

## Further education in England

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.

### 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.

Funded educational provision is not 'public funds' as defined in the immigration rules.

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. Restrictions on study can also be placed on immigration bail notices (see our updated guidance note). 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).

The ESFA funding rules for young people are contained in detailed guidance which is published annually. The [current guidance](#) is for the academic year 2019-20. [1]

For the student and institution/training provider to get ESFA funding to pay for the cost of the course, the programme of study/training has to be appropriate (including to the student's age and previous educational attainment), and the student has to be lawfully resident in UK. 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.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.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.

### Funding for young people (16 - 19 year olds)

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 for certain groups of students, they should contact their relevant funding body, which will be either the ESFA or the local authority. However, in

terms of specific students the institution is expected to make eligibility/compliance decisions '*within the spirit of the guidance*'. [2]

### 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:

*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.*

English and maths is a priority area in both FE and adult education.

Separated children who are looked after by a local authority should have a personal education plan (PEP), and care leavers should have a pathway plan (PP), 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. It is important that the young person's educational ambitions are properly articulated in the PEP/PP, and are matched with available and eligible courses. For more information on PP's, leaving care support and local authority support please see our fact sheets on these issues, available at: [www.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.com/resources).

### 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 31/8/2019, then ESFA funding would apply for the whole of a two year programme of A Level study starting in September 2019 and not completing until

July 2021.

- The ESFA guidance states: *It is intended that such students must continue to receive free tuition in any consecutive subsequent year of study on the same study programme as recorded in their learning agreement*

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 (i.e. not yet 25), instead of 18.

If a young person's age is disputed, the guidance states that the institution should decide on procedures to satisfy itself that young persons' funding is appropriate. [3]

### EEA Students and Brexit

The FE guidance note is very brief, and merely states that EU/EEA nationals who are living in UK before Brexit/start of their programme (which applies to all students enrolling from 1 August 2019 for the autumn term 2019) must be treated equally to UK residents. This *must* include family members of EU/EEA nationals – who are often not themselves EU/EEA nationals – as they are subsequently listed as eligible.

Family members include:

- spouse or civil partner
- direct descendant (child or grandchild), aged under 21
- direct descendant under 21 of the spouse or civil partner
- direct descendants of the EU national or spouse/partner who are over 21 but still dependant.

The guidance does state that, once enrolled, EU students will be eligible for funding for the full duration of their study programme. It also states '*depending on the terms in which the UK leaves the EU we may provide additional advice on EU/EEA nationals post Brexit*'. [4]

Coram Children's Legal Centre's Migrant Children's Project would actively encourage any EU/EEA

nationals /family members who have not applied to the EU settlement scheme ('EUSS') to apply as soon as possible – see our website resources for fact sheets on the EUSS. Please also contact the MCP through the legal advice email at the end of this fact sheet if needed.

### **Residency eligibility**

A student's residency eligibility is established at the start of their study programme – usually the first day of their study programme. On this date, FE institutions should establish that the student is lawfully resident in the UK, and is unlikely to be prevented from completing the course because of any issues relating to their immigration status or residence. The guidance says:

*Most students will simply need to confirm on their post 16 enrolment form they have legally lived in UK for the 3 previous years. For the small number of eligible students who do not meet this test, institutions should take steps to satisfy themselves that the student is legally resident in UK. [5]*

It is not exactly clear what is meant by 'legally lived' – presumably this is a reference to 'ordinary' residence which should be negatively defined as *not* ordinary if it is *unlawful*. Many young people lack legal status but are not in UK unlawfully.

### **Ordinary residence**

Ordinary residence (OR) is defined as '*habitual, normal and lawful residence from choice and for a settled purpose*' [6].

The 2019-20 guidance directs FE providers to ask all students about residence in UK in the three years preceding the course start date, when they enrol. However, many students are eligible as 'home' students anyway, without having had OR in the preceding 3 years – see 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 (the reason for the distinction between these groups being unclear – as

they are both eligible) is given at pages 15-17 of the funding guidance

Eligible students include:

- those who are 'settled' [7], have right of abode in UK, or are British Citizens and have also had OR for the 3 years preceding the course start
- those on a reciprocal exchange programme
- children of Turkish workers where the parent has a lawful work history in UK and the student has been resident within EEA/Turkey for the 3 years before the course starts

Also considered to be eligible (without needing 3 years' OR):

- People with refugee status, humanitarian protection or discretionary leave to enter or remain in UK, and their spouses, civil partners, and children.
- 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

The group covering most of those with residency eligibility issues is made up of people who qualify for an 'eligibility concession' operated at the discretion of the ESFA Young People's Funding Implementation Team. In practice, the following are considered eligible to be 'home students' and do not need 3 years' OR:

- 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 [8] of European Economic Area (EEA) nationals [9]
- The children of diplomats
- British or EEA citizens who are entering the UK not accompanied by their parents.

- Those who hold passports showing that they have the right of abode in UK
- Those who hold a non-UK passport with a 'visa' or biometric residence permit with leave to enter or remain which says 'work permitted', or does not prohibit work - this covers most forms of leave to remain [10] – for guidance on restrictions on working in UK – see [11]
- Asylum seekers
- Those granted leave under section 67 of the Immigration Act 2016 (the 'Dubs' Amendment)
- Those granted Calais leave to remain
- Those in receipt of asylum support under section 4 of the Immigration and Asylum Act 1999
- Those in the care of social services, including unaccompanied asylum seekers
- Those who are have either the right of abode, or leave to enter or remain in UK, as dependents (usually dependent on their parent or partner).

Although 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, those without such a right may still fall under one of the above eligible categories. For example, a young person may be in the care of social services as a care leaver, or be in receipt of section 4 support, awaiting the outcome of a fresh claim.

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*' that justify funding [12]

#### **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) should 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.
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 eligible groups above. Overseas students can be charged full cost tuition fees.

It is not usually possible to split ESFA funding between institutions or providers. However, there may be exceptions to this so check the current guidance [1].

#### **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 that available to 16 to 19 year

olds, and is focused on making students ready for either advanced learning 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. [17]

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. It may be necessary to get advice in this situation.

### Residency eligibility for AE funding

AE 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 AE funding and may find difficulties in enrolling with certain institutions.

### The following are eligible:

- British citizens and those with a right of abode in the UK who have been OR in the EEA for three years prior to starting their course
- Citizens of EEA [10] countries who have been resident *within the EEA* for the three years prior to starting their course
- Non-EEA citizens who are legally in UK (but not with a student visa) and have 3 years OR *in the UK* before the course start
- Family members [18] of EEA citizens where the family member student and/or the EU[19] /EEA national satisfy certain residence requirements within EEA during the preceding 3 years [20]
- Asylum seekers who are either receiving care – leaver support, or have made an undecided asylum claim over 6 months ago [21]

- Refused asylum seekers who are either-
  - receiving leaving care support, or
  - have appealed against the asylum refusal over 6m ago with no further decision, or
  - are receiving asylum support under section 4 Immigration and Asylum Act 1999 [22]

**There is no 3 year residency requirement for:**

- Those with indefinite leave to enter or remain, refugee status, humanitarian protection, discretionary leave, or leave outside the rules .
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- Those with leave to remain under section 67 Immigration Act 2016 ('Dubs' leave)
- Those with Calais leave to remain
- The spouse, civil partner and children of anyone in the above categories
- Asylum seekers and refused asylum seekers who meet the AE residency eligibility rules

A person granted stateless leave under Part 14 of the immigration rules will be eligible if they have OR in the UK and have also had it throughout the 3 year period preceding the first day of the first academic year of the course. The spouse/civil partner and child of such a person is also eligible if they also satisfy the 3 year OR requirement. [23]

**Ineligible persons [24]**

Those who are in UK illegally (includes over-stayers); those only holding a Tier 4 student visa; tourists or visit visa holders; dependants of Tier 4 students who do not have 3 years OR; those whose biometric residence permit imposes a study prohibition or restriction on the individual.

**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. It may be necessary to take legal advice. See also our fact sheet on 'no study' conditions, available at: [www.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.com/resources).

**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 [1] and [16].

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 to be taken by their legal representative and given to them, to keep safely, before it is submitted with the immigration application. A letter from the rep confirming that the application to renew, extend or vary the leave was submitted before the old leave expired (possibly with

post office tracking number) is also very useful in showing that the old leave to remain continues to apply. [25]

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

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

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

Some colleges sponsor international students to come from abroad to study in the UK. Colleges which do this 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*'. [26]

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'. [27]

Social services should therefore be involved in solving any problems that may arise in accessing further education, and strategies to troubleshoot likely barriers to continuing education should be contained in the education section of the pathway plan [28]

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.

Leaving care support (sections 23C and 23CA Children Act 1989) can be withdrawn if a care leaver becomes ineligible for it. Typically, this happens where a refused asylum seeker care leaver is 'appeal rights exhausted', AND a properly-conducted human rights assessment has concluded that there would be no human rights breach in withdrawing support. [29]

There is now a duty on responsible local authorities to continue to provide advice and support, and to review the pathway plan annually, for all qualifying care leavers up to the age of 25 [30] regardless of whether they are in education. Whilst this means that being in continuing education isn't required for leaving care support - it should mean that care leavers up to age 25 should be actively encouraged to re-engage with education or training through review of their pathway plan.

### NOTES

[1] Department for Education, 'Funding guidance for young people', at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/823121/16\\_to\\_19\\_funding\\_guidance\\_Regulations\\_2019\\_to\\_2020-v1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823121/16_to_19_funding_guidance_Regulations_2019_to_2020-v1.pdf)

[2] paragraph 14 in [1]

[3] paragraph 75 in [1]

[4] paragraph 30-31 in [1]

[5] paragraph 28 in [1]

[6] paragraph 37 in [1]

[7] 'Settled' means having either indefinite leave to enter or remain (whether under the Immigration Rules or under the EU settlement scheme), EU permanent residence in UK, a 'no time limit' endorsement or holding the 'right of abode' in UK. British citizens hold right of abode.

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

[9] 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.

[10] paragraph 40 c. - page 16 in [1]

[11] Home Office, 'An employer's guide to acceptable right to work documents', at <https://www.gov.uk/government/uploads/system/uploads/attac>

[hment\\_data/file/441957/employers\\_guide\\_to\\_acceptable\\_right\\_to\\_work\\_documents\\_v5.pdf](#)

[12] paragraph 41 in [11]

[13] EFSA, '16 to 19 Bursary Fund guide:

<https://www.gov.uk/guidance/16-to-19-bursary-fund-guide-2019-to-2020-academic-year>

[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 2019-20, at

<https://www.gov.uk/government/publications/adult-education-budget-aeb-funding-rules-2019-to-2020>

[17] paragraph 33 in [16]

[18] the adult education guidance definition of 'family member' is found at paragraph 47 in [16]. The definition is incomplete as it does not include the direct descendants of a spouse or civil partner (it also fails to explain assumed dependency up to age 21, and continued eligibility over 21 where there is dependency).

[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] see chart outlined at paragraph 49 in [16]

[21] paragraph 45 in [16]

[22] paragraphs 46 in [16]

[23] paras 51-54 in [16]

[24] para 55 in [16]

[25] Section 3C of the Immigration Act 1971

[26] Home Office, Tier 4 of the Points Based System: Guidance for Sponsors – para 2.3

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/824003/Tier\\_4\\_Sponsor\\_Guidance\\_-\\_Doc\\_2\\_-\\_Sponsorship\\_Duties\\_2019-08\\_1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/824003/Tier_4_Sponsor_Guidance_-_Doc_2_-_Sponsorship_Duties_2019-08_1.1.pdf)

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

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

[29] Schedule 3 of the Nationality, Immigration and Asylum Act 2002

[30] 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 at: [mcpadvice@coramclc.org.uk](mailto:mcpadvice@coramclc.org.uk)