

Change to the residency criteria for access to tuition fee and living cost support- Relevant Connection to Scotland

Equality Impact Assessment – Results

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1. Title of Policy

Change to the residency criteria for access to tuition fee and living cost support-
Relevant Connection to Scotland

2. Summary of aims and desired outcomes of Policy

Relevant National Outcome(s):

- We are well educated, skilled and able to contribute to society.
- We respect, protect and fulfil human rights and live free from discrimination.

This policy reviews the current residency criteria and eligibility for student support for those who are considered to have a relevant connection to Scotland in order to replace the existing long residency requirement which has recently been found to be unlawful. The desired outcome is to amend the current regulations, the Education (Fees) (Scotland) Regulations 2022 and the Student Support (Scotland) Regulations 2022, to expand the definition of 'relevant connection to Scotland' to enable access to tuition fee and living cost support for courses of further and higher education for those who meet the new eligibility criteria.

3. Directorate: Division: Team

Lifelong Learning and Skills Directorate

Learner Experience Division

Student Financial Support Team

4. Executive Summary

A Scottish Government consultation on proposed changes was carried out and a review of the current eligibility criteria was conducted, of which this EQIA forms a part.

The EQIA identified that the proposed changes will have a positive impact on people as a result of their age. The proposed changes do not have an age specific condition unlike the previous long residency provision which provided differing residency requirements for those under 18 to those aged 18 and above. The revised relevant connection to Scotland provision will determine eligibility based on immigration status and residency and will not consider age specific eligibility in the same way that the previous long residency rules did.

It has also been identified that there will be a positive impact on people as a result of their race. The change will address discrimination that individuals may have faced as a result of not having been provided with a permanent immigration status in terms of their access to student financial support. Widening the residency criteria to those

who have been granted a form of leave to enter or remain will provide opportunity for an expanded group of people to access support for courses of further and higher education.

The Scottish Government does not consider there to be any direct or indirect discrimination under the Equality Act 2010 as a result of this policy change.

5. Background

The current criteria for access to tuition fee and living cost support in Scotland requires students to meet certain residency rules which are laid out in legislation. They generally require students to:

- Be ordinarily resident in Scotland on the relevant date (the relevant date is the 1 August for Autumn start courses; ordinary residence can be described as habitual or normal residence, by choice, over a period of time in one place and does not include residence solely for the purposes of education);
- Have been ordinarily resident in the UK and Islands for 3 years immediately prior to the relevant date;
- Be settled in the UK within the meaning of the Immigration Act 1971 (for example, be a UK national or otherwise have a right to stay in the UK without time restriction, for example, 'Indefinite Leave to Remain'). Or be:
 - (i) Under the age of 18 and have lived in the UK throughout the seven year period preceding the relevant date;
 - (ii) Aged 18 or above and, preceding in the relevant date, have lived in the UK throughout either half their life or a period of twenty years.

Under the current regulations there is a limited window (known as the Long Residence criteria, set out in (i) and (ii) above) in which a student not qualifying under the 'settled in the UK' provision may be eligible for support.

Prospective students who do not meet the residency criteria for home student support can still apply for courses of further and higher education, but could be considered as international students by institutions for fee purposes.

The Long Residence criteria was successfully challenged by Judicial Review in late 2022 and the Court determined this to be unlawful. At the conclusion of the Judicial Review, Scottish Ministers gave an undertaking to review the definition of a relevant connection to Scotland used to determine eligibility for student financial support for the commencement of the 2023/24 academic year. As part of this work, the Scottish Government launched a public consultation on proposed changes which closed on 31 March 2023. In addition, Scottish Government officials undertook a series of stakeholder engagement meetings on the matter and heard from students who had lived experience of being impacted by the long residence provisions.

The aim of this policy is to review the current residency criteria following the Judicial Review and public consultation and propose a change to the regulations that would

expand the eligibility criteria in respect of the relevant connection to Scotland to those who had been granted a form of leave to enter/remain in the UK, have lived in the UK for 3 years and are now ordinarily resident in Scotland. The change would allow the individuals who would become eligible under the expanded definition to access tuition fee and living cost support for courses of further and higher education.

This contributes to the following national outcomes:

- We are well educated, skilled and able to contribute to society.
- We respect, protect and fulfil human rights and live free from discrimination.

6. The Scope of the EQIA

The proposed policy change has relevance to the protected characteristics of age and race. As the change to the residency criteria would open up opportunities and have a positive impact on any prospective students who meet this criteria, it is considered that a concise and focussed Equality Impact Assessment is proportionate in these circumstances.

7. Key Findings

We have identified that there will be a positive impact on people as a result of their age. The new proposed criteria does not have an age specific condition, however it is replacing the long residency provision in the regulations which had an age restrictive element. The new provision will determine eligibility based on immigration status and residency.

We have also identified that there will be a positive impact on people as a result of their race. This change will address discrimination that individuals may have faced as a result of not having been provided with a permanent immigration status or being provided a form of leave that is not included as one of the exceptions to the relevant connection to Scotland criteria. Widening the residency criteria to those who have been granted a form of leave to enter or remain will provide opportunity for an expanded group of people to access support for courses of further and higher education.

8. Recommendations and Conclusion

In conclusion, extending the current student support system would have a positive impact on individuals (and their family members) who have been granted a form of leave to enter or remain in the UK and are ordinarily resident in Scotland. The Scottish Government considers that this proposed policy change can be objectively justified as a proportionate means of achieving a legitimate aim.



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The Scottish Government
St Andrew's House
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ISBN: 978-1-83521-099-4 (web only)

Published by The Scottish Government, November 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1320302 (11/23)

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