

Child Rights and Wellbeing Impact Assessment (CRWIA) for access to home fee status/ student financial support in relation to those considered to have a Relevant Connection to Scotland

December 2023

1. Brief Summary

To expand the eligibility criteria in respect of the relevant connection to Scotland for eligible students to access home fee status/ student financial support.

The expanded eligibility will include all students who are:

- Ordinarily resident in the UK for three years' prior to the relevant date;
- Ordinarily resident in Scotland on the relevant date; and
- If they have been granted a form of leave to enter or remain in the UK, where the leave has not expired.

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

As regulations currently stand, in order to access tuition fee and living cost support, students are generally required to meet the following residency rules:

A person who, on the relevant date –

- (a) is ordinarily resident in Scotland
- (b) Has been ordinarily resident in the United Kingdom and Islands throughout the immediately preceding 3-year period; and
- (c) Is –
 - (i) Settled in the United Kingdom within the meaning given by section 33(2A) (interpretation) of the Immigration Act 1971
 - (ii) Under the age of 18 and has lived in the United Kingdom and Island throughout the seven-year period preceding the relevant date
 - (iii) Aged 18 or above and, preceding the relevant date, has lived in the United Kingdom and Islands throughout either half their life or a period of twenty years
 - (iv) Aged 18 or above and received support by virtue of head (ii) for the academic year preceding the relevant date; or
 - (v) The spouse, civil partner or child of a person described in sub-paragraph (i)

Under the current regulations there is a minimum time period (known as the Long Residence criteria and set out in sub-paragraphs (c)(ii) and (iii) above) in which a student not qualifying under either sub-paragraphs (c)(i) or (c)(v) may be eligible for student support. Prospective students who do not meet the residency criteria for home student support can still apply for courses of further or higher education, but could be considered as international students by institutions for fee purposes, receiving no tuition fee or living cost financial support from the Scottish Government.

Sub-sections (ii) and (iii) of the above criteria were successfully challenged by judicial review in late 2022 and the Court determined the Long Residence provisions to be unlawful. At the conclusion of the Judicial Review, 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 (AY) being 1 August 2023. As part of this work, Scottish Government launched a public consultation ([Changes to residency criteria for access to financial support in Further and Higher Education – Scottish Government – Citizen Space \(consult.gov.scot\)](#)) 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.

Changes detailed above represent the Scottish Government's steps to address this issue.

Start date of relevant proposal: August 2023

Start date of CRWIA process: April 2023

2. Which aspects of the relevant proposal currently affects or will affect children and young people up to the age of 18?

All aspects of the policy will apply to those under the age of 18 who wish to undertake a course of Further or Higher Education from 2023/24 Academic Year (AY).

3. Which groups of children and young people are currently or will be affected by the relevant proposal?

This policy change will specifically impact those groups of children and young people who have leave to enter or remain in the UK (but not settled status in the UK) and wouldn't have met the (now deemed unlawful) long residence provision and wish to undertake a course of Further or Higher Education.

Declaration

4. Is a Stage 2 Children's Rights and Wellbeing Impact Assessment required? (Tick relevant requirement) ([Guidance Section 2.1](#))

CRWIA required No explanation required, please complete questions 5 and 6

CRWIA not required Please explain why below and contact the children's rights unit to discuss this decision crwia@gov.scot

5. Sign & Date

Policy Lead Signature & Date of Sign Off:

Nicola Nisbet 27/04/2023

CRWIA author, if different from policy lead, Signature & Date of Sign Off: as above

Deputy Director Signature & Date of Sign Off: Catherine Topley 25/05/2023

Date SGLD contacted: 03/05/2023

6. Preparation Phase if undertaking a CRWIA

Evidence / Stakeholder Engagement / Research:

The Scottish Government carried out a public consultation using the Citizen Space website: [Scottish Government consultation - changes to student support residency criteria.](#)

The consultation specifically focused on proposals on the expansion of residency eligibility for home fee status and student financial support from the Scottish Government in recognition of the Court's opinion in *Jasim*.

It was recognised that the previous eligibility criteria could adversely impact children and young people who had entered the UK and went through the secondary education system in Scotland and were then unable to access home fee status and student financial support for FE/ HE study unlike their peers.

Relevant sector stakeholders were also identified and invited to respond to the consultation and meet with Scottish Government officials.

CRWIA Stage 2 – Assessment of Impact and Compatibility

1. What evidence have you used to inform your assessment? Identify any gaps in the evidence base, and set out how you will address these.

The Court opinion in *Jasim v Scottish Ministers*: [2022csoh64.pdf](#) ([scotcourts.gov.uk](#))

Scottish Government consultation: [Scottish Government consultation - changes to student support residency criteria](#) Full analysis will be published in May 2023 on the Scottish Government website ([www.gov.scot](#)) and Citizen Space ([www.consult.gov.scot](#))

Evidence provided during the stakeholder engagement exercise.

2. Evidence from stakeholders/Policy Colleagues

As noted above, the Scottish Government carried out a public consultation using the Citizen Space website: [Scottish Government consultation - changes to student support residency criteria](#)

Evidence provided during the stakeholder engagement exercise was also used to inform the policy position.

Officials leading on this work also engaged with Department for Education, Welsh Government and Northern Irish Government regarding this work along with colleagues in Migration and Asylum policy.

3. Evidence from children and young people

It is unknown how many children and young people formally responded to the consultation; however policy officials did engage directly with some students who had been directly impacted by the previous long residence provisions.

4. Analysis of the evidence

4.1 How have the findings outlined in questions 1-3 influenced the development of the relevant proposal?

Through the consultation analysis, stakeholder engagement and seeing the operation of the interim Payment Scheme (a financial remedy that Scottish Ministers

introduced following the Jasim case for those students impacted by the decision in 2021/22 and 2022/23 AY), the aforementioned expansion of residency eligibility criteria has been developed.

The new provision will determine eligibility based on immigration status and residency rather than the previous long residency provision which also included eligibility criteria which was linked by age.

The change will address discrimination that individuals may have faced as a result of not having been provided with a permanent immigration status. Widening the residency criteria to those who have been granted a form of leave to enter or remain will provide an opportunity for an expanded group of people to access support for courses of Further and Higher Education.

4.2 Assessing for compatibility against the UNCRC requirements (Guidance Section 2.2)

UNCRC Articles

What impact does/will your relevant proposal have on children’s rights (Please tick positive, negative or neutral)

	Positive	Negative	Neutral
Article 1 Definition of the child	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 2 Non-discrimination	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 3 Best interests of the child	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 4 Implementation of the Convention	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 5 Parental guidance and a child’s evolving capacities	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 6 Life, survival and development	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 7 Birth registration, name, nationality, care	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 8 Protection and preservation of identity	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 9 Separation from parents	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 10 Family reunification	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 11 Abduction and non-return of children	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 12 Respect for the views of the child	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 13 Freedom of expression	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 14 Freedom of thought, belief and religion	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Article 15 Freedom of association	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 16 Right to privacy	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 17 Access to information from the media	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 18 Parental responsibilities and state assistance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 19 Protection from violence, abuse and neglect	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 20 Children unable to live with their family	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 21 Adoption	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 22 Refugee children	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 23 Children with a disability	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 24 Health and health services	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 25 Review of treatment in care	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 26 Social security	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 27 Adequate standard of living	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 28 Right to education	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 29 Goals of education	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Article 30 Children from minority or indigenous groups	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 31 Leisure, play and culture	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 32 Child labour	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 33 Drug abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 34 Sexual exploitation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 35 Abduction, sale and trafficking	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 36 Other forms of exploitation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 37 Inhumane treatment and detention	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 38 War and armed conflicts	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 39 Recovery from trauma and reintegration	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 40 Juvenile justice	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Article 41 Respect for higher national standards	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 42 Knowledge of rights	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
First optional protocol	Positive Negative Neutral		
Article 4	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 5	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 6	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 7	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Second Optional Protocol			
Article 1	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 2	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 3	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 4	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 6	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 7	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 8	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 9	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 10	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Article 11	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

5. Impact on children and young people

In relation to the UNCRC articles that you have ticked above, please explain how your relevant proposal will impact or currently impacts on individual or groups of children. Please give consideration to groups who may be considered at greatest risk of not having their right fulfilled.

Positive: The change will address discrimination that individuals may have faced as a result of not having been provided with a permanent immigration status. 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.

6. Negative Impact/Incompatibility

If negative impact is identified in Question 5 above, can you elaborate on this and explain why impact is or will be negative?

No negative impact was identified.

Are there any potential concerns about compatibility with the UNCRC requirements? Please explain these here.

No

7. Options for modification or mitigation of negative impact or incompatibility

N/A

8. Positive impact: Giving better or further effect to children's rights in Scotland

This change will have a positive impact on the Right to Education particularly for those children and young people without a permanent immigration status in the secondary education system in Scotland who wish to continue in their learner journey and go onto study at FE/ HE like their peers. This change will open up access to home fee status and financial support from the Scottish Government without the need to have spent a significant period of their life in Scotland (beyond the standard 3 year rule applicable to all Scottish domiciled students).

9. Impact on Wellbeing: does or will the relevant proposal contribute to the wellbeing of children and young people in Scotland? (Guidance Section 2.2)

Please tick all of the wellbeing indicators that are relevant to your proposal.

Wellbeing Indicator	Will there be an improvement in wellbeing in relation to this indicator: yes/no
Safe - Growing up in an environment where a child or young person feels secure, nurtured, listened to and enabled to develop to their full potential. This includes freedom from abuse or neglect.	No
Healthy - Having the highest attainable standards of physical and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices.	No
Achieving - Being supported and guided in learning and in the development of skills, confidence and self-esteem, at home, in school and in the community.	Yes
Nurtured - Growing, developing and being cared for in an environment which provides the physical and emotional security, compassion and warmth necessary for healthy growth and to develop resilience and a positive identity.	No
Active - Having opportunities to take part in activities such as play, recreation and sport, which contribute to healthy growth and development, at home, in school and in the community.	Yes
Respected - Being involved in and having their voices heard in decisions that affect their life, with support where appropriate.	No
Responsible - Having opportunities and encouragement to play active and responsible roles at home, in school and in the community, and where necessary, having appropriate guidance and supervision.	Yes
Included - Having help to overcome inequalities and being accepted as part of their family, school and community.	Yes

Post Assessment Review and sign-off

10. Communicating impact to children and young people (Guidance Section 2.2)

How will you communicate to children and young people the impact that the relevant proposal is having or will have on their rights?

Regulatory changes will be laid before the Scottish Parliament in May 2023.

Information on support available for this group will be available on the SAAS and Student Information Scotland websites.

Response to the public consultation will be published on the Scottish Government website (www.gov.scot) and via Citizen Space (www.consult.gov.scot)

Providing information to children and young people on how their rights are being or will be impacted helps to ensure that policy-development is transparent. Are you publishing a child-friendly or accessible CRWIA?

No – information and guidance will be provided on the SAAS / Student Information Scotland website.

11. Planning for the review of impact on child rights (Stage 3)

As SAAS / colleges gather statistical data on student applications, officials will be able to annually monitor the impact of the policy change on this group going forward.

Stage 3 will be completed after a sufficient period of time has lapsed to ensure the policy is bedded in and trend analysis can be captured potentially in 2/ 3 years' time.

12. Compatibility sign off statement

This relevant proposal has been assessed against the UNCRC requirements and has been found to be compatible.

Policy Lead Signature & Date of Sign Off: Nicola Nisbet 27/04/2023

Deputy Director Signature & Date of Sign Off: Catherine Topley 25/05/2023

SGLD Sign Off: Yes No



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