

Access to higher education for young refugees and migrants

This fact sheet provides information on access to higher education but applies only to those studying in England. For guidance on eligibility for home fees and student finance in Wales, Scotland and Northern Ireland, see UKCISA's Information Sheets available at <http://www.ukcisa.org.uk/International-Students/Fees--finance/Home-or-Overseas-fees/>

If you have any questions about the issues raised in this fact sheet, please call our Migrant Children's Project advice line on 0207 636 8505 or email mcp@coramclc.org.uk.

What is 'higher education'?

Higher education primarily describes post-18 learning that takes place at universities, as well as other colleges and institutions that award academic degrees, professional qualifications and Continuing Professional Development (CPD) modules.

What are 'home fees' and what is 'student finance'?

Publicly funded educational institutions may charge two levels of fee: 'home' fees and 'overseas' fees. Full-time home students will be charged up to £9,250 a year for 2017 entry [1] – but fees for overseas students will be much higher than this (the average is £11,000 but they can be up to over £30,000 per year depending on the institution, the level of course and the type of course). Private sector institutions often have only one level of tuition fee, which all students must pay.

Student finance is the name given to financial support provided by the Government to some students in the UK. [2] If an individual meets the eligibility criteria for claiming statutory student support they can apply for a Tuition Fees Loan to cover tuition fees, and for a Maintenance Loan to cover living costs. [3] Maintenance Grants have been replaced with means-tested loans. [4]

Special support grants are also available, aimed at assisting disabled students and full-time students attending courses with dependents. These targeted grants have been increased by 2.8% for the new 2017/2018 academic year. [5]

It is important to note that there are different rules for student support and fees in Scotland, Wales and Northern Ireland. **This fact sheet refers to the rules for England only.**

Does having no recourse to public funds prevent access to higher education?

No. Certain people have 'no recourse to public funds' (NRPF), including those who have no regular status in the UK and those who have status subject to a condition of not accessing public funds. Public funds are defined in the Immigration Rules and include social housing, homelessness assistance and welfare benefits. The definition does not include education and those accessing higher education will not be in breach of a NRPF condition. [6]

What is the 'academic year' for the purposes of student finance?

In many categories, student finance can depend on whether an individual is ordinarily resident on the first day of the first year of the course they intend to take. Ordinary residence is discussed further below.

The academic year does **not** mean the first day of the course the individual is taking (unless it falls on one of four dates mentioned above). The academic year, for student finance purposes, can be one of four dates:

- 1st January (for courses starting 1st January to 31st March);
- 1st April (for courses starting 1st April to 30th June);
- 1st July (for courses starting 1st July to 31st July); or

- 1st September, (for courses starting 1st August to 31st December)

Who is eligible for home fees and/or student finance? [7]

Asylum seekers

Asylum seekers may apply to study at a higher education institution. However, they will not be entitled to pay home fees, even if they have been resident in the UK for three years. Neither will they be eligible for student finance.

It is worth noting, though, that universities can, and sometimes do, use their discretion to allow asylum seekers to study as home students. Some provide information about this on their websites and a few offer bursaries for asylum seekers. [8]

Those with discretionary or limited leave to remain

Most individuals with discretionary or limited leave to remain will not be entitled to pay home fees and will not be eligible for student finance.

However, in the 2015 case of *Tigere*, the Supreme Court ruled that an individual who has lived in the UK for many years cannot be excluded from obtaining student finance simply because they do not have settled status (indefinite leave to remain) in the UK. [9]

The government has now updated the Regulations which govern eligibility for fees. These state that those applying for student finance must meet the following conditions to obtain such finance in England:

- Is ordinarily resident in England;
- 3 years 'ordinary residence' in the UK on the first day of the first term of the start of the academic year of the course; and
- either be:
 - (1) under 18 years old and has lived in the UK for the preceding 7 years prior to the first day of the start of the first academic year of the course; or

(2) is over 18 and has lived half their life in the UK preceding the first day of the start of the first academic year of the course; [10]

An individual is deemed to be 'ordinarily resident' if they 'habitually, normally and lawfully' reside in England.

The narrower interpretation of the decision in *Tigere* will still exclude, for example, those children who have limited leave to remain but arrived in the UK as teenagers.

For example, if someone arrives in the UK when they are 13, they will not be able to access student finance until they are 26 years old (half their life in the UK) and only where they have been ordinarily resident for at least the 3 years prior to the first day of the start of the first academic year of the course. However, if that young person becomes settled (is granted indefinite leave to remain) – the normal route is 10 years limited leave for settlement – they would become eligible earlier (see below).

Those with refugee status

A person granted refugee status (and his/her spouse and child) is entitled to home fees and student support if:

- s/he is ordinarily resident in the UK (for home fees) and/or England (for student support) on the first day of the first academic year of the course; and
- s/he has not ceased to be ordinarily resident since being recognised as a refugee.

The spouse and/or child must have been such a family member of the refugee on the date that the refugee made their application for refugee status. In addition, the child must have been under the age of 18 on the date that the refugee made their application for refugee status.

NB. Refugees are only granted five years limited leave in the first instance (instead of indefinite leave to remain). This does not, however, affect their right to apply for student support according to the law.

Those with humanitarian protection (HP)

A person (and his/her spouse and child) who has been refused refugee status but was granted humanitarian protection is entitled to home fees if s/he has leave and is ordinarily resident in the UK on the first day of the first academic year.

S/he is also eligible for student support if:

- s/he is ordinarily resident in the England on the first day of the first academic year of the course; and
- s/he has been ordinarily resident in the UK and the Islands (Channel Islands and the Isle of Man) since being granted HP, and for the three years preceding the first day of the first academic year of the course; and

The spouse and/or child must have been such a family member of the person with HP on the date that the person with HP made their application for refugee status. In addition, the child must have been under the age of 18 on the date that the person with HP made their application for refugee status.

EU nationals & other categories

Eligibility for student finance on the basis for EU/EEA nationals and their family members is complex. There are a number of categories and UKCISA cover the requirements for home fees and student finance for those residing in England on their website - <http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status>.

UKCISA cover the requirements for the following:

- EU nationals and family members
- EU nationals in the UK
- EEA/Swiss workers, and family
- Those with the right of permanent residence (a right based on EU law)

There are also specific rules on Swiss nationals and Turkish workers – details of eligibility are again on the UKCISA website (link above).

Those with Indefinite Leave to Remain (ILR)

A person (or their child) with indefinite leave to remain is entitled to home fees and student finance if:

- s/he is settled within the meaning of section 33(2A) of the Immigration Act 1971 (i.e. is ordinarily resident in the UK without being subject to any restrictions on the period for which s/he may remain in the UK) on the first day of the first academic year of the course;
- s/he has been ordinarily resident in the UK and Islands for the three years preceding the first day of the first academic year of the course;
- his/her residence in the UK during that period was not wholly or mainly for the purpose of receiving full-time education; and
- s/he is ordinarily resident in the UK (for home fees) and/or England (for student support) on the first day of the first academic year of the course.

Becoming eligible for home fees/student finance support during study

Tuition fee eligibility

When a person is granted refugee status or humanitarian protection during a course of study and, as a result, is recognised as a home student for fee purposes, they only become eligible for home fees in the following academic year. [11]

Student support eligibility

If a person is granted refugee status or humanitarian protection within three months of the start of the current academic year, they are eligible for student support. If the change occurs after three months, they become eligible in the following academic year(s). A

person granted humanitarian protection will still need to satisfy the three year ordinarily residence rule. [12]

Care leavers and duties of social services

The case of *Kebede* clarified the duties owed to care leavers by the local authority with regard to financial support for educational purposes. The court reiterated that there is a duty on a local authority to make a grant in relation to educational expenses as part of its leaving care support, to the extent that a former relevant child's educational needs require it. [13]

The court found that a 'principal expense associated with education is the cost of tuition' and so it followed that it was the local authority's duty to give assistance by making a grant to enable care leavers to meet this expense.

However, at the time of writing the Immigration Act 2016 has been enacted but many provisions are yet to come into force. The Act seeks to reduce the rights of care leavers and makes specific provision curtailing local authorities' duties around meeting tuition fees for those with limited leave to remain and no leave to remain. [14] At the time of writing, these provisions are not yet in force.

NOTES

[1] <http://www.practitioners.slc.co.uk/media/7760/ssin-0117-student-support-package-for-201718-210716.pdf>

[2] See Schedule 1, part 2, of the Education (Student Support) Regulations 2011 and Schedule 1 of the Education (Fees and Awards) Regulations 2007 for categories of eligible individuals

[3] <https://www.gov.uk/student-finance/overview>

[4] <https://www.ucas.com/ucas/undergraduate/finance-and-support/tuition-fees-and-student-loans>

[5] <http://www.practitioners.slc.co.uk/media/7760/ssin-0117-student-support-package-for-201718-210716.pdf>

[6] Paragraph 6 of the Immigration Rules, at <https://www.gov.uk/guidance/immigration-rules/immigration-rules-introduction>

[7] Eligibility is outlined in The Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 and Education (Student Support) Regulations 2011 as amended by the Education (Student Fees, Awards and Support) (Amendment) Regulations 2011, reg 7(a)(ii)

[8] See, for example, Article 26 – Student Bursaries at <http://article26.hkf.org.uk/student-bursaries>

[9] <https://www.supremecourt.uk/cases/docs/uksc-2014-0255-judgment.pdf>

[10] The Education (Fees and Awards) (England) Regulations 2007 (as amended) Schedule 1 paragraph 13

[11] Education (Fees and Awards) (England) Regulations 2007, Section 4 and The Student Fees (Qualifying Courses and Persons) (England) Regulations 2007, Section 5

[12] Education (Student Support) Regulations 2011, Sections 16 and 85

[13] *R (on the application of Kebede) v Newcastle City Council* [2013] EWHC 355 (Admin)

<http://www.childrenslegalcentre.com/userfiles/Kebede%20v%20Newcastle%202013%20EWHC.pdf>

[14] Schedule 12, Immigration Act 2016

<http://www.legislation.gov.uk/ukpga/2016/19/schedule/12/enacted>

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Call 0207 636 8505 or email mcp@coramclc.org.uk.