay in the United Kingdom. It is this endorsement that constitutes proof of your immigration status in the United Kingdom. If you have not received your ISD within seven working days of the date of your arrival in the United Kingdom please telephone the UK Border Agency (UKBA) on the number given at the top of this letter. Alternatively you may contact Philip Scargill, Migrant Helpdesk, 45 Friends Road, Croydon, CR0 1ED. If you require confirmation of your status before you receive your status documentation please telephone UKBA on the number given at the top of this letter.

Employment

You do not need the permission of the Department for Work and Pensions or the Home Office before taking a job. Job Centre Plus can help you find a job or train for work – any job centre or employment office will be able to help you and you can apply for a place on a government-sponsored training scheme if you meet the conditions for these schemes. You are free to set up in business or any professional activity within the regulations that apply to that business or profession.

If you want to live or work in the Isle of Man or one of the Channel Islands you must first ask the Island's immigration authorities.

Financial Assistance and Education
Leave to remain in the UK

The immigration status of ‘leave to remain (LTR)’ appears on the new style residence permits called Biometric Residence Permits (BRP). The UKBA introduced this style of permit in November 2008. A BRP may also be known as an Identity Card for Foreign Nationals (ICFN).

The UKBA can give LTR to asylum seekers, workers, students etc. If they give it as the result of an asylum claim, the student will be eligible for support and ‘home’ fee status. If they give it for any other reason, they will not be eligible. The only way of knowing on what basis the UKBA have given LTR is to see the back of the permit. If it says in the remarks field ‘no public funds’, the student is not eligible for support.

The example below is for a non-EEA national who is a student, however, the remark for a student should be ‘WORK 20 HRS MAX IN TERM TIME’ and not ‘NO WORK’ as illustrated. As this says ‘no public funds’, the student is not eligible for support.

The example below is for a dependant of a worker in the UK. Such are not entitled to support or ‘home’ fee status.

If they don’t give you their BRP, they may give you their UKRP. See images below. As you will see reference to ‘no public funds’ is on the front of the permit. Any other form of words, other than what is shown below, is likely to mean it is a forgery.
Prior to the UKRP, they got a stamp in their passport as follows. With any of these, they are not eligible for support.
Right of Abode

Below is an example of the most common document that you can accept as proof of settled status in the UK. This is given to nationals of certain commonwealth countries who have a UK mother. It is the same as having Indefinite Leave to Remain (ILR) in the UK, which means they must meet the same eligibility conditions for support and ‘home’ fee status as those with ILR.
Family member of non-EEA national

Below is an example of an entry clearance certificate that belongs to a wife of a non-EEA national. As it states ‘no recourse to public funds’ this means that the husband is most likely a worker or student in the UK, with no recourse to public funds himself and therefore this extends to the wife. With such a visa, they would not be entitled to support or ‘home’ fee status.
EEA/Swiss nationals and family members of such

Below is an example of a 'residence card' that you can accept from:

- **an EEA or Swiss national** who has permanent residence in the UK. It will state 'residence card' or perhaps 'permanent residence'. Such nationals can apply for this, but don't have to. With such a document, you should treat them as settled in the UK within the meaning of the Immigration Act. They don't need this document to stay in the UK or apply for any student support or home fee status. It is just a document that is useful to them to establish at least five years residence in the UK if required. In terms of offering support, with this, it tells us that they have been living in the UK for five years, which means they are entitled to full support and not just a fee waiver.

- **a non-EEA or Swiss national** to prove that they are the family member of an EEA or Swiss national. It will state 'residence card of the family member of an EEA or Swiss national' or 'residence card of the family member of an A8 or A2 national. The valid period varies depending on how long they have been in the UK by the time they apply for it and how long their EEA or Swiss family member has been in the UK. The longest valid period is ten years. It is not compulsory that they apply for this as they will already have an entry clearance certificate (shown on the next page) to enter the UK as the family member of an EEA or Swiss national, but it is easier for them to have it when they apply for employment etc.
Entry Clearance certificate for family members of EEA or Swiss nationals

Such nationals will get this on entry to the UK. The UKBA replaced the black and white stamp shown with the entry clearance certificate.

On the next page, you can see a filled in copy of the stamp
Asylum Seekers

The Application Registration Card (ARC)

Most asylum seekers are not allowed to work but exceptionally some can. Regardless of their employment status, the ARC is an indication that they are or were an asylum seeker in the UK. The ARC does not have a valid from or valid to date. So this means you have to watch out for those that were asylum seekers, who have failed the asylum process and all appeal rights. Such individuals are known as Appeals Right Exhausted (ARE). If a student is ARE, they technically do not have any immigration status in the UK and therefore we cannot offer support or ‘home’ fee status. However be aware that individuals can make further appeals even after being declared ARE. They should have evidence either from the Home Office or a lawyer’s letter to prove that they are still awaiting a further appeal decision.

New ARC cards issued in November 2010

See next page for ARC issued before November 2010
Original ARC card issued in May 2004
Refugee status

Below are four examples of documents you can accept as proof of refugee status in the UK.

Prior to August 2005, the UKBA granted ‘refugee’ status in the UK for an indefinite period (see example 2). From August 2005 they started giving it for five years, known as ‘limited leave to remain’ (see examples 2 and 4). Some refugees will have a travel document (see example 3).

If the UKBA award someone refugee status, such status also extends to their spouse, civil partner and child. If their spouse, civil partner or child is not in the UK with them at the time such status is granted, they can enter the UK at a later date and be given what is known as ‘family reunion’. You will see such words on their passport. This basically means they are coming to join someone in the UK with refugee status and must also be treated as a refugee. You do not need to see confirmation that the person they are joining in the UK is a refugee, the UKBA will have already checked this before issuing a ‘family reunion’ visa.

Example 1 - Refugee status – granted for five years

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**Grant of Asylum**

You have been recognised as a refugee as defined by the 1951 Geneva Convention relating to the Status of Refugees and its Protocol (‘Refugee Convention’) and have been granted asylum in accordance with the Immigration Rules.

**THIS LETTER IN ITSELF CONFERS NO LEAVE TO ENTER OR REMAIN IN THE UNITED KINGDOM AND DOES NOT CONSTITUTE PROOF OF YOUR STATUS.**

Please find enclosed your Immigration Status Document (ISD). This has been endorsed with your leave to remain in the United Kingdom. The date this leave to enter or remain expires is shown on the endorsement. It is this endorsement that constitutes proof of your immigration status in the United Kingdom.
Example 2 - Refugee status – granted indefinite

Example 3 - Travel document which can be for five years or indefinite
Example 4 - UKRP showing ‘limited leave to remain’ valid for five years. The UKBA have replaced this style of permit with a Biometric Residence Permit (BRP), you can see an example of this on page 54
Humanitarian Protection (HP) or Discretionary Leave (DL)

Below is an example of a United Kingdom Residence Permit (UKRP) that you can accept to prove that someone has HP or DL also known as Limited Leave to Remain (LLR) in the UK.

Important – we can only offer support and award ‘home’ fees to those the UKBA grant LLR as the result of an asylum claim. To establish this, you will need to see their Home Office letter.

The UKBA give HP or DL to those who are not entitled to full refugee status but are still allowed to stay in the UK for a limited period of time. For HP, this will be valid for five years and for DL, it will be valid for less than five years.

For someone who has LLR, we can offer support and ‘home’ fee status to their husband, wife, civil partner (not their partner) and child or step child.

This should not be confused with Limited Leave to Remain with ‘no recourse to public funds’, who are not eligible for support or ‘home’ fee status.
Gateway Protection Programme (GPP)

Certain asylum seekers can enter the UK with a decision already made by the Home Office about their asylum claim. They will grant Gateway Protection for an Indefinite period. With this status, their entitlement to the support starts on the day the UKBA grant them such status. However, if this is after the tuition fee cut-off date, they will not be eligible for payment of fees in that year but will be in every subsequent year of their course.

Currently the only two groups that we know of who have been given a status in the UK under the Gateway Protection Programme are.

- Iraqi nationals who have worked for our armed forces and civilian missions in Iraq, who were employed between 1 January 2005 and 7 August 2007. Their Home Office letter should state that they are recognised as a refugee as defined by the 1951 Geneva Convention. Iraqi nationals who were employed from 8 August 2008 onwards, come to the UK with ILE (see page 52 for details).

- Those from the Congo who arrived in the UK in 2006 or later. You should therefore not expect to see a document for such nationals dated before 2006.

See GPP example letter on the next page.
Dear Salutation

GATEWAY PROTECTION PROGRAMME

Select either option 1 or 2

Option 1 - for those granted refugee status
You have been recognised as a refugee as defined by the 1951 Geneva Convention relating to the Status of Refugees and its Protocol and you have been granted indefinite leave to remain in the United Kingdom and this means that you are free to stay in this country permanently. End of Option 1

Option 2 - for those accepted as ‘compassionate’ new refugees
You have been granted indefinite leave to enter the United Kingdom and this means that you are free to stay in this country permanently. This leave has been granted exceptionally, outside the Immigration Rules. End of Option 2

THIS LETTER IN ITSELF CONFERS NO LEAVE TO ENTER OR REMAIN IN THE UNITED KINGDOM AND DOES NOT CONSTITUTE PROOF OF YOUR STATUS.

Please find enclosed your Immigration Status Document/passport. This has been endorsed with indefinite leave to enter the United Kingdom. It is this endorsement that constitutes proof of your immigration status in the United Kingdom.

EMPLOYMENT
You do not need the permission of the Department for Work and Pensions or the Home Office before taking a job. Job Centre Plus can help you find a job or train for work – any job centre or employment office will be able to help you and you can apply for a place on a government-sponsored training scheme if you meet the conditions for these schemes. You are free to set up in business or any professional activity within the regulations that apply to that business or profession.

If you want to live or work in the Isle of Man or one of the Channel Islands you must first ask the Island’s immigration authorities.

ACO 2398 Gateway Protection Programme

BUILDING A SAFE, JUST AND TOLERANT SOCIETY
Immigration Status Document (ISD)

As you can see, there are four sections to this, one of which is the UK Residence Permit (UKRP).

If they have a form of asylum in the UK, which means they will have Limited Leave to Remain (LLR) on their UKRP, it will tell us here what it is (HP, DL or refugee status). If they have DL that has not been given as the result of an asylum claim, it will have the words 'This leave has been granted exceptionally outside the Immigration Rules' at the bottom of the personal details section.

If they have Limited Leave to Remain (LLR) that is not the result of an asylum claim, there UKRP will have ‘no recourse to public’ funds, which means they are not eligible for support or ‘home’ fee status.

If they have Indefinite Leave to Remain (ILR) in the UK, and in the personal details section it states it has been granted exceptionally outside the Immigration Rules, this will have been given to an asylum seeking legacy case. Such students are entitled to support and ‘home fee’ status if they meet the normal ILR conditions.