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Section 1 – Introduction

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) (No.2) Determination 2021” (“the Determination”) which 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 read alongside the Determination; it is not intended to replace it and is not a legal document. This is intended to offer guidance 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 should seek your own legal advice.

Throughout the Determination several key terms are used on a regular basis and these are referred to in this guidance. For a definition of these terms see the Glossary at Appendix 1.

1.3 The legislation and guidance

The Education (Access Funds) (Scotland) Regulations 1990\(^1\), 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 Determination 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. Paragraph 10 of the Guidance on Fee Waiver Grant Policy\(^2\) for 2021-22 sets out the

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\(^1\) [The Education (Access Funds) (Scotland) Regulations 1990 (legislation.gov.uk)]

\(^2\) [Fee Waiver Grant Policy 2021-22 (sfc.ac.uk)]
residency eligibility for fee waiver grant, and includes a reference to the Determination, as well as a number of other residency criteria.

1.4 Eligibility changes brought in as a result of Brexit

The changes to the residency criteria that have been put in place for academic year 2021/22 represent a significant change for many students, and particularly those who are EU nationals. While the Scottish Government has previously confirmed that students whose studies began in academic year 2020/21 and earlier would continue to be treated on the same terms until the completion of their course, students who are beginning their studies in academic year 2021/22 may be treated significantly differently.

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 original 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).

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.

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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
- No

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

- Yes
- No

Is the student ordinarily resident (see p6) in Scotland on the relevant date?

- Yes
- 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).

Unlikely to be eligible if none of the above.

Student may be eligible for fee waiver and bursary support. (See p6)

See exceptions above re temporary absence (p8, 9). If the student is ordinarily resident in another UK country they should check with the relevant authorities in that country to see if student support is available for them to study in Scotland.
2.1 Residency criteria for UK citizens and permanent residents

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

The student must:

- Be ordinarily resident\(^3\) in Scotland on the relevant date; **AND**
- Have been ordinarily resident in the UK and Islands throughout the period of 3 years immediately preceding 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 relevant date (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.

**Students who meet either of the final two bullet points above could include people who are awaiting a Home Office decision on their asylum application, but does not apply to people who have failed the asylum process (and do not hold leave to enter or remain, or who are residing in the UK illegally). It could also include those who may hold another form of visa such as accompanying their parents on a long term study visa, or an alternative form of visa issued by the Home Office.**

**Additionally, young unaccompanied asylum seekers and children of asylum seekers who have been in the UK for a number of years who do not meet these criteria may still be eligible under the criteria set out at section 4.5.1 below. The circumstances of each student should be considered on a case by case basis.**

If the student meets all of these conditions set out above, 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 from where they are ordinarily resident 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 4 for examples of what passport stamps or documents to expect from a student to prove settled status.

\(^3\) For a definition of this term see the Glossary at Appendix 1.
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 Appendix 2) 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.

Case Studies

<table>
<thead>
<tr>
<th>Jo is 18 and was born in Glasgow, to Scottish parents. Jo has lived in Scotland all her life apart from the odd 2 week break to Spain with her family. Jo wants to go to college when she finishes school. Jo will be eligible for a fee waiver and (means tested) living cost support in the form of an EMA or a further education bursary and other relevant support including access to her college’s discretionaty fund.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andy was born in Edinburgh and his family are Scottish but he moved to Portsmouth in England with his family when he was 2 years old. He wants to go to college in Edinburgh when he finishes school and wants to know if he will be eligible for any bursary support. The college tells him that although he was born in Scotland, because he is not ordinarily resident in Scotland he will not be eligible for a fee waiver or bursary support. Andy should now investigate whether any funding is available from the relevant funding body in England for him to study in Scotland.</td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>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.</th>
<th>Lindsay was not in the relevant area (i.e. UK and Islands) for 3 years before the start of her course. However, 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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>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.</td>
</tr>
</tbody>
</table>
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
Further Education Residency Guide

country in the UK in which the family member in the military was ordinarily resident when they joined up.

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2.3 UK Returners from the EU, EEA or Switzerland

UK nationals who lived in Scotland before living elsewhere in the EU, EEA or Switzerland, and have now returned to the UK will be eligible for student support when studying in Scotland (UK Returners).

To be eligible to apply for bursary support they must meet the following criteria:

- Prior to living elsewhere in the EU, EEA or Switzerland they were a UK national or person with settled status\(^4\) in the UK or the family member of a UK national, \textbf{AND}
- They have been ordinarily resident in Scotland for at least three years and settled\(^5\) in the UK immediately before leaving the UK to exercise a right of residence, \textbf{AND}
- They were ordinarily resident on IP completion day\(^6\) —
  - (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
  - (ii) in the United Kingdom and Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland, and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the first day of the relevant date.
- They have been ordinarily resident in the UK, Islands, Gibraltar or the territory comprising the EEA and Switzerland during the three years immediately prior to the relevant date,
- In a case where they were ordinarily resident as above wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to above \textbf{AND}
- They were settled in the UK within the meaning of the Immigration Act and they are ordinarily resident in the UK on the relevant date.

A student applying for bursary support as the family member of a UK Returner must be accompanying or joining that UK national in the United Kingdom.

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\(^4\) For a definition of this term see the Glossary at Appendix 1.

\(^5\) If they are applying for support as the family member of a UK Returner, they do not have to be settled within the meaning of the Immigration Act.

\(^6\) IP completion day was 31 December 2020. IP completion day is an abbreviation for 'Implementation Period' completion day, the ending of the 11-month period from 31 January 2020 during which the UK continued to be subject to EU rules. This period was known in the Withdrawal Agreement between the UK and the EU as the 'transition period.'
To be eligible for funding as a UK Returner or the family member of a UK Returner the student must be starting their course prior to 31 July 2028.

**Case Studies**

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 moved to Germany for family reasons. She completed her high school education there. Moira moved back to Scotland following the IP completion date, is now ordinarily resident in Scotland and decided to apply to college.

She will qualify as a UK returner and be eligible for full support because she was living in Scotland for 3 years before moving to Germany, she's exercised a right of residence, and is ordinarily resident in Scotland on the relevant date.

Stephen was born in Scotland and lived there for 5 years before his family relocated to Italy for work reasons. Stephen completed his high school education in Italy but following the announcement of the UK’s exit from the EU decided to return to the UK.

Stephen moved to England shortly after the IP Completion date and then moved back to Scotland to live permanently with his aunt before the start of his college course.

He will qualify as a UK returner and be eligible for full support as he was ordinarily resident in the EEA on IP Completion Date and was ordinarily resident in the UK on the relevant date.
2.4 UK student who was born & lived in the EU, EEA or Switzerland

If the student is a UK national, who has settled status in the UK, but who was born and lived their entire life in the EU, EEA or Switzerland, and has now returned to the UK and wishes to study, they can be considered eligible for support. This extends to the family members of a UK national who has lived their entire life in the EU, EEA or Switzerland and who has never lived in the UK.

In order to qualify the student must:

- Be a UK national and was ordinarily resident on 31 December 2020 in EEA/Switzerland or UK and Islands (immediately after a period of residence in EEA/Switzerland), **AND**
- Have been ordinarily resident in the UK, Islands, Gibraltar or EEA/Switzerland for three years before the course start date, **AND**
- Be ordinarily resident in Scotland at the start of the course and not here simply for education purposes.

In order for a family member of a UK national to qualify, both the family member and the UK national must meet the above conditions.

To be eligible as a UK national or family member of a UK national who has never lived in the UK, they must begin their course prior to 31 July 2028.

2.5 UK or EU student who lives in Gibraltar

If the student is a UK national or EU national who lives in Gibraltar and wishes to study in Scotland, they will be eligible for support if they meet the following conditions:

- They must be an EU or UK national on the relevant date, **AND**
- They must have been ordinarily resident in the UK, Islands, Gibraltar or EEA/Switzerland for three years before the relevant date, **AND**
- They must be ordinarily resident in Gibraltar at the start of the course, **AND**
- If the student is an EU national, they must have been living in Gibraltar on 31 December 2020.

To be eligible for support as a UK or EU national living in Gibraltar, they must begin their course prior to 31 July 2028. This provision extends to the student only.

2.6 Doesn’t meet any of the above criteria

If the student is 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, is not a UK or EU national living in Gibraltar, 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**

Stacey, whose parents are UK Nationals, was born in Spain but holds settled status in the UK and is classified as a UK National due to her parents nationality. Stacey had lived in Spain all her life before moving to Scotland on 31 March 2021 to live with her aunt, getting a part-time job to support herself.

Stacey then applied to study a full-time course in college beginning in AY 2021/22.

Stacey is eligible for support as a UK student who was born and lived in the EU.
3.1 EU nationals

3.1.1 Regarding Brexit:

On 31 January 2020 the United Kingdom officially ceased to be a member of the European Union and entered into a transition period during which all previously held commitments were maintained while negotiations on a new relationship took place. This transition period ended on 31 December 2020.

EU Nationals (and associated groups) who chose to remain in the UK after the end of the transition period were offered the choice to apply to the EU Settlement Scheme (EUSS) for a form of leave to remain. For further information on this form of leave, see “Settled Status – EU Settlement Scheme” in the Glossary at Appendix 1.

3.1.2 Full Support:

In order to qualify for full support a student must fulfil the following criteria:

- Be, on the relevant date, an EU national or family member of an EU national, and have either settled or pre-settled status through the EUSS; or have applied to the EUSS and are awaiting confirmation of EUSS status; \( \text{AND} \)
- Have been ordinarily resident in the UK or Islands for the three years immediately prior to the relevant date, \( \text{AND} \)
- Be ordinarily resident in Scotland on the relevant date.

If a student is claiming support as the family member of an EU national, both the student and their EU family member must meet all of the conditions detailed above.

If the student does not meet the second condition above, they may still be eligible for full support if they are an EEA migrant worker/self-employed person, family member of an EEA migrant worker/self-employed person, or the family member of an EEA frontier worker/self-employed person, as detailed below. Alternatively, if the student has been ordinarily resident in the EEA or Switzerland for three years immediately prior to the relevant date they will be eligible for a home fee waiver.

Late applications to the EU Settlement Scheme

The Home Office is required by the Citizens’ Rights Agreements to accept late EUSS applications (after the 30th June deadline) where there are reasonable grounds for missing the deadline. Further guidance on this can be found at – EU Settlement Scheme: information for late applicants - GOV.UK (www.gov.uk).

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\( ^{7} \) This also includes EU nationals and their Joining Family Members who have submitted an application to the EUSS after 30th June 2021 and are awaiting a decision.
Republic of Ireland (ROI) National

In order to qualify for support a ROI student must fulfil the following criteria:

- Be an Irish national, **AND**
- Be settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date, **AND**
- Be ordinarily resident in Scotland on the relevant date, **AND**
- Have been ordinarily resident in the UK, Islands and the Republic of Ireland throughout the period of three years immediately preceding the relevant date.

If a student is applying as a family member of an Irish national, both the student and their Irish family member must meet all of the conditions set out above. The student must also have pre-settled status through the EUSS though the Irish national family member does not. In this situation the student’s Irish national family member must have been resident in the UK by 31 December 2020, however the student could have joined them after this date, so long as they have done so before 30 June 2021.

3.2 EU nationals – fee waiver only

EU National Or ordinarily Resident in rUK

In the event that an EU student meets the first two criteria for being deemed eligible for full support but is deemed ineligible due to not being ordinarily resident in Scotland on the relevant date, they will be eligible for a tuition fee waiver **IF** they are ordinarily resident in the UK and Islands (Channel Islands and the Isle of Man).

Case Studies

Ben is an Italian national. He moved with his family to the UK in 2016 and is ordinarily resident in Scotland with his family on 1 August 2021. He has settled status in the UK. Ben is eligible for full support.

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 in September 2021 and is looking to apply for support.

As Michael was not ordinarily resident in the UK on or before 31st December 2020, he is ineligible to apply for leave under the EU Settlement Scheme. This means he is not eligible for fee support to study at a Scottish institution and would be treated as an International student.
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 full support as she meets the residency criteria for UK citizens and permanent residents.

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 has not applied to the EU Settlement Scheme as he arrived in Scotland in March 2021 and has no form of settled status therefore he is ineligible for support.

Scott was born in the Republic of Ireland and lived in Ireland until 1 January 2021, at which point he moved with his family to live in Scotland. Scott applies to start college in Edinburgh in the autumn of 2021. He is eligible for full support as he meets the residency criteria for Irish nationals studying in Scotland.

Claire was born in the Republic of Ireland and lived with her family in Ireland until 2015 when her family moved to the United States. In July 2019 Claire moved to Scotland to live with her grandparents and has lived there since then.

Claire applies to start college in Glasgow in autumn of 2021. Claire is ineligible for support as she does not satisfy the criteria of being ordinarily resident in the UK, Islands and the Republic of Ireland for a period of three years immediately prior to the relevant date.

Claire is advised that if she continues to live in Scotland she will be eligible for support after July 2022, as she will then meet the criteria of being three years ordinarily resident in the UK, Islands and the Republic of Ireland.
3.3 Migrant Workers (including frontier workers, self-employed workers, EEA & Swiss nationals)

3.3.1 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 (and 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:

- That the student is a EU/EEA (non UK) national who:
  i. has leave to enter or remain in the UK,
  ii. has been awarded either pre-settled or settled status through the EUSS or has made an in time application; OR
  iii. has a right to admission to the United Kingdom as a qualifying frontier worker; AND
- They have been ordinarily resident in the United Kingdom and Islands (Channel Islands and the Isle of Man) and Gibraltar or EEA/Switzerland for the three years immediately prior to the relevant date; AND
• They are ordinarily resident in Scotland on the relevant date; **AND**

• 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, they are or have been employed or self-employed in the UK.

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

**Case Study**

Harry is a Swiss national who moved from Switzerland to Scotland in 2020. He had worked in Scotland in a role that is linked to the course he is planning to study in 2021. Harry has pre-settled status in the UK and meets the migrant worker conditions and is therefore eligible for support.

Beth is a Norwegian national who moved to Scotland in 2020 from Norway. Beth has pre-settled status in the UK. Beth is not a migrant worker or a family member of such. Beth is not eligible for support.

**3.3.2 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 3.3.1 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**.)

• That the student and their family member is a EU/EEA (non UK) national who
  i. has leave to enter or remain in the UK,
  ii. has been awarded either pre-settled or settled status through the EUSS or has made an in time application; **OR**
iii. has a right to admission to the United Kingdom as a qualifying frontier worker; **AND**
- The student and their family member have been resident in the United Kingdom and Islands (Channel Islands and the Isle of Man) and Gibraltar or EEA/Switzerland for the three years immediately prior to the relevant date; **AND**
- The student is ordinarily resident in Scotland on the relevant date; **AND**
- Their family member is employed or self-employed in the UK.

Case Study

Kristin is a Norwegian national who lived in Norway prior to moving to Scotland in 2019 with her parents, both of whom work in Scotland. Kristin has pre-settled status in the UK and meets the family member of migrant worker conditions and is eligible for home tuition fee status.

Back to contents
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:

- The student is the child of a Turkish worker; **AND**
- The student and their Turkish worker parent were both ordinarily resident in the UK prior to 31 December 2020; **AND**
- The student is ordinarily resident in Scotland on the relevant date; **AND**
- The student has been ordinarily resident in UK, Islands, Gibraltar, EEA/Switzerland or Turkey during the 3 year period immediately prior to the relevant date.
### 3.5 Children of Swiss nationals

Children of Swiss nationals are entitled to support in the UK under Article 10 ‘Personal Scope’ of Swiss Citizens Rights 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 UK, Islands, Gibraltar or EEA/Switzerland for three years immediately prior to the relevant date; **AND**
- Has settled or pre-settled status through the EUSS; **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 and to apply for 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.
Section 4 – Other student nationalities

Does the student have refugee status?

Yes

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

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

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

No

Is the student classed as a ‘stateless person’

Yes

No

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

Yes

No

Has the student been granted discretionary leave to remain through Calais Leave

Yes

No

Has the student been granted discretionary leave to remain as a Domestic Violence Survivor

Yes

No

See p25

See p26

See p27

See p33

See p33

See p33

See p34
If under 18 has the student lived in the UK throughout a 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

If the student fulfils all the criteria as a young unaccompanied asylum seeker (see p27) they may be eligible for a fee waiver only.

No

Is the student under 18 and has Temporary Protection?

Yes

See p26

No

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

Yes

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.

No

Is the student an asylum seeker?

Yes

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 p27).

No

If under 18 has the student lived in the UK throughout a a 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.

See p6
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 4 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 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 4 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. See Appendix 4 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 4 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.
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; AND
- 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.
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 4 for sample documents asylum seekers may show you to prove their status.

4.5.1 Young unaccompanied asylum seekers and children of asylum seekers

Young unaccompanied asylum seekers and children of asylum seekers who have been in the UK for a number of years may be eligible for support under the ‘long residence’ rule as set out in section 2.1. However, if they do not meet these criteria then they may be eligible under the following criteria in this section below.

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; and
- Is seeking support for 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).

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, Islands and Gibraltar for the 3 year period immediately before the relevant date.
4.7 Syrian Vulnerable Refugee scheme

The scheme aimed to 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 committed to taking 10% of the refugees who come to the UK. This equated to 2,000 refugees coming to Scotland over the five years of the programme.

(To note: This scheme ended in February 2021, having been extended due to all resettlement activity being paused between March and December 2020 due to Covid-19.)

To be eligible for support 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 Locally Employed Scheme (LES)

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.

4.11 Calais Leave

People entering the UK who have been granted Calais Leave and ‘leave in line’, granted by virtue of being a dependent child of a person granted Calais Leave 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.
4.12 Domestic Violence survivors

People entering the UK who have been granted indefinite leave to remain as victims of domestic violence (DVILR) 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.
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 4 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 4 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.

European Economic Area (EEA)

Many references are made to the EU and the EEA. The European Economic Area (EEA) includes three additional states (Iceland, Liechtenstein and Norway) 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.

Family Member

The family member of a student, for the purposes of eligibility, would be considered to be:

- Their husband, wife or civil partner (not partner); or
- Their direct descendant or those of their husband, wife or civil partner who are;
  - Under the age of 21; or
  - Their dependents\(^8\) or those of their husband, wife or civil partner; or
- Their dependent direct relatives in the ascending line (a parent or grandparent) or those of their husband, wife or civil partner.

Human Trafficking Survivor

\(^8\) A student who is 21 or over may qualify as a dependant if they can prove they are financially dependent on their family member. The student in this case would have no money from work or benefits and would not be eligible to apply for living-costs support for a full-time course of further or higher education.
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 4 or visit GOV.UK.

**IP completion day**

On IP completion day – 11pm on 31 December 2020 - the implementation period ended and thereafter the UK is no longer treated as a Member State by the EU.

**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 4. 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.

**Migrant Workers (including frontier workers, self-employed workers, EEA & Swiss nationals)**

*EEA Migrant Worker*: A person who is a national of an EEA state, is employed in the UK, and is not a frontier 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 Article 10 ‘Personal Scope’ of the Swiss Citizens Rights 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.

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 as constituted from time to time.

Ordinary Residence

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’.

Ordinarily Resident in Scotland

The Scottish Government would expect someone who is ordinarily resident in Scotland to have made their home in Scotland with the intention of staying and living here, and not solely for the purpose of undertaking a course of study. It should be noted that this definition does not set a requirement for the number of days, weeks, months or years a person has been living in a place before they can be considered ordinarily resident, as this will not always be the best evidence of whether or not someone is ordinarily resident.

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

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) and Gibraltar 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.

Relevant Date
The first day of the first academic year of the course for which fees or 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).

**Right of Permanent Residence**

Someone with the right of permanent residence will meet one of the following conditions:

- Is settled in the UK and has leave to enter or remain in the United Kingdom by virtue of residence scheme immigration rules.
- Has or is treated as having a right of permanent residence for the purposes of EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the grace period.
- Has or is treated as having right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of Citizens’ Rights Regulations in relation to that person during the relevant period.
- Is an Irish national settled in the United Kingdom who has not made a valid application under residence scheme immigration rules AND would be granted leave to remain or enter in the United Kingdom if they made such an application.
- A family member of a Northern Irish person, where the family member is free to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules.

**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.

**Settled Status – EU Settlement Scheme (EUSS)**

EU, EEA and Swiss nationals and their respective family members who were living in the UK before the end of the transition period (31 December 2020) and continued to reside there thereafter have citizens’ rights under the EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement (“the Withdrawal Agreements”). Those who meet the conditions of the Withdrawal Agreements can continue to legally reside in the UK and enjoy associated rights. The rights of those who move to the UK after the end of the transition period (unless they have citizens’ rights as a family member of a person already in the UK) will be subject to new Home Office visa arrangements.

Those who have citizens’ rights can apply for settled status via the Home Office’s EUSS. They will be awarded:

- **Settled status** (i.e. indefinite leave to remain if they have the requisite minimum of five years of continuous lawful residence in the UK, or
- **Pre-settled status** (i.e. limited leave to remain) if they have a shorter period of UK residence (any period of residence of less than five continuous years). After five years of continuous lawful residence in UK they can apply to change this status to settled status and should do so before their pre-settled status expires.

**(Note – Those who have a family member that is an eligible person of Northern Ireland can also apply to the EUSS (regardless of whether the family member is an EU, EEA or Swiss citizen)).** To be eligible, the person of Northern Ireland must:

- be a UK, Irish or dual UK/Irish national;
- have been in Northern Ireland;
- at the time of their birth, have at least one parent who held British, Irish or dual nationality (or was without any restriction on their period of residence);
- be living in the UK by 31 December 2020.

**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.
FURTHER EDUCATION BURSARIES

PART 1
Interpretation

In this schedule—

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(*)

“Citizens’ Rights Regulations” means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020(*)


(a) is reference to the Directive as it had effect immediately before IP completion day,

(b) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,

“EEA national” means a person who is a national for the purposes of the Community Treaties of any member State of the European Union,

“EEA EFTA separation agreement” means the agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom’s membership of the European Union,”

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

(a) is a self-employed person in Scotland, and

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

“EEA frontier worker” means an EEA national who—

(c) is a worker in Scotland, and

(d) resides in Switzerland, Gibraltar or the territory of an EEA state and returns to their residence in Switzerland, Gibraltar 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 but who is not an EEA frontier worker,

“EEA national” means a national of an EEA state,

(*) 2002 (c.41).
(*) Cm. 9171.
(*) OJ L 158, 30.04.04, p.77.
“EEA Regulations 2016” means the Immigration (European Economic Area) Regulations 2016(*),
“EEA self employed person” means an EEA national in the United Kingdom who is a self employed
person 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, Curacao, Saba, Sint Eustatius
and Sint Maarten), the Territory of New Caledonia and Dependencies, St Pierre et Miquelon and Wallis
and Futuna Islands,
“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—
(e) their spouse or civil partner, or
(f) 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
(g) 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,
“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,
“partner” for the purposes of regulation 4 means in relation to the holder or the holder’s parent—
(h) the spouse of that person,
(i) the civil partner of that person, or
(j) a person ordinarily living with that person as if he or she were the spouse or civil partner of that
person.
“person with protected rights” means—
(k) a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement,
Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope)
of the Swiss Citizens’ Rights Agreement who—
(i) has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration
rules,
(ii) is a relevant person within the meaning of regulation 3 (grace period) of the Citizens’ Rights Regulations
where the grace period (within the meaning of that regulation) has not ended,
(iii) is an applicant within the meaning of regulation 4 (applications which have not been finally determined
by the deadline) of the Citizens’ Rights Regulations where the relevant period (within the meaning of
that regulation) has not ended, or

(*) 2016 No. 1052.
(iv) is an Irish national (“P”) who—
   (aa) has not made a valid application under residence scheme immigration rules, and
   (bb) would be granted leave to remain or enter in the United Kingdom if P made such an application, or
(l) a family member (“P”) of a relevant person of Northern Ireland (“R”) where—
(i) P has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules, and
(ii) P would fall within sub-paragraph (a)(i) if R were a person within the personal scope of Article 10 (personal scope) of the EU Withdrawal Agreement, Article 9 (personal scope) of the EEA EFTA Separation Agreement, or Article 10 (personal scope) of the Swiss Citizens’ Rights Agreement, “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(†) as extended by the Protocol thereto which entered into force on 4th October 1967(‡), “relevant date” means the first day of the first academic year of the course of education for which an allowance is sought, “relevant person of Northern Ireland” has the meaning given in residence scheme immigration rules, “residence scheme immigration rules” has the meaning given by section 17(1) of the European Union (Withdrawal Agreement) Act 2020, “right of permanent residence” means a person who—
(m) meets one of the following conditions—
(i) the person is a person referred to in sub-paragraph (a)(i) of the definition of “person with protected rights” who is settled in the United Kingdom by virtue of having acquired the right of permanent residence,
(ii) the person is a person referred to in sub-paragraph (a)(ii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the grace period,
(iii) the person is a person referred to in sub-paragraph (a)(iii) of the definition of “person with protected rights” who has or is treated as having a right of permanent residence for the purposes of the EEA Regulations 2016 as those Regulations continue to have effect by virtue of the Citizens’ Rights Regulations in relation to that person during the relevant period,
(iv) the person is an Irish national (“P”) settled in the United Kingdom who—
   (aa) is a person referred to in sub-paragraph (a)(iv) of the definition of “person with protected rights”,
   (bb) has not made a valid application under residence scheme immigration rules, and
   (cc) would be granted indefinite leave to enter or remain in the United Kingdom if P made such an application, or
(v) the person is a person (“P”) referred to in sub-paragraph (b) of the definition of “person with protected rights”, where P is settled in the United Kingdom by virtue of the grant of indefinite leave to enter or remain under residence scheme immigration rules,
   “Scotland” excludes the local authority areas of Orkney Islands and Shetland Islands
   “self-employed person” means—
   (n) in relation to an EEA national, a person who is self-employed within the meaning of article 7 of Directive 2004/38 or the EEA Agreement, as the case may be, or
   (o) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Switzerland Agreement,

(*) Cm. 9171.
(‡) Cm. 3906 (Out of print: photocopies are available, free of charge, from the Student Awards Agency Scotland, Saughton House, Broomhouse Drive, Edinburgh EH11 3UT).
“Swiss Citizens’ Rights Agreement” means the agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens’ Rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement.

“Swiss employed person” means a Swiss national in the United Kingdom who is an employed person within the meaning of Annex 1 to the Switzerland Agreement, but who is not a Swiss frontier employed person.

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

(p) is an employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland, and

(q) resides in Switzerland, Gibraltar or the territory of an EU state and returns to their residence in Switzerland, Gibraltar or that EU state, as the case may be, daily or at least once a week,

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

(r) is a self-employed person (within the meaning of Annex 1 to the Switzerland Agreement) in Scotland, and

(s) resides in Switzerland, Gibraltar or the territory of an EU state and returns to their residence in Switzerland, Gibraltar or that EU 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 1 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(*) and which came into force on 1st June 2002 and reference to a provision of the Agreement—

(t) is reference to the Agreement as it had effect immediately before IP completion day,

(u) is to be read, where appropriate, as if references to a “Member State” include the United Kingdom,

“temporary protection” means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules(9),

“Turkish worker” means a Turkish national who—

(v) is ordinarily resident in Scotland, and

(w) is, or has been, lawfully employed in the United Kingdom; and

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

“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(*) on the relevant date,

(*) Cm. 5639.

(*) HC 395; relevant amending instrument is HC 164.

(*) 1971 (c.77); section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c.61).
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(ii) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the first day of the first academic year of the course, or

(iii) aged 18 years old or above, and, preceding the first day of the first academic year of the course, has lived in the United Kingdom throughout either half his or her life or a period of twenty years.

2.—(1) A person with protected rights or a qualifying frontier worker who—

(a) is—

(i) an EEA migrant worker or an EEA self-employed person,

(ii) a Swiss employed person or a Swiss self-employed person,

(iii) a family member of a person mentioned in sub-head (i) or (ii),

(iv) an EEA frontier worker or an EEA frontier self-employed person,

(v) a Swiss frontier employed person or a Swiss frontier self-employed person, or

(vi) a family member of a person mentioned in sub-head (iv) or (v),

(b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or 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) In sub-paragraph (1), a “qualifying frontier worker” means a frontier worker within the meaning of regulation 3 (meaning of frontier worker) of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020 who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

(3) Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iv), (v) or (vi).

(4) In this paragraph, any description of a person in sub-paragraph (1)(a)(i) and (iv) is to be read as if a relevant person of Northern Ireland were included in the definition of “EEA national” in regulation 2, and sub-paragraph (1)(a)(iii) and (vi) are to be construed accordingly.

3.—(1) A person with protected rights who—

(a) 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, as extended by the EEA agreement,

(b) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and

(c) is ordinarily resident in Scotland on the relevant date.
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,
   (b) was ordinarily resident in Scotland for at least 3 continuous years 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 before IP completion day,
   (c) was ordinarily resident on IP completion day—
      (i) in Gibraltar or the territory comprising the European Economic Area and Switzerland, or
      (ii) in the United Kingdom and Islands, immediately following a period of ordinary residence in Gibraltar or the territory comprising the European Economic Area and Switzerland, and has remained ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland from IP completion day to the relevant date,
   (d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date,
   (e) in a case where the person’s ordinary residence referred to in head (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the United Kingdom, Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in head (d), and
   (f) is undertaking a course for which the relevant date is prior to 31 July 2028.

(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 for the purposes of Article 7 of Directive 2004/38(*) (or corresponding provisions under the EEA agreement or the Switzerland Agreement(**)), or
      (iii) a person who had 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
      (ii) under the EEA agreement or the Switzerland Agreement in a state other than the United Kingdom, or
      (iii) in the case of a person who had 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) and is accompanying or joining that United Kingdom national in the United Kingdom.

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—

(*) OJ L 158, 30.04.04, p.77.
(**) Cm. 5639.
(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.

6A. 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.

6B. 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 relevant date, 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 relevant date.

6C. 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.
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6D. 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.

6E. A person who—

(c) has been granted discretionary leave to remain in the United Kingdom due to being identified as a victim of modern slavery,

(d) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted such discretionary leave to remain in the United Kingdom, and

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

6F. A person who—

(f) has extant leave to remain in the United Kingdom under paragraph 352J, 352K, 352L, or 352T (Calais leave and “leave in line” granted by virtue of being a dependent child of a person granted Calais leave) of the immigration rules, as defined in section 33(1) of the Immigration Act 1971,

(g) has been ordinarily resident in the United Kingdom and the Islands since that person was first granted such leave, and

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

6G. A person who—

(i) has been granted indefinite leave to remain in the United Kingdom under any of the following provisions of the immigration rules, as defined in section 33(1) of the Immigration Act 1971—

(ii) paragraph 289B (victims of domestic violence),

(iii) paragraph D-DVILR.1.1. of Appendix FM (victims of domestic abuse), or

(iv) paragraph 40 of Appendix Armed Forces (victims of domestic violence: partners of members of the armed forces),

(j) has been ordinarily resident in the United Kingdom and Islands since that person was first granted such leave, and

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

7. A person who—

(l) at the date the Scottish Ministers 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,

(m) has not attained the age of 18 years on the relevant date, and

(n) 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.

7A. A person who—

(o) is the child of an asylum seeker or is a young asylum seeker,

(p) is resident in Scotland on the relevant date,

(q) has been resident in Scotland throughout the period of 3 years immediately preceding the relevant date,
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(r) 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,

(s) is under 25 years old on the relevant date, and

(t) seeks an allowance in respect of a course of education at an establishment in Scotland.

8. —(2) A person who—

(a) is either an EU national or the family member of an EU national who is—

(i) a person with a right of permanent residence who has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date,

(ii) a person with protected rights who has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date, or

(iii) a person with protected rights who has been ordinarily resident in the United Kingdom and Islands, Gibraltar or the territory comprising the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date,

(b) seeks an allowance in respect of a course of education at an establishment in Scotland,

(c) where that person is a person referred to in head (a)(i) or (ii), is ordinarily resident in Scotland on the relevant date,

(d) where that person is a person referred to in head (a)(iii), is ordinarily resident in the United Kingdom and Islands on the relevant date,

(e) in the case where their ordinary residence referred to in paragraph (a)(i) or (ii) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising Gibraltar or the European Economic Area and Switzerland immediately prior to the period of residence referred to in paragraph (a)(i) or (ii).

(3) For the purposes of this paragraph—

(a) a person referred to in sub-paragraph 1(a) does not include an EU national who is also 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.

(c) in sub-paragraph (1)(a), the reference to a “family member of an EU national” is to be read as if a relevant person of Northern Ireland were included in the definition of “EU national” in regulation 2.

9. A person who—

(a) is the child of a Swiss national,

(b) is entitled to support in the United Kingdom by virtue of Article 18(2) of the Swiss Citizens’ Rights Agreement,
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(c) is—

(i) a person with a right of permanent residence, or

(ii) a person with protected rights,

(d) is ordinarily resident in Scotland on the relevant date,

(e) has been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area and Switzerland throughout the period of 3 years immediately preceding the relevant date, and

(f) in a case where the person’s ordinary residence referred to in sub-paragraph (e) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the United Kingdom, the Islands, Gibraltar, the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in sub-paragraph (e).

10. A person who—

(a) is the child of a Turkish worker (“T”), where T was ordinarily resident in the United Kingdom immediately before IP completion day,

(b) was ordinarily resident in the United Kingdom immediately before IP completion day,

(c) is ordinarily resident in Scotland on the relevant date, and

(d) has been ordinarily resident in the United Kingdom, Islands, Gibraltar and in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the relevant date.

11.—(1) Subject to regulation 2(5) and 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 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 where that person qualified only by virtue of paragraph 7A or paragraph 8, 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 7.

12. A person who—

(a) is an Irish national,

(b) is settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date,

(c) is ordinarily resident in Scotland on the relevant date,

(d) has been ordinarily resident in the United Kingdom, Islands and the Republic of Ireland throughout the period of three years immediately preceding the relevant date.

PART 3

Ordinary Residence

1. For the purposes of paragraphs 1(a), 5(b), 6(a)(iii) and (b), 6A(a)(iii) and (b), 6B(a)(iii) and (b), 6C(a)(iii) and (b), 6D(a)(iii) and (b), 6E(1)(c), 6F(1)(c), 6G(1)(c) and 7(c) of Part 2 of this schedule 2 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 7A(b) of Part 2 of this schedule 2 a person shall be treated as ordinarily resident in Scotland on the relevant date if the college of further education or institution within the higher education sector is satisfied that that person was not actually resident only because—
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(a) that person, or their spouse or civil partner, or parent, 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;

(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 2 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 or institution within the higher education sector 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 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 (4) shall apply in determining, for the purposes of paragraphs 1(b), 2(1)(b), 3(1)(b), 4(1)(d), 7A(c), and 8(1)(a)(ii) and (iii) of Part 2 of this schedule 2 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, Switzerland 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 or the institution within the higher education sector is satisfied that that person was resident therein or 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 be treated as having been ordinarily resident in the relevant area for the specified period if the college of further education or institution within the higher education sector 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 12 of Part 2 of this schedule 2, no part of that residence was wholly or mainly for the purposes 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 or institution within the higher education sector 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(3)(a), “an independent student” means a person who immediately prior to the relevant date—

(a) had attained the age of 25 years,

(b) was married or in a civil partnership,

(c) had 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) had 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 heads (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:
Austria (1995)                      Italy (1952)
Belgium (1952)                      Latvia (2004)
Croatia (1 July 2013)               Luxembourg (1952)
Czech Republic (2004)               Netherlands (1952)
Germany (1952)                      Slovenia (2004)
Ireland (1973)                      

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 – 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 UK Borders Agency (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.

Regarding the EU Settlement Scheme

It should be noted here that EU nationals who are registered under the EU Settlement Scheme (EUSS) and have been granted either settled or pre-settled status are not provided with any physical documentation to demonstrate their status. EU nationals can no longer provide a passport or ID card to demonstrate their status and will instead be required to use the ‘view and prove’ platform - View and prove your immigration status - GOV.UK (www.gov.uk) - however dependents of EU nationals with status will continue to be issued with Residence cards.
The first two Biometric Residence Permits (BRPs) are issued to dependants of EU citizens and show both permanent and temporary residence.

The last BRP is the new style BRP which was issued from January 2021

**Points Based Immigration System**

BRPs are now being issued under the UK Government’s new post-Brexit Points Based Immigration System, which is a route for skilled workers from outside the UK to enter the country to live and work. Skilled workers can also bring family members to live in the UK under this system. BRCs may reference ‘PBS’ or ‘PBS Dependant’ if the person a dependant of a person who is in the UK on the basis of the Points Based System. If a student is in the UK under the Points Based System this would usually suggest that their stay here is not related to one of the fundable categories\(^a\) and therefore the student would not be eligible for a fee waiver or support. However, if the student presents evidence that they are in the UK because they are in one of the fundable categories (see footnote below) then they can be allocated a fee waiver or support as appropriate.

**No Access to Public Funds**

The reference to 'no public funds' on biometric cards refers to mostly to social security benefits. It is possible for a student with No Access to Public Funds (NATPF) on their biometric card to receive fee waiver and student support in some circumstances, if they can present evidence that they are in the UK because they are in one of the fundable categories (see footnote below). However, if a student has NATPF on their biometric card, this can sometimes be a signal that the Leave to Remain has been granted for another reason and not, for example, as the result of an asylum claim. If a student's BRP includes NATPF the student should be asked for further documentation to evidence that they are in one of the fundable categories. Ultimately a student is required to evidence they meet the student

\(^a\) As set out in section 4 (for example, LTR as the result of an asylum claim) or section 2.1 ('long residence' rule).
support eligibility criteria as set out in the Education (Access Funds) (Scotland) (No.2) Determination 2021.

**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’s 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.

![UK Residence Permit](image)

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 56 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 CONFERNS 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 Scragg, 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 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.

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.

The example below is for a dependant of a worker in the UK.

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.
Eligible

Not eligible

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 has having Indefinite Leave to Remain (ILR) in the UK.
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.
Asylum Seekers

The Application Registration Card (ARC)

ARC cards issued in November 2010

Front

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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 a ‘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

![Home Office document example](image-url)
Example 2 - Refugee status – granted indefinite

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

ENTITLEMENTS
You are free to take a job and do not need the permission of any Government Department before doing so. You are free to use the National Health Service and the social services, and other services provided by local authorities as you need them.

POLICE REGISTRATION
You no longer need to report changes of address or other details to the police.

TRAVEL ABROAD
You may travel out of the Common Travel Area any number of times during the validity of your permit. You are not required to notify Border Force, the UK’s National Immigration Enforcement Agency.

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 – student support and ‘home’ fees can only be offered 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.
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.

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 24 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. 

Option 2 - for those accepted as 'compassionate' non-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.

THIS LETTER IN ITSELF CONFFERS 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.

AD6 2398 Gateway Protection Programme
1 of 3

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.