

Access to higher education for refugees and

This fact sheet provides information on access to higher education for young refugees and migrants but the information 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/>

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 since 2017 entries **[1]** – but fees for overseas students will be much higher than this. Private sector institutions often have only one level of tuition fee, which all students must pay.

Financial support is provided by the Government to some students in the UK. It can be called student support or student finance. **[2]**

If an individual meets the eligibility criteria for claiming student support they can apply for a tuition fees loan to cover tuition fees (up to £9,250, or up to £11,100 if an accelerated degree course).

Maintenance loans help to cover living costs and the amount provided depends on the academic year and the personal/living circumstances of the student. **[3]**

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 immigration status or have a type of status that has a NRPF condition.

'Public funds' are defined in the Immigration Rules and include social housing, homelessness assistance and welfare benefits. The definition does not include education (or student support or 'home' fees and those accessing higher education will not be in breach of a NRPF condition. **[6]**

What about immigration bail?

In January 2018, the UK government made significant changes to the law regarding

immigration bail and detention. 'Immigration bail' now covers more situations than before, including 'temporary admission' (previously given to asylum seekers in the UK while waiting on a decision). This change has had an effect on some young people's ability to study in the UK, as a 'no study' condition can be imposed as part of their 'bail' conditions.

If you know of someone with a 'no study condition' or for further information on immigration bail and how to check whether a 'no study' condition is imposed, please see our webpage on this here:

www.childrenslegalcentre.com/resources

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

A student can qualify for student support and/or 'home' fees if they meet the eligibility conditions of one or more of the categories provided for within the relevant regulations.

To be eligible under any particular category, the student must meet all the relevant eligibility criteria for that category on the first day of an 'academic year' of their course. Often, the eligibility criteria relating to ordinary residence must be met on the first day of the **first** academic year of the student's course.

Under the regulations for 'home' fees and student support, the first day of an academic year is one of the dates below:

- **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)
- **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 charge asylum seekers or others the equivalent cost of home fees. Some provide information about this on their websites and a number of universities now offer bursaries for asylum seekers. [8]

Those with limited leave to remain

Most individuals with limited leave to remain (or discretionary leave) 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 amended the Regulations which govern eligibility for fees and student support. To be eligible, the student must satisfy all the criteria below on the first day of the first academic year of their course:

- be ordinarily resident in England;
- have been 'ordinarily resident' in the UK and Islands for 3 years; 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) 18 or over 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 their spouse and child) is entitled to home fees and student support if:

- they are 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
- they have 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). They will have to apply for ILR before the expiry of their refugee leave. This does not, however, affect their right to apply for student support.

Those with humanitarian protection (HP)

A person granted humanitarian protection after having applied for refugee status (and their spouse and child) is entitled to home fees and student support if:

- they are 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
- they have not ceased to be ordinarily resident since being granted humanitarian protection; and
- they have been ordinarily resident in the UK and Islands for 3 years on the first day of the first academic year of their course.

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

European categories

There are a number of European 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 (also known as the 'Bidar' category)
- EEA/Swiss workers, and family
- Those with the right of permanent residence (a right based on EU law)

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

For information on the EU Settlement Scheme and settled/pre-settled status granted under the scheme, please see our fact sheets, available here:

www.childrenslegalcentre.com/resources

Those with Indefinite Leave to Remain (ILR)

A person with indefinite leave to remain is entitled to home fees and student finance if:

- they are settled within the meaning of section 33(2A) of the Immigration Act 1971 on the first day of the first academic year of the course – this would include British

citizens, those with indefinite leave to enter or remain and those with the right of abode in the UK;

- they have been ordinarily resident in the UK and Islands for the three years preceding the first day of the first academic year of the course;
- their residence in the UK during that period was not wholly or mainly for the purpose of receiving full-time education; and
- they are 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.

Those with section 67 leave

Some children and young people in the UK will have section 67 leave – this is a new type of leave granted to children relocated to the UK through the 'Dubs' amendment. For further details on this type of leave, please see our fact sheet on claiming asylum as a child:

www.childrenslegalcentre.com/resources.

Those granted section 67 leave have to be ordinarily resident in England on the first day of the first academic year of the course and be ordinarily resident in the UK and Islands for three years prior to the first day of the first academic year of the course.

Becoming eligible for home fees/student finance support during study

Tuition fee and student support eligibility

When a student or their relevant family member is granted refugee status during their course, they can become eligible for home fees from the following academic year. **[11]**

If a student or their relevant family member is granted refugee status within three months of the start of the current academic year, they can be eligible for student support. If the change occurs after three months, they can become eligible from the following academic year. **[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.

The Immigration Act 2016 sought 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] However, **these provisions are not in force and do not apply.**

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.gov.uk/student-finance/continuing-fulltime-students>

[5] <https://www.gov.uk/student-finance/continuing-fulltime-students>

[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)

[8] See STAR website for list of universities http://www.star-network.org.uk/index.php/resources/access_to_university

[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 - mcpadvice@coramclc.org.uk