



## Home student criteria for HE student support in England

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The purpose of this note is to outline the criteria used for the classification of students as home or overseas students for higher education student support. Home students may apply for tuition fee support and eligible students may be able to access other forms of publicly funded student support such as maintenance loans and grants. Students classified as overseas student are liable for higher fees and are not eligible for any public funding. The assessment of students as home or overseas is dependent on the circumstances of each individual student and can be rather complicated. An organisation called the [UK Council for International Student Affairs](#) (UKCISA) provides advice and information for overseas students on issues including fee classification.

This note sets out the requirements for home student classification for higher education purposes in England and outlines some of the situations which may cause students difficulties – such as British citizens who have been living overseas and students with discretionary leave to remain.

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# 1 Overview

Only students classified as home or EU students are eligible for publicly funded student support, students classified as overseas students receive no public funds and pay higher tuition fees. Each student is assigned a classification based on their individual circumstances taking into account their immigration status and residency. Problems in this area tend to arise with students who do not hold the required immigration status and with UK students who have not met the three year residence requirement.

## 2 Eligibility requirements for classification as a home student

Classification of students for student support purposes is based on a student's immigration status **AND** on meeting a residency requirement.

### 2.1 Immigration status

The provisions governing the classification of students are contained in the [Education \(Fees and Awards\) England Regulations 2007](#) SI 2007/779. These regulations set out the criteria for home student status and make the charging of higher fees to overseas students lawful – the charging of higher fees to overseas students could otherwise be deemed illegal under equalities legislation.

The regulations state that to be eligible for support a student must first of all have 'settled status', or fall into a specific category of exceptions. The regulations state that the term 'settled' is given the meaning in section 33 (2A) of the *Immigration Act 1971*. An organisation called the [UK Council for International Student Affairs](#) (UKCISA) provides information for overseas students, their webpage [Definitions](#) gives the following explanation of 'settled status':

#### Settled

'Settled' means being both ordinarily resident in the UK and without any immigration restriction on the length of your stay in the UK. The regulations refer to immigration law for the definition of 'settled'.

For the purposes of the fees and student support regulations, you are settled if you have: the **Right of Abode** (including those people who have this by virtue of a Certificate of Entitlement to the Right of Abode); or **Indefinite Leave to Enter/Remain** (ILE/R), in the UK; or, for Scotland's regulations, the right of permanent residence in the UK. **If your passport describes you as a 'British citizen', then you also have the Right of Abode and are, therefore, settled.**

Some EEA and Swiss nationals, and their family members, will have acquired the right of permanent residence in the UK, under EC law. These people are settled in UK immigration law but will not generally qualify under categories which require settled status, except under Scotland's regulations. For England, Wales, and Northern Ireland, such settled people may qualify under an alternative category, if they meet all the appropriate criteria.

You **do not** have settled status if:

- you have a time limit on the length of your stay in the UK, as shown by your current immigration permission, ie you have a 'limited leave'
- you are exempt from immigration control, eg you are living in the UK as a diplomat or a member of their household/family

- you have a type of British passport that does not give you British citizenship, eg British National (Overseas).

Settled status therefore includes British citizens and persons with right of abode or indefinite leave to enter or remain in the UK.

## 2.2 Residency requirements

Schedule 1 of the regulations states that students must **also** meet a residency requirement to be considered as settled and eligible for student support. Under schedule 1 students must have been 'ordinarily resident' in the UK for **three years** before the first day of the first academic year of the course. It is not necessary to have had settled immigration status in the UK for the full three years, students only need to show that they have it on, at the latest, the first day of the first academic year of the course.

There is much case law on the term 'ordinarily resident' and a number of these cases can be found on the UKCISA website at ['Ordinary residence' case law](#). Students whose families have been temporarily resident abroad and the families of people in the armed forces may also meet the residency requirement. In case of a dispute each situation is considered on its own merits based on the student's individual circumstances.

One landmark judgement often quoted in contentious issues of ordinary residence is found in a [case from 1982](#) - Shah v London Borough of Barnet 1983 All ER 226. In this case Lord Scarman made a speech setting out the principles behind ordinary residence:

"It is my view that LEAs, when considering an application for a mandatory award, must ask themselves the question:- has the applicant shown that he has habitually and normally resided in the United Kingdom from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences? If an LEA asks this, the correct, question, it is then for it, and it alone, to determine whether as a matter of fact the applicant has shown such residence

## 2.3 Exceptional cases

Other students may be eligible for support if they fall into one of the exceptional categories. These other categories cover refugees and their families and persons with humanitarian protection. Students applying for support under these criteria do not have to meet a three year residency requirement – students just need to be ordinarily resident in the UK on the first day of the first year of the course.

# 3 Issues

## 3.1 British families living overseas

UK citizenship fulfils the immigration requirement, but UK citizens **must ALSO meet the three year residency requirement** ie they must have been *ordinarily resident* in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

British citizenship is not enough in itself to guarantee home student status, neither is owning a home in the UK nor is paying tax in the UK - this residency requirement may catch out students from expat families. Exceptions can be made for students whose parents were temporarily overseas, or for children from forces families, but families who choose to live overseas permanently will need to consider the three year residency rule when planning their children's higher education.

This ruling had been in place for decades – this can be seen from the fact that the key case establishing the grounds of ordinary residence comes from 1982.

The UK is not alone in adopting a residency requirement for publicly fund student support; most countries including nearly all EU countries have adopted some type of residency requirement for home fee classification and international students are charged higher fees.

The three year residency requirement as stated is set out in legislation so the Student Loans Company (SLC) has no discretion in this area - they must apply the law as it stands. Universities have some discretion in the area of tuition fees and they may choose to charge a student who would otherwise have been considered as an overseas student as a home student – possibly for instance if they miss the three year residency by a very small amount of time - however this would not necessarily help some students as under these circumstances the SLC would still not be able to provide the student with a fee loan or any other form of student support.

### **3.2 EU students**

Under EU law on free movement EU students who move to another member state to study have to be treated the same as local students for fee purposes, so EU students studying in the UK are eligible for tuition fee support under the same criteria as home students – the same type of reciprocal arrangement applies to UK students studying in another member state. EU students however are not eligible for maintenance loans.

To be classified as an EU student individuals must be a national of an EU member state (or Switzerland, the EEA or Turkey) and have been resident in that state for three years before the start of the first academic year.

### **3.3 Students with discretionary leave to remain (DLR)**

Up until 2011, under student support regulations, persons with certain temporary awards of leave to enter or remain in the UK as a result of a claim for asylum, including DLR, were eligible to receive higher education fee support and maintenance support.

In February 2011 the [Education \(Student Fees, Awards and Support\) \(Amendment\) Regulations 2011](#) SI 87 came into effect; these regulations tightened the rules on persons eligible for student support and removed eligibility for student support, regulated fees and home fee status from holders of DLR until they were awarded settled status. These changes mean that students with DLR are now classified as overseas students and this has significant implications for the costs of studying as these students can now be charged higher fees than home students and they have no access to public funds.

The rationale for the change was given in the [Explanatory Memoranda](#) to SI 2011/87:

This restriction of eligibility for support has been introduced to manage increased pressures on the student support budget. Transitional arrangements are made to ensure that students currently assessed as eligible under existing regulations will continue to receive the support they have been awarded.

Universities have discretion to allow asylum seekers to study as home students and they can therefore charge these students home rates of fees; however as previously stated the Student Loans Company has no discretion in the application of the student support regulations so these students will have no access to student finance to cover these fees or their maintenance costs.

The changes in the rules on students with DLR were not universally welcomed. A report by the Refugee Support Network in February 2012 "[I just want to study": Access to Higher Education for Young Refugees and Asylum Seekers](#)", highlighted the difficulties faced by young students with DLR status. The report recommended that students with DLR should have access to student support. The Refugee Children's Consortium also published a briefing on this issue, [Briefing on Access to Higher Education for Refugee Young People](#).

### ***The Newcastle judgement***

In 2013 two young Ethiopians with DLR applied to the High Court in Newcastle for assistance with university tuition fees from their local authority. The court decided that as the young people had arrived in the UK as unaccompanied asylum seeking children the local authority had a duty under children leaving care legislation (specifically the *Children's Act 1989* s23 b+c), to provide funding for tuition fees and related expenses.

A case information note by the Coram the Children's Legal Centre, *Migrant Children's Project Newsletter August 2013* - [R \(on the application of Kebede\) v Newcastle City Council \[2013\] EWHC 355 \(Admin\)](#) gives an overview of the Newcastle judgement

#### **July 2013 update:**

The local authority appealed against the High Court's decision but the case was upheld in the Court of Appeal (*Kebede v Newcastle CC [2013] EWCA 960 Civ*). The judges affirmed that the natural meaning of 'expenses connected with his education' include the major expense of tuition fees and is not limited to the costs of books and stationary and the like (para. 13) and rejected Newcastle's argument that its resources were a relevant factor when deciding whether to make a grant under section 24B(2) of the Children Act 1989. While it was accepted that immigration status was relevant (for example, if a young person has no leave to remain before a university course starts, or there no likelihood of his leave being extended), 'what is an educational need must be assessed in the educational context' in each case (paras 21-22).

The newsletter suggested that this case could have significant implications for local authorities:

#### **Access to higher education**

The case of *Kebede v Newcastle CC* was upheld in the Court of Appeal this week, with important implications for young people with discretionary leave who have been in the care of a local authority and want to go to university but are unable to access student support or home fees. It may now fall to the local authority to fund their access to university, either by paying their fees or providing them with a loan