

## Further education

This fact sheet provides information on problems that can arise for young people who have an immigration status issue and are trying to access further education in England. There are separate regimes in Scotland, Wales and Northern Ireland, and for those starting courses when under 19 (or under 25 if they have an education, health and care plan), and for those who are 19 and over.

### What is further education?

Further education (FE) describes any study which is not higher education (HE), and which is being pursued by students who are usually 16 or older. It generally comes after compulsory secondary ends. This is normally on the last Friday in June for those young people ending Year 11 who have been studying for General Certificates of Secondary Education (GCSEs). FE can include the opportunity to take, or re-take, qualifications at levels 1 and 2 (GCSE is level 2), and covers a wide range of types of course up to and including level 3. FE also includes adult education (AE).

Provision for FE reflects the government's stated intention to get young people to participate in education or training at least up to the age of 18, and to ensure that all young people achieve basic functional skills in English and mathematics. Local authorities also have a duty to facilitate the education of young people in their area.

FE courses are delivered by schools, colleges and training providers, as well as through AE community provision. Some programmes such as National Vocational Qualifications (NVQs) and Higher National Diplomas (HNDs) are classified as FE up to Level 3, but become Higher Education (HE) at Level 4 and beyond.

Insecure immigration status can impact a young person's access to FE because it affects how residency eligibility for course fees funding is assessed. There are also particular issues for separated young people whose education has been disrupted and who may have language barriers to

overcome. These young people often need extra help to make good educational choices, and to stay in education within the structure provided.

### General Principles

Funding for FE is given by the Education and Skills Funding Agency (ESFA), which is an executive agency of the Department for Education (DfE) and which was formed out the merger of the Education Funding Agency and the Skills Funding Agency in April 2017.

The funding rules are contained in detailed guidance which is published annually. The [current guidance](#) is for the academic year 2017-18. [1]

For the student and institution/training provider to get ESFA funding to pay for the cost of the course, several elements have to be in place:

- the programme of study/training has to be approved, and at the right level,
- there may be a specific age requirement. For young people funding, the student has to be not yet 19 years old on the 31 August which falls before the **relevant date** (see below) [2], and
- the student has to meet residency rules on the **relevant date**.

Students whose course includes work experience may need to establish that there is no legal restriction on them working in UK. For further information on work, training and work experience, please see our fact sheet on these issues, available at: [www.coramchildrenslegalcenter.com/resources](http://www.coramchildrenslegalcenter.com/resources).

The ESFA may fund provision in the 14-16 (compulsory school) age range but in most cases an institution wishing to enrol a student aged under 16 on 31 August prior to starting their programme of study should seek funding, and/or funding advice, from the local authority.

Looked after separated children should have a personal education plan (PEP), and care leavers should have a

pathway plan, which accurately assesses education needs (e.g. ESOL delivered alongside a full time GCSE programme in English and maths, not just entry-level ESOL) – and makes provision for education and training, into adult life. It is important that the young person's educational ambitions are properly articulated in the plan(s), and are matched with available and eligible courses. For more information on pathway plans, leaving care support and local authority support, please see our fact sheets on these issues, available at: [www.coramchildrenslegalcentre.com/resources](http://www.coramchildrenslegalcentre.com/resources).

### **Funding for 16- to 19-year-olds**

#### **ESFA**

The ESFA is responsible for funding tuition fees for all students in full or part time education aged 16-18 at institutions which are funded by it, either directly (for example, an independent FE college), or indirectly (for example a local authority maintained school Sixth Form). If the institution has a query about funding, they should contact their relevant funding body, which will be either the ESFA or the local authority. The ESFA publishes [funding guidance](#) every year and this is the main source of information about access to and eligibility for funding. [1]

#### **Eligible programme of study**

For funding purposes, only qualifications approved for teaching to 16-19 year olds under section 96 of the Learning and Skills Act 2000, or any alternative list which may be published by the DfE in the future, will be eligible for funding. [3]

The ESFA guidance states that:

*in the vast majority of cases young people should be predominantly enrolled either in learning which leads to an external certificate offered by a regulated awarding organisation....or a substantial work placement to prepare them for progression to an apprenticeship or other employment. [4]*

Annex D to the guidance lays out the requirement to improve the English and mathematics qualification attainment within young people's study programmes. English and maths is also a priority area in adult education.

#### **Age eligibility**

The funding for 16-19 year olds applies if the student is under 19 as at 31 August in the **funding year** (which runs from 1<sup>st</sup> August in one year to 31<sup>st</sup> July in the following calendar year) in which their course starts.

For example,

- If a student is 18 years old as at 31/8/2017, then ESFA funding would apply for the whole of a two year programme of A Level study starting in September 2017 and not completing until July 2019. [5]
- However, if the student has already turned 19 on 31<sup>st</sup> August, then ESFA funding will not apply for a course beginning in September 2017.

In the case of those with learning difficulties and disabilities (with a learning difficulty assessment or education, health and care plan), the upper age limit for the start of an ESFA-funded programme is 24, instead of 18.

#### **Financial eligibility**

A 'no recourse to public funds' (NRPF) condition in a passport or on a residence permit makes no difference to a student's eligibility for funding. 'Public funds' are defined at paragraph 6 of the immigration rules and do not include education or any education funding, including bursaries.

#### **Residency eligibility and relevant date**

A student's residency eligibility is established at the start of their study programme – on the first day of the academic (or teaching) year in which the course starts. This is usually (but not always) 1<sup>st</sup> September. This is referred to as the **relevant date**.

Educational institutions must establish at the relevant date that the student is lawfully resident in UK and is unlikely to be prevented from completing the course because of residency issues. The current guidance states that:

*In determining student eligibility, institutions must also satisfy themselves that there is a reasonable likelihood that the student will be able to complete their study programme.*

The guidance further states that, for EEA students:

*Institutions must assume that all European Economic Area (EEA) students have the legal right to remain in the UK for their study programme. Once a student is enrolled, the institution is expected to take all reasonable steps to ensure that the student can complete their programme.*

If the student is eligible at the start of their programme, the guidance states that they generally remain eligible:

*Students who are attending programmes of more than one term's duration, and are eligible for funding at the start of their programme, will usually be eligible for funding for the whole duration of their study programme as well as any subsequent funded programmes studied immediately end-on to their initial funded programme. [6]*

### **Ordinary residence (the 'three year rule')**

Ordinary residence is defined as '*habitual, normal and lawful residence from choice and for a settled purpose*'.

The FE provider may ask whether an individual has had ordinary residence for the three years preceding the relevant date, in addition to asking whether the student is lawfully resident. We have described this below as the '**three year rule**'.

Many students are eligible to be home students without satisfying the 'three year rule' – these exceptions are laid out below. Temporary absences from UK during the three year period are also ignored.

### **Eligible groups / 'home' students**

A list of those eligible, and those 'considered to be eligible' for ESFA funding is given at pages 13-15 of the funding guidance (see footnote [1]). Eligible

students in the following three groups are described as 'home' students. [7]

Group one (must meet the 'three year rule'):

- Those who are 'settled', [8] or have right of abode in UK, or are British
- Children of Turkish workers

Group two (do not need to meet the 'three year rule'):

- People with refugee status, humanitarian protection or discretionary leave, and their family members holding associated leave to remain.
- People who have recently become settled (for example, acquired indefinite leave to remain or British citizenship) within the three years preceding the start of the course.
- Students of all nationalities who are dependants of serving members of the British armed forces
- Students studying under reciprocal exchange agreements.

Group three, unlike the other two groups, is made up of people who qualify for an 'eligibility concession' operated at the discretion of the ESFA Young People's Funding Implementation Team – although this concession is not mentioned in the funding guidance (see footnote [1]). In practice, the following are considered eligible to be 'home students' and are not required to meet the 'three year rule':

- Those who are accompanying or joining parents, spouses or civil partners who have the right of abode or leave to enter or remain in UK
- Those who are in UK as family members [9] of European Economic Area (EEA) nationals [10]
- The children of diplomats
- British or EEA citizens who are entering the UK not accompanied by their parents.
- Those who hold passports showing either that they have the right of abode in UK, or that they

have no restrictions on working in UK [11]

- Asylum seekers
- Those in receipt of asylum support under section 4 of the Immigration and Asylum Act 1999
- Those who are placed in the care of social services, including unaccompanied asylum seekers
- Those who have either the right of abode, or leave to enter or remain in UK, as dependents (usually dependent on their parent or partner).

The guidance states that:

*In order for a student to be eligible for funding the student must have the legal right to be resident in the United Kingdom at the start of their study programme.*

However, those without such a right may still fall under one of the above categories. For example, they may be in the care of social services as a care leaver or be an asylum seeker in receipt of section 4 support.

The guidance does also make clear that the ESFA will consider funding students who do not fall into one of the categories above if there are other 'exceptional circumstances'. Where an institution believes that a student should be considered for funding under exceptional circumstances, it must contact its funding body (the ESFA or the local authority).

#### **Eligibility while waiting for a Home Office decision**

Some institutions restrict access to students who are waiting for a decision from the Home Office or who have limited leave to remain which will expire before the course ends – this is because they need to demonstrate course completion rates to the ESFA. If you encounter this, there are two points to be made:

1. A young person will have the right to apply to extend (or vary) their leave and may also have the right to appeal a negative decision. During this process, the rights they had (e.g. the right to study, work, or claim benefits) will continue until

they are either granted further leave or become 'appeal rights exhausted' – so long as the application or appeal was made before their previous status expired. (See also footnote [6].)

2. Institutions, social workers, advisers and students should be wary of restricting the educational ambitions of young people who have less certain forms of status. It is not acceptable to enrol a young person only on a short, or low-level, course because of doubts about their immigration status, and is unlikely to be in the best interests of that young person.

#### **Exclusions from funding**

For funding purposes, an **overseas** student will be defined as someone who does not meet the criteria defining a home student as set out in the three groups above (under 'eligible groups'). Overseas students can be charged full cost tuition fees.

Students undertaking full time higher education (HE) are ineligible for ESFA funding.

It is not usually possible to split ESFA funding between institutions or providers. However, there is currently (2017-18) one exception to this: students who are studying non-employed Sporting Excellence Awards can also get funding to combine this with academic or vocational learning, though only at specific ESFA institutions. [12]

#### **Bursaries**

The 16-19 Bursary Fund, which also covers young people up to age 24 with an EHP, provides financial support to help students overcome specific barriers to participation. [13]

There are two types of bursary:

- the vulnerable bursary of up to £1,200 a year for young people in one of the 'defined vulnerable groups'
- the discretionary bursary for individual needs for help with the cost of transport, meals, books and equipment.

The 'defined vulnerable groups' are young people who are on eligibility-assessed ESFA funded courses and

who are also either in care, are care leavers, or are in receipt of certain disability or welfare benefits in their own right. The educational institution will require written confirmation of the young person's looked after or care leaver status from the relevant local authority, which can be by letter or by email. Institutions then draw down funds on demand from the Student Bursary Support Service (SBSS), which administers the vulnerable bursaries for the ESFA.

Discretionary bursaries are targeted at students who cannot stay in education without financial help for things like transport, meals, books and equipment. The amount depends on the needs of the student. Institutions including colleges administer their own discretionary bursary allocation and set their own eligibility criteria but they must comply with the Equality Act 2010 and with the ESFA's eligibility conditions as outlined above. It is noted in the guidance that institutions must ensure that all students eligible for free meals receive them.

### **Childcare needs**

There is also some support available for young parents who study. Care to Learn provides support with childcare if:

- the student is under 20 and the main carer of a child
- the student is British, or an EEA national
- the course and childcare provider both qualify [14]

Some student parents will qualify for the early years nursery offer if they are:

- on specified benefits
- an asylum seeker receiving section 95 asylum support. [15]

### **Funding for those who are 19 or over**

The funding available for learners who are 19 or over is more restrictive than what is available for 16 to 19 year olds, and is focused on making students ready for either advanced learned and HE, or work.

FE provision for those who are aged 19 or older is referred to as Adult Education (AE) in the [funding guidance](#) and also covers 19+ apprenticeships. [16]

Tuition fees funding for AE is dependent on course type and residency eligibility. Students must be eligible on the day that they start their learning, and if eligible at the start of their programme, they remain so until the end. However, if a student is not eligible for funding at the start, then the ESFA will not fund the learning aim for them at any time in the future, even if they become eligible. [17] However, a different or amended learning aim might be funded.

Inability to complete a course – for example because a person's leave runs out half way through the course - can make securing funding more difficult. However, the guidance states that:

*Any learner or relevant family member who has applied for an extension or variation of their current immigration permission in the UK is still treated as if they have that leave. Keeping this permission applies as long as the application was made before their current permission expired. Their leave continues until the Home Office make a decision on their immigration application. [18]*

### **Residency eligibility for AE funding**

FE funding is not a public fund. Someone has the right to study unless they have a condition on their leave stating they cannot. However, those with uncertain immigration status may not be eligible for FE funding and may find difficulties in enrolling with certain institutions.

British nationals, those with a right of abode in the UK, and citizens of EU or EEA countries [19] who have been resident within the EEA for the three years prior to starting their course will meet the residence requirements for AE funding.

For other groups, the AE guidance refers institutions to [UKCISA](#) for further information on residence and eligibility. [20] In general, the following groups will also meet the residency criteria for funding:

*EEA nationals and their family members*

- Non-EEA citizens who have permission to live in the UK that is not for educational purposes, and who meet the 'three year rule' on the first day of the course
- Non-EEA citizens who are 'extended family members' of EEA nationals [21] who have a residence permit evidencing their permission to be in the UK and who meet the 'three year rule'
- 'Direct family members' of an EEA national [22] (see also [9]) who have lived within the EEA for the three years prior to the start of the course. [23] Learners in this group include children and step-children up to age 21 or 21+ if still dependant on the EEA national.

*Others without rights derived from the EEA*

- Those with indefinite leave to enter or remain, their spouses, civil partners and children
- Those with refugee status, humanitarian protection, discretionary leave to enter or remain, exceptional leave to enter or remain or leave outside the rules, and their spouses, civil partners and children
- Asylum seekers who have lived in the UK for six months or longer while their claim is being considered by the Home Office and no decision has been made
- Asylum seekers and refused asylum seekers who are in the care of social services and are receiving leaving care support
- Asylum seekers who have been refused refugee status by the Home Office and have lodged an appeal against the decision, though only where they have then been waiting six months or more for an appeal determination
- Refused asylum seekers in receipt of section 4 asylum support
- Refused asylum seekers who are in the care of social services and are receiving leaving care support

The rules explicitly state that those who have overstayed their visa are not eligible for funding. [24]

**What if the college asks for a fee?**

If the college says that a student is ineligible for funding, it is important to check that they have correctly assessed eligibility according to the relevant funding guidance or rules.

If the student is ineligible for funding, the college may ask the student to pay fees. The ESFA guidance states that where a student does not meet their eligibility criteria as outlined above, the student is defined as an 'overseas' student and can be charged full-cost tuition fees. For some young people who are ineligible to have their course funded, this may be an option if they can afford it or if they can get help paying the fees.

**What if the young person is told by the Home Office that they do not have 'permission to study'?**

Sometimes the Home Office will inform someone that they do not have permission to study. If someone is granted limited leave to enter or remain in the UK it may be given subject to a condition restricting the person's studies in the UK. It is not clear why the Home Office decides to impose such a restriction on some grants of leave and not others.

**Practical issues when enrolling**

Even if a young person is eligible for funding and has no restriction on studying, there can be misunderstandings on the part of colleges about who can access FE. It is therefore important for those working with young people to understand their rights to access FE and it may be important to accompany a young person to enrol and to refer to a copy of the relevant funding guidance.

A young person may also experience practical difficulties explaining and evidencing their immigration status, which may complicate the enrolment process. If possible, the young person should show a photocopy of the old leave and a letter from their solicitor confirming that an application has

been submitted and that their leave is treated as continuing. Best practice would be for the young person to request a certified copy of their biometric residence permit before it is submitted with the immigration application, along with the letter confirming the application was made in-time.

Asking the local MP to write to the Home Office may be another option where there is an outstanding application, but the advice of the young person's legal representative should be sought before doing this.

The practices and requirements of different colleges vary, so the young person's experience is likely to depend on which college they are seeking to enrol at.

### **Duties on educational institutions which sponsor Tier 4 international students**

Some colleges sponsor international students to come from abroad to study in the UK. Where a college does this, they will have a licence from the Home Office. The Home Office guidance to sponsors includes information on duties and compliance. This primarily concerns duties in respect of sponsored Tier 4 international students but it also imposes duties to 'comply with all aspects of the Immigration Rules and sponsor guidance, and support immigration control' [25]

A student's immigration status can be a complicated question. However, it is important that caution does not lead to a presumption against students who have difficulties explaining and evidencing their status.

### **Children in care and care leavers**

Local authorities' duties towards looked after children include a duty to safeguard and promote the child's welfare, which includes an explicit requirement to 'promote the child's educational achievement'. [26] Social services should therefore be involved in solving any problems that may arise in accessing further education. All local authorities must have a virtual school head who is in charge of promoting the educational achievement of all children looked after by that local authority. If there were any problem with a looked after child accessing further education, the virtual school head should know about it.

A care leaver's pathway plan must set out a detailed plan for education or training [27] and care leavers should be supported to realise this plan. Access to further education is especially important because a young person's access to leaving care support beyond the age of 21 up to the age of 25 can be linked to their continued participation in education or training. Unless leaving care support is withdrawn on the basis of immigration status, [28] a care leaver should be supported to access further education.

There is now a duty on responsible local authorities to continue to provide advice and support, and to review arrangements annually, for all care leavers up to the age of 25 [29] regardless of whether they are in education. This could mean that some care leavers who fall out of FE can get help to access education again, if eligible.

### **NOTES**

[1] Department for Education, 'Funding guidance for young people', at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/607246/16\\_to\\_19\\_funding\\_guidance\\_2017\\_to\\_2018\\_v\\_1.0\\_003.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607246/16_to_19_funding_guidance_2017_to_2018_v_1.0_003.pdf)

[2] 'Relevant date' refers to 'the first day of the first academic (or teaching) year of the course' and this is defined as:

- a) 1 September if the academic year starts between 1 August and 31 December;
- b) 1 January if the academic year starts between 1 January and 31 March;
- c) 1 April if the academic year starts between 1 April and 30 June; and
- d) 1 July if the academic year starts between 1 July and 31 July.

[3] ESFA, 'Section 96 – Qualifications', at

<https://www.gov.uk/guidance/section-96-qualifications>

[4] paragraph 64 in [1]

[5] paragraph 16b in [1]

[6] paragraph 24 in [1]

[7] paragraph 36 in [1]

[8] 'Settled' means having either indefinite leave to enter or remain, or permanent residence in UK, or holding the 'right of abode' in UK. British citizens and certain other people (see pages 13-14 at [1]) hold right of abode.

[9] Family members are defined at regulation 7 of the Immigration (EEA) Regulations 2016 and Article 2 (2) of EC 2004/38

[10] The European Economic Area comprises Iceland, Liechtenstein and Norway and all 28 member states of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK).

Swiss nationals are also treated as if they were EEA nationals.

[11] Home Office, 'An employer's guide to acceptable right to work documents', at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/441957/employers\\_guide\\_to\\_acceptable\\_right\\_to\\_work\\_documents\\_v5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441957/employers_guide_to_acceptable_right_to_work_documents_v5.pdf)

[12] paragraph 35 in [1]

[13] EFSA, '16 to 19 Bursary Fund guide: 2017 to 2018 academic year', at <https://www.gov.uk/guidance/16-to-19-bursary-fund-guide-2017-to-2018-academic-year#to-19-bursary-fund-changes-for-2017-to-2018>

[14] gov.uk, 'Care to Learn', at <https://www.gov.uk/care-to-learn/eligibility>

[15] gov.uk, 'Help paying for childcare', at <https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds>

[16] EFSA, Adult education budget: funding and performance management rules 2017-18, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/640223/Adult\\_education\\_budget\\_funding\\_and\\_performance\\_management\\_rules\\_version\\_2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/640223/Adult_education_budget_funding_and_performance_management_rules_version_2.pdf)

[17] paragraph 28 in [16]

[18] paragraph 34 in [16]

[19] The 28 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

[20] UK Council for International Student Affairs (UKCISA), at <https://www.ukcisa.org.uk/>

[21] "Extended family member" of the Immigration (European Economic Area) Regulations 2016, at [http://www.earegulations.co.uk/Regs2016/ByPage/regulation\\_08](http://www.earegulations.co.uk/Regs2016/ByPage/regulation_08)

[22] paragraph 42 onwards in [16]

[23] If the learner family member has not been ordinarily resident within the EEA for the three years prior to starting their learning (although their EEA national family member has been), then they will be ineligible if both they and their family member are non-EU EEA citizens, or they are both non-EEA citizens. For more information see paragraph 44 at [16].

[24] paragraph 46 at [16]

[25] Home Office, Tier 4 of the Points Based System: Guidance for Sponsors, Document 2,; paragraph 2.3..

[26] Section 22(3A), Children Act 1989.

[27] Schedule to the Children (Leaving Care) (England) Regulations 2001.

[28] Under section 54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002, some care leavers can have their leaving care support terminated if it would not breach EU law rights or human rights to do so. For more information, please see our fact sheet on this.

[29] section 3 Children and Social Work Act 2017, at <https://www.legislation.gov.uk/ukpga/2017/16/contents/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 by email ([mcpadvice@coramclc.org.uk](mailto:mcpadvice@coramclc.org.uk)) or by telephone (020 636 8505 – Tuesday to Thursday 10am-2pm).**