

**SCOTTISH GOVERNMENT:
DIRECTORATE FOR LIFELONG LEARNING AND SKILLS**

FURTHER EDUCATION RESIDENCY GUIDE

October 2023

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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 (Discretionary Funds and Further Education Bursaries) (Scotland) Determination 2023**” (“the Determination”) which sets out 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 Student Support (Scotland) Regulations 2022, provide Scottish Ministers with the powers to pay Further Education bursaries. 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. The residency criteria are set out in schedule 1 of the Student Support (Scotland) Regulations 2022 (“the 2022 Regulations”) and references are made in this guidance to the specific paragraphs of this Schedule.

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 2022 Regulations. Paragraph 10 of the Guidance on [Fee Waiver Grant Policy for 2023-24](#) sets out the residency eligibility for fee waiver grant, and includes a reference to the Determination, as well as a number of other residency criteria.

1.4 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 leave 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](#)).

1.5 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)

2.1 Residency criteria for those with a relevant connection to Scotland

The basic conditions which students need to fulfil in order to qualify for a fee waiver and bursary support are set out in Schedule 1 of The Student Support (Scotland) Regulations 2022 ([Appendix 2](#)).

The student must:

- Be ordinarily resident 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**
 - (i) 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**
- (ii) Be- a person (other than a person who has applied for refugee status) who has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that they have been granted leave to enter or remain in the UK and whose leave has not expired, or
 - (iii) The spouse, civil partner or child of a person described in (i) or (ii).

If the student meets all of the conditions set out above, they may be considered to be eligible for a fee waiver and 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.

Case Studies

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 discretionary fund as she meets the eligibility requirements of having a relevant connection to Scotland.

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 as he does not meet the eligibility criteria in the Relevant Connection to Scotland category or any of the exceptions. Andy should now investigate whether any funding is available from the relevant funding body in England for him to study in Scotland.

2.2 Exceptions to the ordinary residence requirements

There are some exceptions to the ordinary residence conditions described above. These are set out in of Schedule 1 of The Student Support (Scotland) Regulations 2022 ([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 being so resident are:

- (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 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 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:

- (i) 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**
- (ii) 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**
- (iii) The student, or their spouse or civil partner, or either of their parents, either of their guardians or any other person having parental responsibility for that person, or (b) in the case of a dependant direct relative in the ascending line, the child upon whom that student was dependent or that child's spouse or civil partner 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.

Case Studies

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

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. As per (i) above.

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

He is now 21 and has been back in Scotland for 13 months and has applied to college. James is eligible to apply for a fee waiver and living cost 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. As per (ii) above.

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

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

Claire's family decided to emigrate to the USA from Scotland when she was ten years old. They have lived there since and are now permanent residents in the USA. Claire is now 17 and would like to return to Scotland to reconnect with some of her family and go to college while she is here.

However she will not be eligible for any support as she does not meet the residency criteria even though she still has a British passport as the period away would not be considered a temporary absence. She would need to return to the UK for at least a year before she could be considered under the "born in and spent the greater part of her life in the UK, one year of residence in the UK one year out of three" exception.

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.

To prevent them from being disadvantaged, military personnel and their families should be assessed on a relevant connection to Scotland. This is because support at FE level is not portable across borders, meaning they will not receive support from the rUK country 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 in the UK or the family member of a UK national, **AND**
- They have been ordinarily resident in **Scotland** for at least three years and settled in the UK immediately before leaving the UK to exercise a right of residence, **AND**
- They were 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 first day of the relevant date. **AND**
- 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, **OR**
- 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 **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. 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 Scotland on the relevant date.

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2.4 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.

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Section 3 – EU, EEA, Swiss and Turkish students

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; **AND**
- Have been ordinarily resident in the UK or Islands for the three years immediately prior to the relevant date, **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 \(www.gov.uk\)](#).

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 Ordinarily Resident in rUK

In the event that an EU student doesn't meet the second and third criteria above (OR in the UK and islands for three years; and OR in Scotland on the relevant date), they will be eligible for a tuition fee waiver **IF** they are now 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 2017 and is ordinarily resident in Scotland with his family on 1 August 2023. 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 2023 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.

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 2023 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 2023, at which point he moved with his family to live in Scotland. Scott applies to start college in Edinburgh in the autumn of 2023. He is eligible for full support as he meets the residency criteria for Irish nationals living in Scotland.

Claire was born in the Republic of Ireland and lived with her family in Ireland until 2014 when her family moved to the United States. In July 2021 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 2023. 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 and the period in the United States is not considered temporary absence.

Claire is advised that if she continues to live in Scotland she will be eligible for support after July 2024, as she will then meet the criteria of being three years ordinarily resident in the UK, Islands and the Republic of Ireland.

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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?

Schedule 1 of The Student Support (Scotland) Regulations 2022 ([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:

- A person with protected rights or a qualifying frontier worker who –
 - (a) is –
 - an EEA migrant worker or an EEA self-employed person,
 - a Swiss employed person or a Swiss self-employed person,
 - a family member of a person mentioned in sub-head (i) or (ii),
 - an EEA frontier worker or an EEA frontier self-employed person,

- a Swiss frontier employed person or a Swiss frontier self-employed person, or
 - a family member of a person mentioned in sub-head (iv) or (v),
 - 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
 - subject to sub-paragraph (3), is ordinarily resident in Scotland on the relevant date.
- 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(1) who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.
 - Sub-paragraph (1)(c) does not apply where the person applying for support falls within sub-paragraph (1)(a)(iv), (v) or (vi).
 - 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.

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 2021. He had worked in Scotland in a role that is linked to the course he is planning to study in 2023. 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 2021 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. 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 Schedule 1 of The Student Support (Scotland) Regulations 2022 ([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 2020 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.

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3.4 Children of Turkish workers

Children of Turkish nationals living and working in the UK may be eligible for support (as set out in Schedule 1 of The Student Support (Scotland) Regulations 2022 ([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.

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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 Schedule 1 of The Student Support (Scotland) Regulations 2022 ([Appendix 2](#))).

- Is the child of a Swiss national who is entitled to support in the UK by virtue of the Swiss citizens' rights agreement; **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.

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Section 4 – Other student nationalities

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.

Someone who has been awarded refugee status by the Home Office may be eligible for fee waiver and bursary support if they meet the following criteria (as set out in Schedule 1 of The Student Support (Scotland) Regulations 2022 ([Appendix 2](#))).

- They are a refugee on the date that the Scottish Ministers received their application for student support 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.

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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.

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 (this change was carried forward and included in the Student Support (Scotland) Regulations 2022).

A student who has gained ILE as a result of LESAS must meet the following residency requirements (as set out in Schedule 1 of The Student Support (Scotland) Regulations 2022 ([Appendix 2](#))).

- Is an Iraqi national who has been granted indefinite leave to enter 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; **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. If someone in this category wishes to apply for support they must meet the following residency criteria (as set out in Schedule 1 of The Student Support (Scotland) Regulations 2022 ([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; **AND**
- Has been ordinarily resident in the UK and Islands at all times since being awarded leave to enter or 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.

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 limited leave to remain in the UK and were living in Scotland when this was awarded.

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

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

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4.4 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.

4.4.1 Children of asylum seekers or young asylum seekers – Fee waiver only

Following the recent residency consultation we have decided to simplify the eligibility criteria for access to a fee waiver for children of asylum seekers and young asylum seekers. This has been introduced in recognition of the impact that a delay to an asylum claim can have on a child or young person's learner journey.

The criteria for access to a fee waiver is now:

- A child or an asylum seeker or young asylum seeker
- Resident in Scotland on the relevant date
- Under 18 years of age on the date that the application for asylum was made

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4.5 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.

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4.6 Syrian Vulnerable Refugee scheme

The scheme aimed to bring 20,000 refugees to the UK by 2020. Refugees came 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 were granted Refugee Status. Criteria for selecting refugees included 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 came 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:

a

A person who -

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

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 or another form of leave to enter.

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4.7 Afghan nationals

4.7.1 Afghan Locally Employed Scheme (LES)

Afghan nationals who have been granted limited leave to remain the UK under the Locally Employed Staff (LES) Ex-Gratia 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.

4.7.2 Relocated Afghan citizens

Afghan nationals who were relocated to the UK following the unrest in Afghanistan in 2021 may have been granted leave under the Afghan Citizens Resettlement Scheme or the Afghan Relocations and Assistance Policy Scheme by the Home Office. They are eligible to access 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.

4.7.3 Evacuated or Assisted British nationals from Afghanistan

UK nationals who have been evacuated or assisted to leave Afghanistan during the period of Operation Pitting will be eligible for student support providing they meet the following conditions:

- has been ordinarily resident in the United Kingdom and Islands since they were evacuated from or otherwise left Afghanistan, and
- is ordinarily resident in Scotland on the relevant date,

OR

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

4.8 Stateless Persons

People entering the UK who have been granted leave to remain as a Stateless Person under the Immigration rules as set out in paragraph 15 of Schedule 1 of The Student Support (Scotland) Regulations 2022 ([Appendix 2](#)) 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 Victim of Modern Slavery

People entering the UK who have been granted discretionary leave to remain as a 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.

4.10 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.

4.11 Domestic Violence survivors

People entering the UK who have been granted indefinite leave to remain as victims of domestic violence (DVILR) or partners of members of HM Forces who are the victims of domestic violence 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 Ukrainians

Background

In March 2022, the UK Government launched three immigration routes for Ukrainian nationals impacted by the conflict in their home country to resettle in the UK:

Ukraine Family Scheme

This allows immediate and extended family members of British nationals, people settled in the UK and certain other residents, to come to the UK. In order to be eligible for the scheme, the individual must be applying to join or accompany a UK-based family member, they must be Ukrainian or the immediate family member of a Ukrainian national who is applying to the scheme and must have been residing in Ukraine on or immediately before 1 January 2022.

Homes for Ukraine Scheme

This allows people seeking sanctuary with no family ties to the UK to be sponsored by individuals or organisations who can offer them a home, such as a spare room or unoccupied residential self-contained unit. It is open to Ukrainian nationals and immediate family members of Ukrainian nationals. Sponsors can be of any nationality, with any immigration status, provided they have at least six months leave to remain in the UK. There is no cap on the numbers of individuals which can apply to this scheme.

In addition, the Scottish Government have established the 'Scottish Warm Welcome scheme' which is a distinct route to accommodation and support in Scotland. The Scottish scheme version removes the need for applicants to be matched to a named individual before they are cleared to travel to the UK through the visa system.

Successful applicants through either of the schemes will be granted leave to remain for a period of 36 months. Ukrainians entering the UK will have 6 months leave to remain outside of the Immigration rules in which to apply for one of the two schemes. They also have the right to apply for refugee status or leave on humanitarian grounds if eligible. Individuals will have access to public funds as well as the right to work and study in the UK.

Ukraine Extension Scheme

This is a third protection route for Ukrainian nationals, which is a new fee-free route which allows a Ukrainian national who is in the UK and had permission on 18 March (including those who have overstayed by a short period from 1 January to 18 March 2022) to stay in the UK. Eligibility to apply for this scheme extends to the national's spouse, civil partner and/ or child, if they were already in the UK. The scheme began on 3 May 2022. It caters for Ukrainians who were in the UK prior to the invasion on other visas such as student, skilled worker or seasonal worker visas.

Successful applicants to this scheme will also be granted leave to remain for a period of 36 months and have access to public funds as well as the right to work and study in the UK.

Eligibility for student support

Ukrainian nationals will be eligible for fee and living cost support (including Discretionary Funds) from AY 2022/23 providing they meet the following conditions:

- Have applied to one of the UKG settlement schemes outlined above where that application is still being considered; or
- Have been granted leave to remain following that application,
- Have applied for (and is still being considered) or have been granted leave outside of the Immigration Rules, as defined by section 33(1) of the Immigration Act 1971 where the person was residing in Ukraine immediately before 1 January 2022 and has left Ukraine in connection with the Russian invasion; and
- Have been ordinarily resident in the UK and Islands since their arrival in the UK after leaving Ukraine; and

- Are ordinarily resident in Scotland on the relevant date; and

UK nationals from Ukraine

UK nationals who have fled Ukraine as a result of the Russian invasion will be eligible for student support provided they meet the following criteria:

- was residing in Ukraine immediately before 1 January 2022,
- left Ukraine in connection with the Russian invasion which took place on 24 February 2022,
- has been ordinarily resident in the United Kingdom and Islands since arriving in the United Kingdom after leaving Ukraine, and
- is ordinarily resident in Scotland on the relevant date,

OR

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

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Appendix 1 - Glossary of Terms

Asylum Seeker

Those whose applications for asylum in the United Kingdom are currently being considered by the Home Office.

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.

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 4](#).

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 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

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.

IP completion day

On IP completion day – 11 pm 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>.

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

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 depending on when the course starts:

- (a) 1 August to 31 December, 1 August
- (b) 1 January to 31 March, 1 January
- (c) 1 April to 30 June, 1 April
- (d) 1 July to 31 July, 1 July

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 (e.g. 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.

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.

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Appendix 2 – The Student Support (Scotland) Regulations 2022 – SCHEDULE 1

SCHEDULE 1

PERSONS ELIGIBLE FOR STUDENT SUPPORT

Regulations 2, 3(1), 7(1), 11(2)(a), 26(1) and 29(1)

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PART 1

PERSONS ELIGIBLE FOR TUITION FEE AND LIVING COST SUPPORT

Law In Force

1. Persons who are settled in the United Kingdom or have long residence

A person who on the relevant date—

- (a) is ordinarily resident in Scotland,
- (b) has been ordinarily resident in the United Kingdom and Islands throughout the immediately preceding 3 year period, and
- (c) is—

- (i) settled in the United Kingdom within the meaning given by section 33(2A) (interpretation) of the Immigration Act 1971,

- [(ii) a person (other than a person who has applied for refugee status) who has been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that they have been granted leave to enter or remain in the United Kingdom and whose leave has not expired, or

- (iii) the spouse, civil partner or child of a person described in heads (i) or (ii).]¹

Notes

¹ Sch.1 para.1(c)(ii) and (iii) substituted for Sch.1 para.1(c)(ii)-(v) by Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2023/142 (Scottish SI) reg.3(5)(a) (August 1, 2023)

Commencement

Sch. 1(1) para. 1(a)-(c)(v): August 1, 2022

Extent

Sch. 1(1) para. 1(a)-(c)(v): Scotland

Law In Force

2.— EU nationals etc. with protected rights who have been living in the UK and Islands for three years

(1) A person with protected rights who—

(a)-(b) [...]¹

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

(2) 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—

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(i) exercised a right under Article 7 (right of residence for more than three months) 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(1) (interpretation).

(3) Where a person eligible under this paragraph is seeking a loan under regulation 11 (students

eligible for student loans) in respect of a taught course leading to a postgraduate diploma or to a

postgraduate masters degree, or a research course leading to a postgraduate masters degree, at an

establishment in Scotland—

(a) the requirement in sub-paragraph (1)(b) is to be read as a requirement to have been ordinarily resident in the United Kingdom, Islands, Gibraltar, the European Economic Area or Switzerland throughout the period of 3 years immediately preceding the relevant date, and

(b) the requirement in sub-paragraph (1)(c) to be ordinarily resident in Scotland on the relevant date does not apply.

Notes

1 Revoked by Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2022/362

(Scottish SI) reg.3(4) (August 1, 2023)

Commencement

Sch. 1(1) para. 2(1)-(3)(b): August 1, 2022

Extent

Sch. 1(1) para. 2(1)-(3)(b): Scotland

Law In Force

3. Irish nationals who are settled in the United Kingdom

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, and

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

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Commencement

Sch. 1(1) para. 3(a)-(d): August 1, 2022

Extent

Sch. 1(1) para. 3(a)-(d): Scotland

Law In Force

4. Family members of a relevant person of Northern Ireland

A person who—

(a) is a family member of a relevant person of Northern Ireland as defined in paragraph

(b) of the definition of "person with protected rights",

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

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

Commencement

Sch. 1(1) para. 4(a)-(c): August 1, 2022

Extent

Sch. 1(1) para. 4(a)-(c): Scotland

Law In Force

5.— Workers, employed persons, self-employed persons and their family members

(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 (3), 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 2020¹ who has a right of admission to the United Kingdom under regulation 6 (right of admission) of those Regulations.

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(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.

Notes

¹ 2020 No. 1213.

Commencement

Sch. 1(1) para. 5(1)-(4): August 1, 2022

Extent

Sch. 1(1) para. 5(1)-(4): Scotland

Law In Force

6. Workers who benefitted from the Freedom of Movement for Workers Regulation—

A person with protected rights who—

- (a) is [or was]¹ 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 Union², 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.

Notes

¹ Words inserted by Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2022/362 (Scottish SI) reg.3(5) (February 2, 2023)

² OJ L 141, 27.5.2011, p.1.

Commencement

Sch. 1(1) para. 6(a)-(c): August 1, 2022

Extent

Sch. 1(1) para. 6(a)-(c): Scotland

Law In Force

7.— Persons who are settled in the United Kingdom and have exercised a right of residence

elsewhere

(1) A person who—

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(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 in—

(i) Gibraltar or the territory comprising the European Economic Area and Switzerland, or

(ii) the United Kingdom or 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, and

(e) is undertaking a course for which the relevant date is earlier than 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 under the EEA agreement or the Switzerland Agreement in a state other than the United Kingdom, or

(ii) in the case of a person who 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.

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Commencement

Sch. 1(1) para. 7(1)-(3): August 1, 2022

Extent

Sch. 1(1) para. 7(1)-(3): Scotland

Law In Force

8. Refugees

A person who—

(a) at the date that the Scottish Ministers received their application for student support 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) is the spouse, civil partner or child of such a refugee, and

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

Commencement

Sch. 1(1) para. 8(a)-(b): August 1, 2022

Extent

Sch. 1(1) para. 8(a)-(b): Scotland

Law In Force

9. Persons granted leave following on from refugee claim

A person who—

(a)

(i) has applied for refugee status but has as a result of that application been informed in writing by a person acting under the authority of the Secretary of State for the Home Department that, although that person is considered not to qualify for recognition as a refugee, it is thought right to allow that person to enter or remain in the United Kingdom and that person has been granted leave to enter or remain accordingly,

(ii) has been ordinarily resident in the United Kingdom and Islands at all times

since that person was first granted such leave to enter or remain, and

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

(b) is the spouse, civil partner or child of a person of the kind described in sub-paragraph

(a) and who is ordinarily resident in Scotland on the relevant date.

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Commencement

Sch. 1(1) para. 9(a)-(b): August 1, 2022

Extent

Sch. 1(1) para. 9(a)-(b): Scotland

Law In Force

10. Iraqi nationals

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 Office,

(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 described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

Commencement

Sch. 1(1) para. 10(a)-(b): August 1, 2022

Extent

Sch. 1(1) para. 10(a)-(b): Scotland

Law In Force

11. Syrian nationals

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 described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

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Commencement

Sch. 1(1) para. 11(a)-(b): August 1, 2022

Extent

Sch. 1(1) para. 11(a)-(b): Scotland

Law In Force

12. Afghan nationals

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 Scheme¹ 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 described in sub-paragraph (a) and who is ordinarily resident in Scotland on the relevant date.

Notes

¹ A copy of the Locally Employed Staff Ex-Gratia Scheme can be viewed at <https://www.gov.uk/government/publications/afghanistan-locally-employed-staff-ex-gratia-scheme?msclkid=eb3bcf90c7b011ec9e31d7ef58015018>.

Commencement

Sch. 1(1) para. 12(a)-(b): August 1, 2022

Extent

Sch. 1(1) para. 12(a)-(b): Scotland

Law In Force

13. Relocated Afghan citizens

A person who—

(a)

(i) has been granted leave under the Afghan Citizens Resettlement Scheme¹ or granted leave under the Afghan Relocations and Assistance Policy Scheme,

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

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

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

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Notes

¹ A copy of the Afghan Relocations and Assistance Policy Scheme can be viewed at <https://www.gov.uk/government/publications/afghan-relocations-and-assistance-policy?msclkid=2a8bc686c7a511ec8a2b8132cb36424d>.

Commencement

Sch. 1(1) para. 13(a)-(b): August 1, 2022

Extent

Sch. 1(1) para. 13(a)-(b): Scotland

Law In Force

[13A.— Evacuated or Assisted British nationals from Afghanistan

A person who—

(a) is an evacuated or assisted British national from Afghanistan who—

(i) has been ordinarily resident in the United Kingdom and Islands since they were evacuated from or otherwise left Afghanistan, and

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

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

]¹

Notes

¹ Added by Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2022/362

(Scottish SI) reg.3(6) (August 1, 2023)

Extent

Sch. 1(1) para. 13A(a)-(b): Scotland

Law In Force

14. Ukrainian nationals

(1) A person who—

(a)

(i) has made a relevant application to the United Kingdom Home Office where that relevant application is still being considered, or

(ii) has been granted leave to remain following a relevant application, and

[(b) has been ordinarily resident in the United Kingdom and Islands since their arrival in the United Kingdom after leaving Ukraine, and

(c) is ordinarily resident in Scotland on the relevant date.]¹

(2) In this paragraph, a 'relevant application' is an application to—

(a) the Ukraine Family Scheme²,

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(b) the Ukraine Sponsorship Scheme³,

(c) the Ukraine Extension Scheme⁴, or

(d) the United Kingdom Home Office for leave outside the immigration rules⁵, as defined in section 33(1) of the Immigration Act 1971, where the person—

(i) was residing in Ukraine immediately before 1 January 2022, and

(ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022

by an individual who is eligible to apply for that scheme.

Notes

¹ Sch.1 para.14(1)(b) and (c) substituted for Sch.1 para.14(1)(b) by Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2022/362 (Scottish SI) reg.3(7) (August 1, 2023)

² A scheme operated by the Home Office enabling a Ukrainian national, or the immediate family member of a Ukrainian national resident in Ukraine prior to 1 January 2022, to join family members or to extend their stay in the United Kingdom. The current Home Office guidance in relation to the Ukraine Family Scheme is available [here](#):

<https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme?msclkid=d2811a9ac7a511ec885bf3a88e71ccca>.

³ A scheme operated by the Home Office enabling the sponsorship of Ukrainian nationals, or the immediate family

member of a Ukrainian national resident in Ukraine prior to 1 January 2022 to come to the United Kingdom. The

current Home Office guidance in relation to the Ukraine Sponsorship Scheme (Homes for Ukraine Scheme) is available [here](#):

<https://www.gov.uk/guidance/apply-for-a-visa-under-the-ukraine-sponsorship-scheme?msclkid=ecaf79fac7a511ecbf7adee0a78bac5b>.

4 A scheme opening on 3 May 2022 and operated by the Home Office enabling a Ukrainian national who is in the

United Kingdom and had permission to stay in the United Kingdom on or before 18 March 2022 to stay in the United Kingdom. The scheme enables the partner or children of the Ukrainian national to apply to stay in the United Kingdom provided they are already in the United Kingdom as the Ukrainian national's 'dependants'. The current Home Office guidance in relation to the Ukraine Extension Scheme is available here:

<https://www.gov.uk/guidance/support-for-family-members-of-british-nationals-in-ukraine-and-ukrainian-nationals-in-ukraine-and-the-uk?msclkid=08bb96fec7a611ecb081f266e6480fd0>.

5 The immigration rules can be viewed at

<https://www.gov.uk/guidance/immigration-rules?msclkid=b1df136cc7ce11ecb8f75116c530e06c>.

Commencement

Sch. 1(1) para. 14(1)-(2)(d)(ii): August 1, 2022

Extent

Sch. 1(1) para. 14(1)-(2)(d)(ii): Scotland

Law In Force

[14A.— United Kingdom nationals from Ukraine

A person who—

(a) is a United Kingdom national who—

(i) was residing in Ukraine immediately before 1 January 2022,

(ii) left Ukraine in connection with the Russian invasion which took place on 24 February 2022,

(iii) has been ordinarily resident in the United Kingdom and Islands since arriving in the United Kingdom after leaving Ukraine, and

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

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

] 1

Notes

1 Added by Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2022/362

(Scottish SI) reg.3(8) (August 1, 2023)

Extent

Sch. 1(1) para. 14A(a)-(b): Scotland

Law In Force

15. Persons granted stateless leave

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 Office,

(ii) has been ordinarily resident in the United Kingdom and Islands at all times since that person was first granted that leave, and

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

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

Commencement

Sch. 1(1) para. 15(a)-(b): August 1, 2022

Extent

Sch. 1(1) para. 15(a)-(b): Scotland

Law In Force

16.— Persons granted discretionary leave to remain as a victim of modern slavery

(1) A person who—

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

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

(2) For the purposes of this paragraph, "modern slavery" includes human trafficking, slavery, servitude and forced or compulsory labour.

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Commencement

Sch. 1(1) para. 16(1)-(2): August 1, 2022

Extent

Sch. 1(1) para. 16(1)-(2): Scotland

Law In Force

17. Persons granted indefinite leave to remain as a victim of domestic violence or domestic abuse

A person who—

(a) 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—

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

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

(iii) paragraph 40 of Appendix Armed Forces (partners of members of HM Forces who are the victims of domestic violence),

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

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

Commencement

Sch. 1(1) para. 17(a)-(c): August 1, 2022

Extent

Sch. 1(1) para. 17(a)-(c): Scotland

Law In Force

18. Persons granted Calais leave

A person who—

(a) 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,

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

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

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Commencement

Sch. 1(1) para. 18(a)-(c): August 1, 2022

Extent

Sch. 1(1) para. 18(a)-(c): Scotland

Law In Force

19. Children of Swiss nationals

A person with protected rights who—

(a) is the child of a Swiss national,

(b) is entitled to support in the United Kingdom by virtue of Article 18(2) (related rights) of the Swiss citizens' rights agreement,

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

(d) 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.

Commencement

Sch. 1(1) para. 19(a)-(d): August 1, 2022

Extent

Sch. 1(1) para. 19(a)-(d): Scotland

Law In Force

20.— Children of Turkish workers

(1) 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 or in the territory comprising the European Economic Area, Switzerland and Turkey throughout the period of 3 years preceding the relevant date.

(2) In this paragraph "Turkish worker" means a Turkish national who—

- (a) is ordinarily resident in Scotland, and
- (b) is, or has been, lawfully employed in the United Kingdom.

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**Appendix 3 – The Education (Access Funds) (Scotland) (No.3)
Determination 2023 – SCHEDULE 1**

[To be inserted when available]

Appendix 4 - 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)
Bulgaria (2007)	Lithuania (2004)
Croatia (1 July 2013)	Luxembourg (1952)
Cyprus (2004)	Malta (2004)
Czech Republic (2004)	Netherlands (1952)
Denmark (1973)	Poland (2004)
Estonia (2004)	Portugal (1986)
Finland (1995)	Romania (2007)
France (1952)	Slovakia (2004)
Germany (1952)	Slovenia (2004)
Greece (1981)	Spain (1986)
Hungary (2004)	Sweden (1995)
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 5 – Documentary evidence for immigration status

Acceptable documentary evidence for immigration status are subject to change at any time by UK Visas and Immigration.

For examples of acceptable documentation information, or if you have any queries or doubts about a student's documentation for immigration status, you should refer to the [Home Office Guidance](#)

Information can also be found on their website - www.gov.uk/government/organisations/uk-visas-and-immigration

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