

# **Residency criteria for access to financial support in Further and Higher Education**

## **Consultation Analysis**

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## 1. Executive Summary

Following a judicial review hearing at the Court of Session, the Court issued a decision on 9 September 2022 declaring the *long residence rules* contained within the Students' Allowances (Scotland) Regulations 2007 to be unlawful.

Although the regulations had since been repealed, mirrored long residence rules were contained within the current regulations, the Student Support (Scotland) Regulations 2022. At the time of the Court's decision, Scottish Ministers gave an undertaking to review the residency eligibility criteria in advance of the 2023/24 Academic Year (AY) which commences on 1 August 2023.

A public consultation was launched on 24 January 2023 and ran until 31 March 2023 in which 131 responses were received. Those responses along with stakeholder engagement carried out have helped to shape the new residency policies being laid before Parliament.

While the consultation has helped identify a number of important points which have been reflected in our response, it has also helped identify some areas where further consideration will now be required. These are set out in more detail in this document.

For the 2023/24 AY, the Scottish Government have amended their residency eligibility criteria in two areas, namely:

- Relevant connection to Scotland
- Young unaccompanied Asylum Seekers and children of Asylum Seekers

Further information on these changes are set out in this document.

The Scottish Government would like to thank everyone who took the time to provide a written response to the consultation exercise and who took the time to meet with officials especially those individuals who had been adversely impacted by the previous long residence rules.

## **2. About this report**

This report provides an analysis of responses to the Scottish Government's consultation on the "Residency criteria for access to financial support in Further and Higher Education" which ran from 24 January 2023 to 31 March 2023.

The consultation paper can be accessed at:

[Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.consult.gov.scot/consultations/changes-to-residency-criteria-for-access-to-financial-support-in-further-and-higher-education)

### 3. Introduction

Following a judicial review hearing at the Court of Session, the Court issued a decision in the case of [Ola Jasim v Scottish Ministers \[2022\] CSOH 64](#) on 9 September 2022.

The Court declared paragraph 1(c)(ii) and (iii) of schedule 1 of the Students' Allowances (Scotland) Regulations 2007 ("the 2007 Regulations") (known as 'long residence rules') to be unlawful in light of Article 14 of, and Article 2 of the Protocol 1 to, the European Convention on Human Rights (ECHR).

#### 3.1 Long Residence

Generally, prior to the 2017/18 Academic Year (AY), only students with settled status in the United Kingdom who had been resident in the UK / Islands for three years and were ordinarily resident in Scotland on the relevant date would be entitled to home fee status, tuition fee and living cost support during their studies, with some exceptions (for example, frontier workers, refugees and those with temporary protection).

The long residence rules came into force on 1 August 2017, following the Supreme Court judgement in the case of *R (Tigere) v Secretary of State for Business, Innovation and Skills* [2015] 1 WLR 3820 which declared it unlawful on ECHR grounds to refuse the petitioner student financial support purely on the basis that she was not settled in the United Kingdom. The effect of the judgement led to the Scottish Government considering whether its previous eligibility criteria for accessing student support were in contravention of ECHR rights.

As a consequence, the long residence rules were introduced into paragraph 1(c)(ii) and (iii) of schedule 1 of the 2007 Regulations, in the following terms:

#### Schedule 1 – Persons eligible for allowances

1. A person who –

(a) is ordinarily resident in Scotland on the relevant date;

(b) has been ordinarily resident in the United Kingdom and Islands throughout the period of 3 years immediately preceding the relevant date; and

(c) is –

(i) settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971 on the relevant date; or

(ii) under the age of 18 and has lived in the United Kingdom throughout the seven year period preceding the first day of the first academic year of the course; or

(iii) aged 18 years old or above and, preceding the first day of the first academic year of the course, has lived in the United Kingdom either half of his or her life or a period of twenty years."

Equivalent amendments were made to other pieces of student support legislation at the same time, to ensure that individuals who met the long residence rule would be entitled to the full range of student support.

The 2007 Regulations were revoked upon the introduction of the Student Support (Scotland) Regulations 2022 ("the 2022 Regulations"), which came into force on 1 August 2022. However, the 2022 Regulations have mirrored the long residence rules at paragraph 1(c)(ii) and (iii) of schedule 1.

The Court found that the long residence rules failed to strike a fair balance between the impact they had on those excluded from eligibility for student support and the benefit to society of having clear rules restricting funding to those with a connection to Scotland.

The overarching policy rationale for requiring students to have settled status to access student support was because it was considered to be a clear way for individuals to demonstrate a connection to Scotland, which in turn would suggest that they were more likely to remain here and make a longer-term contribution to the Scottish economy after graduation. Without the requirement for such a connection, there would be a risk of finite public resources for student support being provided to students who would be unable to complete their course because their time in the UK was limited or being unable to remain and contribute to society after completing their studies.

The long residence rules, however, provided a route for those who did not have settled status to access home fee status and student financial support provided they were ordinarily resident in Scotland on the relevant date and had resided within the United Kingdom for a specified period of time. These rules allowed people to establish a connection with Scotland even in the absence of settled immigration status.

These rules were part of the criteria for eligibility for access to financial support in Further Education and Higher Education. In Further Education, students who qualify for full support are able to access free tuition and bursary support via their college. In Higher Education, eligible students are able to access free tuition (tuition fee grant), bursaries and/or student loans via the Student Awards Agency Scotland (SAAS).

### 3.2 Future eligibility criteria

Although the Court's decision was in relation to regulations which have now been revoked, Ministers gave an undertaking to review the residency criteria contained within paragraph 1 of schedule 1 of the 2022 Regulations and sought to consult on proposed changes before they were enacted.

### 3.3 Consultation

This consultation ran for a shortened period (10 weeks) rather than the standard 12 weeks. This was to enable the necessary analysis work to be undertaken along with the development of new legislation. The draft legislation requires to be laid in the Scottish Parliament in sufficient time to allow proper scrutiny and to ensure that the changes can take effect from the start of the 2023/24 academic year, being 1 August 2023.

### 3.4 Stakeholder Engagement

In concurrence with the consultation, Scottish Government officials invited stakeholder groups with a vested interest in the topic to meet to discuss the proposals laid out in the consultation exercise. The following stakeholders accepted the invitation to meet:

- Children and Young Persons Commissioner for Scotland
- JustRight Scotland
- National Association of Student Money Advisers (NASMA)
- National Union of Students (NUS) Scotland
- Poverty Truth Commission
- Scottish Refugee Council

In addition, Scottish Government officials heard from a small number of students directly who had been adversely impacted by the long residence provision.

#### 4. Overview of Respondents

A total of 131 written responses were received.

Of the 131 responses, 104 have been published on the Scottish Government website. The remaining 27 respondents did not want their response to be published.

All responses have been considered in this analysis, irrespective of whether or not they have been published. The published responses can be accessed at:

[Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.consult.gov.scot/consultations/changes-to-residency-criteria-for-access-to-financial-support-in-further-and-higher-education)

Of the 131 responses, 31 were received from organisations primarily based in Scotland, 97 from individuals and 3 from campaigns.

A full list of respondents can be found at [Annex A](#).



## 5. Analysis

There were 11 questions in the consultation document which related to residency eligibility for student financial support in Further and Higher Education. 8 of those questions asked for yes/ no answers and the remaining 3 questions provided an opportunity for respondents to provide additional commentary to support their responses elsewhere.

The below analysis follows the layout of the consultation document.

All questions which asked for a “yes” or “no” answer have been broken down into the following categories for responses:

- Yes – the respondent selected “yes” when answering the question
- No – the respondent selected “no” when answering the question
- Don’t know – the respondent selected “don’t know” when answering the question
- Not answered (NA) – the respondent did not answer the question and made no comments about the proposal

### 5.1 Question 1

Do you agree with the overarching policy aim that students need to be able to demonstrate a connection to Scotland in order to obtain financial support from the Scottish Government for their studies?

108 respondents agreed with the overarching policy detailed in the consultation; 11 respondents did not agree; 9 respondents were unsure and the final respondents did not answer the question.

Answer	Number	% (rounded)
Yes	108	82%
No	11	8%
Don't know	9	7%
Not answered	3	2%
<b>Total</b>	<b>131</b>	

## 5.2 Question 2

Please provide any relevant comments you may have in regards to your answer at question one?

76 respondents provided further detail about their answers to Question 1 set out in the consultation. Key themes have been identified from the responses. Below are a snapshot of responses under those themes.

Full responses (from those who gave consent to publish) can be found at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](https://consult.gov.scot/changes-to-residency-criteria-for-access-to-financial-support-in-further-and-higher-education)

### 5.2.1 Relevant connection to Scotland

Whilst the majority of respondents to question one agreed that in order to receive financial support from the Scottish Government, a student must demonstrate a 'relevant connection' to Scotland, there were varying views on how that connection could be demonstrated. Some were in favour of time periods being set (as with the current regulations), although there were some differing opinions on what constituted an appropriate period. Some felt that 'connection' could be linked to being of Scottish descent (through parent, grandparent etc.) and that would be sufficient to access support. Some felt the connection should be linked to post-study, what the student's contribution would be to the Scottish society/ economy upon graduation.

Others commented on the budgetary impact of expanding the relevant connection.

Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education – Scottish Government – Citizen Space \(consult.gov.scot\)](https://consult.gov.scot/changes-to-residency-criteria-for-access-to-financial-support-in-further-and-higher-education)

### 5.2.2 Connection

#### Response no. 1

Although none of the above include a clause for Children of a Scottish parent who has worked abroad for a number of years but the child has not lived in Scotland, the clear connection is there as one of the parents is Scottish yet the child is stopped from choosing to come back to study as they are considered as an International student, they are being discriminated against due to the parents work commitments.

#### Response no. 2

We believe that students need to demonstrate a connection to Scotland, however, we must stress that this is as much about looking forward to the potential life, contribution, and connection to Scotland that the prospective student may have, as much as looking back to their past, reflected in the length of residency. This concept was emphasised in Lord Sandison's Opinion in *Jasim v Scottish Ministers* which found that the 7 years and half-life residency requirement in the 2007 SAAS Regulations were unlawful when considering Article 14 (the right not to be discriminated against) and Article 2 of Protocol 1 (the right to education) of the European Convention on Human Rights, resulting in this current consultation process.

By taking residency as the litmus test for connection to Scotland, individuals will inevitably be excluded from student support despite clear objective connections to Scotland. Arguably, focusing on the length of residency too much would be in conflict with Article 28 of the UNCRC which seeks to 'make higher education accessible to all', and Article 2 in which State Parties are to ensure that children do not face discrimination.

Connection to Scotland is key; however, connection requires us to look forward rather than solely backward as has been the case in the past.

#### Response no. 3

The current policy enables students with no Scottish connections to benefit from Scottish education and financial support, yet discriminates against UK citizens who are Scottish with strong Scottish connections

#### Response no. 4

JustCitizens understand and agree with the overarching policy aim that suggests that students need to be able to demonstrate a connection to Scotland to obtain financial support from the Scottish Government for their studies. With this in mind, we want to highlight that the term "connection" is broad and wide encompassing; it can be defined in multiple ways. As a lived-experience panel comprised of New Scots, we want to ensure the term "connection" encapsulates our experiences as well. We believe that "connection" should not be narrowed to the number of years people have lived in Scotland, or whether individuals were born in this country. For us, our connection to Scotland should be also defined by our future here – the possibilities of a new life, the urge to contribute to society in this country, and the desire to make Scotland our home.

### **5.2.3 Time Period**

#### Response no. 1

I think 3 years of being taught in Scotland (Standard Grade & Highers) while the parents are also resident in Scotland demonstrates a connection to Scotland and therefore eligible.

#### Response no. 2

If there is no evidence of a student having an established link to Scotland then they should not be able to get any support. They personally should have more than 3 years of residing AND contributing to the country.

#### Respondent no. 3

Yes I agree that living in Scotland for a predetermined timeframe is a good base line for access to HE.

#### Response no. 4

The criteria to assess a person is based on the long residency route which is more than 3 years takes away the capacity for growth and development.

#### Response no. 5

I believe that students should have previously contributed to the Scottish Economy in some format, that could be that they were born and brought up in Scotland, their relatives and family reside in Scotland and have done so for a minimum of three years or that they have lived and worked in Scotland for a period of three years.

#### Response no. 6

A student or their dependent who is staying legally in Scotland for at least 3 years and working would've contributed significantly to the economy of Scotland through taxes and spending. Hence, should be considered receive financial support in terms of home student fees when they want to further their education and contribute higher to the economy.

#### Response no. 7

If a child has attended Scottish schools. Gained results from the sqa then they should be eligible for funding at a Scottish university

#### Response no. 8

Although the rationale is sound for this rule and in the main I agree, however, I would say flexibility is needed, thinking here about kids who have come through school system and looking to advance into FE and HE institutions and may be prevented from doing so. At present there is a barrier here for continued study

#### Response no. 9

Yes I do believe a connection to Scotland should be shown for suitable student support and finance. However, the three year residency should not be it.

#### **5.2.4 Post study**

##### Response no. 1

Individuals who have come from abroad to live and settle in this country should be enabled to study here. This will benefit them and Scotland once they graduate.

##### Response no. 2

Only students who will stay after graduation should be using public funds to support their education

##### Response no. 3

I think it is important that we make the rules such that people who have been resident here for less than three years but have a clear willingness to live and work for Scotland be granted student funding provided they meet general nationality criteria and hold pre-settled/settled status.

##### Response no. 4

It should be necessary for a student to remain intact with Scotland to obtain financial support from Scottish government. Or it could also be other way round if you want to study in Scotland with public funds, you should remain in Scotland for at least an year or so to serve Scotland-- this would cover the necessary residency period.

#### **5.2.5 Budget constraints**

##### Response no. 1

A lot of students living in England or other parts of the UK will take advantage of the free tuition fee scheme if the residency rules do not apply. Even if Scotland offers free education, not applying the residency rules will only put more pressure on or budgets already stretched to maximum

##### Response no. 2

It is simply not tenable for UK and Scottish taxpayers to fund the education of persons without a demonstrable connection. This point is all the more important in the era of ever greater demands on the public purse.

### Response no. 3

This is tax payers money so needs to be allocated with due diligence. People should have a strong connection to Scotland or have been given leave to remain as a refugee

### Response no. 4

I do agree students should have a connection to Scotland in order to access to financial support for their studies. For example they have been ordinarily living in Scotland for 3 years and they are allowed to leave to enter or remain in the U.K. This can avoid people misusing the system to gain financial support for their studies that could impact on the public finance.

## **5.2.6 Asylum Seekers**

Support for Asylum Seekers was also a prominent theme in response to question one. In the current regulations there is limited provision for unaccompanied asylum seeking children and children of Asylum Seekers and there are rules in place for access to student financial support for those who are granted Refugee status.

Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education-- Scottish Government-- Citizen Space \(consult.gov.scot\)](#)

### Response no. 1

Strength in diversity. We should be considering how we can support refugees and asylum seekers to study.

### Response no. 2

Instead, it would be fairer to widen the criteria to those seeking asylum and on other types of leave, such as children of those on work or study visas. Generally, people who enrol in education will develop connections that will make them settled in Scotland. This is certainly true for people seeking asylum-- of which an overwhelming majority are granted asylum either on first instance or appeal, and whom the Scottish Government, through its New Scots strategy, claims to want to integrate from "day one" ([Link to Refugee Council's Top 10 Facts About Refugees and People Seeking Asylum - https://www.refugeecouncil.org.uk/information/refugee-asylum-facts/top-10-facts-about-refugees-and-people-seeking-asylum/](https://www.refugeecouncil.org.uk/information/refugee-asylum-facts/top-10-facts-about-refugees-and-people-seeking-asylum/)).

On top of this, given the small minority of people from these backgrounds in proportion to the entire population in Scotland, and given the awful barriers they already have to face when making a life here, it is common sense to extend financial support to these groups and give them the support they need to thrive and contribute to their potential in a diverse and forward-looking Scotland.

#### Response no. 3

Asylum seekers and refugees would not have the right to this support, which would be unfair. There should not be bias towards European immigrants only.

#### Response no. 4

The Scottish Government should also include asylum seekers 25 years old and above. No asylum seekers regardless of their age should be left out in getting financial support for accessing higher education in any college and universities in Scotland. Equity and equality should be practiced in the Government. Asylum seekers that are staying in Scotland and have a Scotland address for more than 3 years should be eligible for funding from SAAS to access higher education and should be treated as a home student rather than international student at every university and colleges in Scotland.

#### Response no. 5

We consider that there are particular groups of children and young people whose eligibility ought to be considered separately and who should not be subject to the same residence criteria. For example unaccompanied asylum seeking children should have the right to financial support to access education from arrival in Scotland regardless of decisions made or not made by the Home Office.

Scottish Ministers have duties towards these children and young people in both international (ECHR and UNCRC) and domestic law (Part 9 of the Children and Young People (Scotland) Act 2014). They should be treated the same as any other looked after child in terms of ability to access education.

#### Response no. 6

We agree with the overall principle, but question the fact that people with outstanding asylum claims are excluded from being able to demonstrate a connection to Scotland.

Refugee Council figures from 2022 show that the number of people waiting for a decision for over 3 years has more than quadrupled since 2020, and the backlog has continued to grow.

Many of the people seeking asylum that we work with spend this time volunteering, building community connections, and seeking to continue their studies so that they are able to prepare for a successful future in Scotland. They have the same level of connection to Scotland as dependants of individuals on student visas, who will be covered by the new residency rules. Moreover, while the consultation paper claims that this is related to a restriction on recourse to public funds under UK immigration law, higher education funding is not classed as a public fund so “a person can access home fees, or receive student support, if they are subject to the ‘no recourse to public funds’ (NRPF) condition” ([Link to NRPF Network's Page on Higher Education - https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/education/higher-education](https://www.nrpfnetwork.org.uk/information-and-resources/rights-and-entitlements/education/higher-education)).

### **5.2.7 Armed Forces personnel/ dependants**

There were a number of responses from individuals and organisations who have raised exception to the current rules in place in regards to financial support for armed forces personnel and their dependants. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education— Scottish Government— Citizen Space \(consult.gov.scot\)](#)

#### Response no. 1

Military personnel need special rules.

#### Response no. 2

Armed Forces Families: Currently rules based on “connections to Scotland” for Armed Forces families are based solely on where the service person joined the military. This immediately discounts anyone who joined the military outside of Scotland, regardless of how long they have lived in the country.

Secondly, the joining location of the service person overrides the circumstances of the spouse/dependants.

This issue whilst complicated, needs to be considered in more detail to make it fairer for families. I can understand that I should not be entitled to financial assistance, but it feels like my family are being punished for my service.

#### Response no. 3



The RAFFF request that the Scottish Government consider what constitutes an appropriate connection to Scotland and ensure that the Armed Forces community are considered in any changes to the residency criteria for accessing FE/HE funding to ensure they are treated fairly. The RAFFF have evidence to suggest that some members of the RAF community feel that they are disadvantaged by the current FE/HE funding systems.

We encourage the Scottish Government to engage with the relevant stakeholders, including the MOD and Families Federations, on this matter and review the FE/HE funding arrangements for students from an Armed Forces background.

We encourage the Scottish Government to engage with the relevant stakeholders to ensure that information on education funding eligibility and entitlements is clear and easily accessible to support Armed Forces personnel and families to make informed choices about their educational pathways.

#### Response no. 4

The Army Families Federation (AFF) would encourage the Scottish Government to undertake a broader consultation to look at a wider amendment to funding rules, in order to consider other cohorts who are disadvantaged by the current policy on access to funding for Higher and Further Education in Scotland. Specifically, dependents of serving UK Armed Forces personnel, who can be disadvantaged by an interpretation of current policy that leads to them being categorised as immigrants rather than UK citizens.

Whilst AFF agrees that there should be a current connection to Scotland to access funding for Further and Higher Education, our evidence suggests that military families are disadvantaged in comparison to civilian Scottish families when being considered against current criteria. Service personnel and their families tell us that there is a lack of clear cut information and guidance around how to apply policy when considering an application from a military connected young person for FE or HE funding. Having reviewed the information and sought clarification on interpretation from a number of sources. We support this view.

AFF believes that concerns over funding at such a key period in a young person's life can make them feel they do not belong as a UK citizen and are powerless over their own life choices. Their voice and personal choice is unheeded due to the fact that they are a military child.

AFF requests that the Scottish Government:

- Provides clarity and direction to allow 16-18 year old dependents of serving UK military personnel the access to the same education funding as they would receive in England, and that a Scottish child would receive if living in England.
- Reviews the policy for access to FE and HE funding, recognising that the rules to determine "settled status" and "ordinary residence" are not necessarily applicable for a UK

Armed Forces family.

- Takes into account the voice of the young person when considering their funding access for both FE and HE given the significant impact that this policy has on their life choices.

#### Response no. 5

Young people from armed forces families are one such group who can experience disadvantage in terms of accessing financial support for further and higher education.

Currently, decision-making about access to financial support for the children of serving personnel of the Armed Forces is largely determined by a reciprocal agreement or 'common policy' applied across the four student funding agencies. This policy states that children from an armed forces family who are seeking student funding, but do not have permanent residence, must apply to the student finance agency from the country in which the serving parent first signed up to the military. This policy was created to address the fact that military families may frequently move as a result of the serving parent's job, with many living in Service Family Accommodation which is not considered a permanent ordinary residence.

The policy attempts to create some clarity for both funding decisions and families experiencing high levels of mobility. However, while we accept that the mobile nature of armed forces life poses challenge for funding decisions, we believe the common policy applies too rigid an approach, for what is a very diverse community with many different paths and experiences. Most worryingly, this policy appears to create disadvantage for the children of serving personnel which contravenes expectation set by the Armed Forces Covenant which states that no policy or practice should disadvantage a member of the Armed Forces community, including children, as a result of the serving person's role within the military.

This impact is further concerning when considered in light of research which suggests children from armed forces and veteran families experience various types of educational impact growing up, with consequences for future education. Further, even for those who do achieve the qualifications required for higher education, research suggests they are 40% less likely than their peers to apply for university.

The current reciprocal agreement means that children and young people from armed forces families are not being given an equal chance of entering higher education as their student finance arrangements are more complex and some will not benefit from Scotland's free tuition simply due to their serving parent's career choice.

The Armed Forces Covenant was designed to try and remove disadvantage for service people, veterans and their families. By only allowing children and young people from armed forces families to apply to the funding body where their serving parent signed up, they are being disadvantaged as they may have lived in Scotland for many years yet must apply to the English/Welsh/Northern Irish funding body. As Scotland has free tuition, this puts this

group of children and young people at a disadvantage compared to their Scottish civilian peers. Forces Children Scotland believes that this means that their serving parent's service is negatively impacting these children, acting in opposition to the Armed Forces Covenant.

### 5.3 Question 3

Do you agree that the length of a person's residence in the UK (together with a requirement to be ordinarily resident in Scotland on the relevant date) is an appropriate way of assessing whether a person has a sufficient connection with Scotland to qualify for financial support in Further / Higher Education?

76 respondents agreed that using the length of a person's residence in the UK is appropriate to assess a connection with Scotland; 46 respondents did not agree; 6 respondents were unsure and the remaining respondents did not answer the question.

Answer	Number	% (rounded)
Yes	76	58%
No	46	35%
Don't know	6	5%
Not answered	3	2%
<b>Total</b>	<b>131</b>	

### 5.4 Question 4

Do you agree that 3 years' residence in the UK is a suitable minimum residence requirement for setting eligibility for student support in Scotland?

65 respondents agreed that 3 years' residence in the UK is suitable as a minimum requirement for eligibility for student support; 36 respondents did not agree; 7 respondents were unsure whilst the remaining 3 respondents did not answer the question.

Answer	Number	% (rounded)
Yes	85	65%

No	36	27%
Don't know	7	5%
Not answered	3	2%
<b>Total</b>	<b>131</b>	

### 5.5 Question 5

Do you agree that residence based on any form of leave to enter or remain from the Home Office in the UK should entitle a person to student support in Scotland, provided they otherwise meet the residence requirements?

87 respondents agreed that the residence based on any form of leave to enter or remain in the UK should entitle a person to student support; 24 respondents disagreed; 14 respondents were unsure and the remaining 6 respondents did not answer.

Answer	Number	% (rounded)
Yes	87	66%
No	24	18%
Don't know	14	11%
Not answered	6	5%
<b>Total</b>	<b>131</b>	

### 5.6 Question 6

Do you agree that individuals who are here specifically for education purposes and are on a student visa, should remain ineligible for the financial support package from the Scottish Government?

91 respondents agreed that those here specifically for education purposes and are on a student visa should remain ineligible for financial support; 21 respondents disagreed; 15 respondents were unsure whilst the remaining 4 respondents did not answer.

Answer	Number	% (rounded)
Yes	91	69%
No	21	16%
Don't know	15	11%
Not answered	4	3%
<b>Total</b>	<b>131</b>	

### 5.7 Question 7

Do you think eligibility should be extended to the dependents (child, spouse or civil partner) of those with student visas?

62 respondents disagreed that eligibility should be extended to dependents of those with student visas; 43 respondents agreed; 22 respondents were unsure whilst the remaining 4 respondents did not answer.

Answer	Number	% (rounded)
Yes	43	33%
No	62	47%
Don't know	22	17%
Not answered	4	3%
<b>Total</b>	<b>131</b>	

### 5.8 Question 8

Should financial support beyond support already given through discretionary funds be extended to students who are currently ordinarily resident in Scotland and have sought asylum from the UK Home Office, but whose application is still pending?

57 respondents agreed that support should be extended to students with pending asylum claims; 50 respondents disagreed; 20 respondents were unsure and the remaining 4 respondents did not answer.

Answer	Number	% (rounded)
Yes	57	44%
No	50	38%
Don't know	20	15%
Not answered	4	3%
<b>Total</b>	<b>131</b>	

### 5.9 Question 9

Do you think eligibility for student financial support should be fixed according to an assessment at the start of their course (i.e. with reference to the relevant date)?

59 respondents agreed that eligibility for student financial support should be fixed according to an assessment at the start of their course; 53 respondents disagreed; 15 respondents were unsure whilst the remaining 4 respondents did not answer.

Answer	Number	% (rounded)
Yes	59	45%
No	53	40%
Don't know	15	11%
Not answered	4	3%
<b>Total</b>	<b>131</b>	

### 5.10 Question 10

Do you have any comments on the sort of 'events' or changes in circumstances that should trigger reassessment of a student after the first academic year of their course?

63 respondents provided further detail on the sorts of events or changes in circumstances that should trigger a reassessment. Key themes have been identified from the responses. Below are a snapshot of responses under those themes.

Full responses (from those who gave consent to publish) can be found at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

### **5.10.1 Change of Immigration status/ circumstance**

There were a number of responses which showed support for eligibility to financial support being reassessed due to a change in immigration status/ circumstance. Some responses also provided examples of certain situations which should trigger a reassessment. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

#### Response no. 1

Change of immigration status Change of circumstances which renders them unable to return to country of origin

#### Response no. 2

If a student is given leave to remain after applying for support then they should be reassessed. If support is given in these circumstances they should agree to work x amount of years in Scotland after Completing their course

#### Response no. 3

Changes of circumstances: When a refugee or asylum seeker is granted leave to enter to the U.K. or when someone who is allowed to leave to enter or remain in the U.K. and has reached the 3 years of residence in Scotland should trigger reassessment.

#### Response no. 4

I think if there's significant change like loss of employment or illness or family circumstance change or disaster type situations it should be reassessed.

#### Response no. 5

Possible changes in circumstances should include: 1- Switching to a new type of visa 2- Extending the current visa

#### Response no. 6

If a student's immigration status changes so that they become eligible or if their length of residency meets the necessary criteria after the first academic year of their course, they should become eligible for funding as soon as practicable. As is currently the case for people who are granted refugee status, this could mean becoming eligible at the start of the next academic year. Reassessing a student's eligibility would reduce the likelihood of disruption to their studies and avoid financially stressful situations where students are locked in to higher rates of fees for the duration of their course.

#### Response no. 7

Status in form of leave to enter or remain can change during academic years.

#### Response no. 8

We think that changes in an applicant's immigration status must be considered a circumstance which triggers reassessment of a student's eligibility after the first academic year of their course.

We also think it is important that the initial assessment of a student's circumstances upon applying needs to take into account the prospect of the student meeting residency requirements halfway through their course. This improves accessibility and undermines the prospect of disruption to the course. It gives the applicant an opportunity to decide whether to postpone the start date of their course, or whether they are able to partially fund their course until they qualify for student funding. We believe that improving this aspect of accessibility is incredibly important in combating discrimination in education.

We also want to flag that once a person is out of the education system for a prolonged period of time, they are less likely to return to full time education. This aspect of the student finance regulations is more likely to affect migrants, placing them in a position of having to accept lower-wage jobs and unequal access to education.

#### Response no. 9



Becoming a UK citizen. Is able to indicate a Scottish connection that was not possible at the start of a student's course.

### **5.10.2 Removal of support**

Some respondents felt that access to student financial support should be removed (and repaid) in certain circumstances. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

#### Response no. 1

If the student shows a lack of interest and commitment to studying, then the assessment process can be imposed. Not all students complete the first year of study, hence the second year should be reassessed so that they can free up space for students that are determined to complete the academic year

#### Response no. 2

Student performance.

#### Response no. 3

if the student involves in criminal activities

#### Response no. 4

Everything is set in advance and should something change ie status then the criteria for that person being accepted was on a different scale and it could be said what happens if it goes the opposite way then is everything canceled and paid back it has to be fair, fair for the student fair for the college fair for the government and fair for the Public in Scotland who would have to pay for all this

#### Response no. 5

Whether they are failing the course, whether they have changed course - plus any criminal charges

#### Response no. 6

If they fail first year and have to repeat it, they should NOT be given support for the repeat year. Similarly if they switch courses and start again from Year One.

### **5.10.3 Qualification after 3 years' residency**

Some respondents felt that if a student should meet the (current) three year residency rule at a point during their studies, this should trigger a reassessment of their eligibility to home fee status/ student financial support. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

#### Response no. 1

Only if their years resident in Scotland hit the requirement while on their course.

#### Response no. 2

Some students may not fulfil the requirements of being residents in Scotland in the first year of university but may be able to fulfil it in the second year.

#### Response no. 3

Changes to asylum status should be considered, along with reaching the 'over 3 years' residency requirement

#### Response no. 4

A student who enters a course, not yet a resident as per the 3 year requirements (but who is a citizen but moved to Scotland less than 3 years ago with family who intend to stay), but who upon starting their second year would be considered a resident

#### Response no. 5

For the reasons set out above, we believe that meeting the 3-year residency requirement should be considered an 'event' important enough to trigger a reassessment of a student's eligibility after the first academic year of their course. We agree with the consultation that a student obtaining Indefinite Leave to Remain or British Citizenship should also qualify as an 'event'.

#### 5.10.4 Annual Re-assessments

The subject of re-assessments of eligibility (potentially on an annual basis) was also regarded as a key theme from responses to this question. The responses to this question did draw out differences between the benefit of undertaking regular reassessments of eligibility versus the operational impact on doing so particularly for HE courses given their duration. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

##### Response no. 1

The burden on further and higher education providers of requiring reassessment of a student's eligibility after one year could be significant. As with the proposed change to a system with no long residence requirement, the consultation paper fails to estimate the cost to the taxpayer/ education providers of the change.

In weighing up the interference with an individual's right to an education against the benefit to Scottish society of the policy this is clearly an important, perhaps the most important, consideration. If the changes, say, would affect only a small number of people every year, then the arguments in their favour would be considerably stronger. Similarly, if the numbers were relatively high, and so the cost to the taxpayer and education institutions large, the arguments in favour would be weaker.

##### Response no. 2

In FE setting, assessments are carried out on an academic basis at the relevant date and this should remain the case going forward.

##### Response no. 3

Ideally it should be reassessed annually in favour of the student. They may have received ILR or married and their status may have changes in their second and third years of studying. It is important to make students' lives easier and put an end to disparity between "home" and "international" students who lived in Scotland for years and want to make this country their home.

##### Response no. 4

The Scottish Funding Council (SFC) has a core legislative duty to secure the coherent provision by the post-16 educational bodies, of a high quality, fundable, further and higher education. SFC provides funding to universities for Scottish domiciled students places as outlined in the relevant regulations, currently, the Education (Fees) (Scotland) Regulations 2022.

SFC is committed to supporting students and has always responded flexibly to changes in regulations regarding excepted students, for example for Ukrainian nationals. As such we would adhere to any further changes to future regulations in regard to excepted students and those eligible for home fee status.

However, in regard to the “relevant date” and any flexibilities, as SFC has an operational responsibility for the administration and payment of funds, we would ask that when considering the type of events or changes that would alter the status of a student, consideration be given to the scope of any such change of circumstances and the potential number of students whose status and eligibility might change due to these flexibilities.

As aforementioned, we are the funding body responsible for further and higher education institutions, the practical impact of any changes on SFC’s operation would also need to be considered. This should also capture the prospect of the impact upon “controlled subjects”.

Therefore, SFC considers that any proposed events or change of circumstances ought to be of a substantive nature, to ensure that the number of potential students affected is manageable from an operational perspective and does not disproportionately affect the ability of SFC to plan and deliver its necessary functions

#### Response no. 5

Should be reassessed each year

#### Response no. 6

The granting of Refugee Status or securing indefinite leave to remain are 'events' that should trigger reassessment of a student's eligibility after the first academic year. These changes would demonstrate an established long residency and relevant connection to the UK. Ordinary residence in relation to relevant connection to Scotland or in Scotland rules would then be a factor in assessment.

Allowing other categories to potentially change status during their studies would cause an issue for institutions' financial planning in that an international-fee paying student who had been expected to pay international tuition fees over a four-year course, for example, then becomes eligible for the Home fee rate and funding in year 2. This might also have

significant impact on our SFC number cap which could result in institutional penalties over which we would have little control

#### Response no. 7

It is important for Universities to be able to make accurate predictions of fee status of students for the purposes of management of our “Home” student population. Under the current regulations, very few students’ fee status changes after the first year, mainly students who are recognised as refugees or are granted leave on asylum-related grounds.

The University recognises that there are students who may “miss out” on a home fees assessment or student support at the start of their course for whom a re-assessment may be proportionate: for example those who become the spouse or child of a person settled in the UK after the relevant date.

Any proposed schedule of events should be considered in conjunction with any proposed changes to the relevant date to ensure that there is no unintentional barrier for those to whom the Scottish Government wish to extend this possibility and, likewise, that changes to the relevant date do not, in and of themselves, open up the possibility of widespread re-assessments for groups not intended to benefit.

Any proposal to significantly extend the range of students who may benefit from a re-assessment of fees after the first year of study needs to be balanced with the need for Universities to be able to reasonably accurately predict their student numbers in line with outcomes agreed with the Scottish Funding Council

### **5.11 Question 11**

**Do you have any other comments on the current policy of carrying out an assessment of eligibility on the relevant date, or the proposals to change it?**

62 respondents provided additional comments. Key themes have been identified from the responses. Below are a snapshot of responses under those themes.

Full responses (from those who gave consent to publish) can be found at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.consult.gov.scot/consultations/changes-to-residency-criteria-for-access-to-financial-support-in-further-and-higher-education)

#### **5.11.1 Public Funds/ Value for Money**

Some respondents added additional commentary about the need to ensure changes to residency eligibility were value for money. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

#### Response no. 1

This is complex and resources are finite so there does need to be value for money so how will we collectively know the approach is helping Scotland to thrive ? If we cannot explain this and measure it we shouldn't be doing it

#### Response no. 2

Public money is limited and those responsible for the public purse need to ensure that we are not supporting people whose main aim is to have their education paid for and then leave.

#### Response no. 3

If you are scottish you should get the free education and funding to help, as a nation we have a lot of good talent which should be nurtured and not denied due to lack of personal finances. Overseas students and from other countries should pay. I don't think overseas students should be preferred before scottish students due to costs.

#### Response no. 4

I think the Government should ensure a balance that is fair to students and taxpayers.

### **5.11.2 Armed Forces**

As highlighted at question two, a key theme from the additional commentary was in relation to the support offered to Armed Forces personnel/ dependents who are wishing to undertake a course of Further or Higher Education in Scotland. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

#### Response no. 1

I don't agree with armed forces serving personnel who live in Scotland not being classified as normally resident. I believe if they have lived in Scotland for the requisite time their children should be eligible for funding.

#### Response no. 2

AFF believes that the current FE funding policy is not fit for purpose when applied to serving Armed Forces families. Allowing these families to have the opportunity to fairly establish their 'ordinary residence' in Scotland based on their length of cumulative time in Scotland, family connections, and economic and social contribution (as voters and tax payers in Scotland) would remove the inherent disadvantages that currently exist for these serving UK citizens.

Armed Forces children undertaking HE courses within Scotland should be considered on a case by case basis, to enable them to demonstrate their Scottish identity and affinity to Scotland, as many complete their education in Scotland, or have lived periods of their lives in Scotland, but have had to live elsewhere due to their parent's service in the UK Armed Forces.

#### Response no. 3

The current policy and Regulations are not applied to children/dependants of armed forces personnel. Instead, a non-statutory guidance document is given primacy over the legally agreed regulations. Therefore, despite many instances where armed forces students could satisfy residence, they are refused student finance from what is in essence their home nation.

### **5.11.3 Relevant Connection to Scotland – post- study**

As highlighted at question two, some respondents had additional comments in regards to relevant connection to Scotland, in turn their eligibility for student financial support being linked to their post-study careers/ lives in Scotland. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

#### Response no. 1

Assessment should focus on intention to settle in Scotland. The 3 year rule is arbitrary and can be disadvantageous to Scots who have returned home to work having been outwith Scotland for work for a period if time.

#### Response no. 2

At the moment many "international" students who lived here for years and currently in full time education on yet another student visa (because you need to be on some form of visa for 10 years to get ILR, unless you are on work visa for 5 years or have a 'local' partner) pay three times higher fees than 'locals' and ineligible for most of the support funds, and no public funds of course. While this is understandable for those who only came here to study, it is unacceptable for those who came here to establish life. These educated people consider going back to their home country just because they and their families have spent all their savings to acquire education and build life in Scotland, and with current cost of living crisis there is no more financial means to sustain life here. Why are they different from 'home' students? Have they worked less, contributed less? No. I definitely think that prior residence duration and intentions to stay should be the only criteria to qualify for 'home' fees and financial support, regardless of their leave type.

#### Response no. 3

To give a fair chance to people who have settled in the country to have opportunities they could not afford is good. A condition for said funding should be that they agree to stay and work in Scotland for 5 years after graduating to be eligible for funding.

#### Response no. 4

I think the length of residence should be reduced to 3 years in Scotland, in line with requirement of British citizen. In addition I do agree the students should have the status of the right to enter or remain in the UK before being eligible for financial support. The population in Scotland is in decline, the Scottish Government should put in place policies to attract people to choose Scotland as their home to raise a family. By simplifying the eligibility criteria as said above, it can certainly make Scotland highly competitive to attract people moving to live in Scotland.

In addition I would suggest the Scottish Government to become even more generous in terms of financial support to students who don't meet the above criteria as long as they agree to stay in Scotland for 5 years after they have completed their studies.

### **5.11.4 Relevant Date**



The relevant date is regarded as a 'bright line' as it is a set date(s) in which residency eligibility is currently assessed against. Further to the responses provided at question ten, some respondents provided further commentary on the use of the relevant date at question eleven. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

#### Response no. 1

Ultimately there has to be a cut off point. And this can and will undoubtedly lead to hard cases, such as Jasim, where a person may miss out by a short period. As above, if there are relatively small numbers, then perhaps a more flexible 'relevant date' could be tenable.

#### Response no. 2

As mentioned, we believe that these assessments need to be carried out with a degree of flexibility and discretion. If the assessing officer notes that the applicant will meet the criteria in two months, this needs to be considered when making a decision. They should not be barred from accessing funds because of this.

We highly encourage the Scottish Government to take this opportunity to put forward fairer, more just processes that consider the different situations which may contribute to an applicant missing the eligibility by a margin.

We urge flexibility to be used, and a more human approach to education to be taken. We want an accessible, inclusive education system which gives people the tools to improve their life and society

#### Response no. 3

I strongly feel that the question of ordinary resident status should consider the history or residency rather than relating it to a single, inflexible date that does not allow for the individual consideration of personal circumstance. I also feel that the student's education history (particularly in relation to reason and circumstances that relate to boarding) should be taken into account and have a greater weighting in the decision process.

#### Response no. 4

In practice, the assessment is undertaken at the point of offer rather than on the relevant date. Residency periods are however assessed relative to the relevant date. It is also noteworthy that an individual receiving leave to remain in England on 1 September would be eligible for student support from Student Finance England to attend a Scottish University. The same individual if they had been resident in Scotland would not be eligible. The length of a person's residence in the UK, together with a requirement to be ordinarily resident in Scotland on the relevant date, is an appropriate approach for those prospective students who are settled in the UK and would otherwise demonstrate ordinary residence in other parts of the UK.

However, there also needs to continue to be recognition of the need for exceptions to this in circumstances, such as Refugee status, which should be eligible for funding support without having met residency criteria.

#### Response no. 5

One respondent supports the relevant date being set in August of each academic year. Another respondent felt the relevant date should be the course start date, not the current relevant date(s). It is unfair if an individual passes the three-year mark after the relevant date and before the course start date.

One respondent felt a set date would simplify this process. They also felt clearer guidance on "ordinarily resident" would be helpful. Another respondent advised they have not encountered students in the last two years who are not willing to learn. If the process is simplified it will provide a significant benefit. This process must be subject to a rigorous equality impact assessment. The respondent stated, "Scotland is an inclusive society so let's make it so".

#### Response no. 6

Completely removing the relevant date, or any similar fixed point of assessment, could create a number of problems that could present significant administrative challenges to Universities:

The potential for any student to become eligible for home fees and support at any point during their studies, irrespective of specified 'events' suggested in question 10 above. Without a "relevant date" or equivalent with which qualifying criteria are associated, there is no fixed point of reference for assessment.

This in turn causes potential difficulties for Universities in managing and predicting student populations for financial management and funding council purposes. This is because at any

point in their studies, a student meeting the qualifying criteria could change from “international” to “home” fees. It is to be expected that there would be similar operational challenges for SAAS in regard to Student Support - It would also make differentiation between “RUK” and “home” fee payers more problematic.

Currently the relevant date allows us to accurately predict most UK students’ fee status by reference to their likely place of residence on the relevant date.

#### **5.11.5 UK returners / 3 year residence rule**

Some additional commentary was provided at question eleven in regards to those who have entered (or re-entered) the UK and do not have three years’ residence in order to be eligible for student financial support. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

##### Response no. 1

Yes, change the 3 year requirement for citizens with families residing in Scotland who live, work, and pay taxes here. It is financially penalising to those students whose families move here with the intention of staying (partly encouraged by the ‘come home’ campaign of recent years). In every other circumstance, those who move here with a job and citizenship are considered residents (paying taxes, for instance), yet their children are considered foreign students for 3 years

##### Response no. 2

The three-year rule that denies a Scottish student, who is also a UK citizen, financial support for tertiary education, AND, classifies him/her as an "international student" has to be reviewed urgently and retrospectively.

##### Response no. 3

The current policy does not take into consideration Scottish connections. It unfairly bases its criteria on a period of three years. This denies some Scots, like my brother and I, our right to higher education and financial support.

#### **5.11.6 Asylum Seekers**

As noted in respect of question two, support for Asylum Seekers has been a prominent theme in the consultation. Some additional commentary was provided at question eleven in relation to this theme. Below are a sample of responses received on the issue. Given the length of some of the written responses, excerpts have been provided in some instances.

The full written responses can be viewed at: [Published responses for Changes to residency criteria for access to financial support in Further and Higher Education - Scottish Government - Citizen Space \(consult.gov.scot\)](https://www.consult.gov.scot/consultations/changes-to-residency-criteria-for-access-to-financial-support-in-further-and-higher-education)

#### Response no. 1

I would allow students who are asylum seeker who have come through the school system and who do not meet residency criteria to continue their studies free of charge in Further and Higher Education institutions. I would also allow these students access to student Funding and allow institutions to be funded for these students whether through credits or any other criteria.

#### Response no. 2

There should be Equity and Equality when it comes to providing funds for asylum seekers there are residing in Scotland. The policy should include all asylum seekers regardless of their age criteria. Universities and colleges in Scotland should do better in supporting asylum seekers who are keen to access higher education. It doesn't make sense putting asylum seekers as international students where they are not able to fund their course as international fees are too expensive. They should be treated as home students. Asylum seekers that have completed their HNC level at colleges in Scotland should be entitled for financial support or funding from SAAS to enrol in University

#### Response no. 3

We do not believe a potential student should be discriminated against regarding their immigration status. If an individual has any form of leave to enter or remain – aside from a student visa – and has resided here for three years or more, they should be entitled to student support in Scotland.

JustRight Scotland stands squarely against the hostile environment and its impact upon those seeking refuge and asylum in the United Kingdom. We note that the Consultation document proposes that the time spent living in Scotland waiting for asylum should count towards the length of residence. We agree with this, but we would note that people who obtain asylum or another form of leave to remain as a result of an asylum claim, have no length of residence requirement at all under the current regulations. However, we agree that if another form of leave to remain is granted for a young person which is separate from the

asylum process, then it is logical that their time waiting for asylum counts towards their residence. We are in favour of the Scottish Government offering student funding to those in Scotland whose asylum applications are still pending but have been in the United Kingdom for 3 years.

To this end, we would argue that it is fair and reasonable to allow those in the asylum system with a claim being considered by the Home Office, to access student support. The asylum system is already dehumanising and in effect presses pause on families' lives, barring them from working and enforcing poverty through the asylum support system. The children of asylum seekers are particularly badly affected by being unable to access higher or further education. Once they leave school – having lived in Scotland for years – they are forced to watch their peers continue their lives, while they are condemned to civic limbo. Only a tiny number of people are supported through the philanthropic funding of sanctuary scholarships.

We note that access to education has in the past been extended to children of asylum seekers and young asylum seekers as per Schedule 2, Part 2, Section 22 of the Student Support (Scotland) Regulations 2022. This section states that children of asylum seekers and young asylum seekers are eligible for tuition funding only if: — they have been residents in Scotland for three years; — are resident in Scotland on the relevant date; — are under 25 years old on the relevant date; — and, were under 18 years old on the date when the asylum application was made, which application must have been made before 1st December 2006.

This aspect of the Regulations has little relevance as of today because it requires an asylum claim to have been made over 16 years ago. The Regulation does tell us, though, that the Scottish Parliament recognised the impact on asylum seeking children in the past and sought to remedy it. We would encourage this same approach now, and we recommend that this rule be revised to allow for children of asylum seekers and young asylum seekers to be eligible for tuition support in Scotland.

## **6. Scottish Government response**

As noted within the Executive Summary section of the document, following the decision in *Jasim v Scottish Ministers* and through the consultation exercise and stakeholder engagement, the Scottish Government propose to bring forward two policy changes in regards to residency criteria in Further and Higher Education for the upcoming 2023/24 AY in regards to:

- Relevant connection to Scotland
- Unaccompanied Asylum Seeking children and Children of Asylum Seekers

### **6.1 Relevant Connection to Scotland**

This provision will see an extension of home fee status and student financial support to those individuals who have been granted leave to enter or remain in the United Kingdom by the Home Office (which has not expired) and who meet the standard residency eligibility criteria of being ordinarily resident in Scotland on the relevant date and having been ordinarily resident in the United Kingdom throughout the period of 3 years immediately preceding the relevant date.

This rule will now capture those who are subject to a range of immigration statuses such as Limited Leave to Remain (LLR), Leave outside the rules and other forms of Leave to Remain (Parent/ Partner routes etc.) and afford them access to home fee status and student financial support without the requirement of a meeting a long residence rule.

This change will also be extended to the dependents of those noted above.

Those who enter the UK on a study visa will remain ineligible for home fee status and student financial support as they have entered the UK for the purposes of education and therefore do not meet the ordinary resident test. However their dependents may be eligible for student financial support depending on their own visa status and length of residence in the UK.

The standard ordinary residence rules remain but other than excepted groups, all students must now meet the same required length of residence in the UK in order to access support. The relevant date for the purposes of fee assessments also remains but further explanation is provided below.

### **6.2 Unaccompanied Asylum Seeking children/ Children of Asylum Seekers**

A provision to support this cohort of students currently exists within the 2022 Regulations but is prescriptive of the time in which the application for asylum had to be made (prior to 1 December 2006) and the age in which the student applied for home fee status/ student financial support (under the age of 25 years).

The policy will now be widened to remove the time limit and age cap that previously applied meaning current unaccompanied Asylum Seeking children and children of Asylum Seekers will be able to apply for support.

This policy continues to extend access to home fee status and tuition fee support only.

This change is in recognition of the impact that a delay to an asylum claim can have on a child or young person's learner journey. It is noted that these individuals can access secondary education but are then precluded from entering Further or Higher Education alongside their peers whilst a decision is made on their outstanding asylum claim. Officials heard anecdotal evidence that age verification for some children as part of the evidencing of their claim can delay the turnaround time of their application.

These amending regulations will be laid before the Scottish Parliament on 11 May 2023 to be in force for the start of the 2023/24 AY being 1 August 2023. Impact Assessments for both changes will be published alongside the amending regulations.

It is recognised that the above proposed changes do not address all key issues identified during the consultation exercise and stakeholder engagement. Given the time constraints for laying amending legislation, it has not been possible to fully consider and address each issue. Below is a note of work that the Scottish Government acknowledge needs further consideration.

### **6.3 Support for Asylum Seekers**

Whilst it is hoped that the amendment to the eligibility criteria for unaccompanied Asylum Seeking children and children of Asylum Seekers will be positively received, it is recognised that the consultation exercise and stakeholder engagement did call for wider support for Asylum Seekers in general, particularly those who have been in the UK for over three years' but have an asylum claim pending.

Further analysis is required to try and identify the number of Asylum Seekers who are currently residing in Scotland who have been waiting more than three years on a decision by the Home Office to ascertain the extent of the issue.

Asylum Seekers who are resident in Scotland and are provided with Refugee status are entitled to home fee status and student financial support from the Scottish Government – this exception exists in the current rules and will remain.

For those who remain ineligible to access home fee status and student financial support (due to a pending claim), they may be able to apply for support through Universities of Sanctuary although it is recognised through the Consultation exercise, that there are limited places offered through this route with competition being high.

Discretionary Fund guidance in both Further and Higher Education also provides access to financial support to those awaiting a decision on an asylum claim who are able to study and are experiencing financial hardship.

### **6.4 Living cost support for unaccompanied Asylum Seekers and children of Asylum Seekers**

Extending access to living cost support (bursaries, grants and student loans) for unaccompanied Asylum Seekers and children of Asylum Seekers needs to be considered further. Analysis undertaken to date is inconclusive as to whether access to this type of financial support could have a detrimental impact on an Asylum Seeker's claim, and any support they are already receiving via public funds. That is why at present, support is only being offered in relation to tuition fees.

## **6.5 Flexibility when assessing applications and re-assessment of eligibility**

There are four dates in the 2022 Regulations which are used to assess eligibility. The date which is used is dependent on the specific course start date. Currently, if a student is deemed to be ineligible at the start of their course then they remain ineligible for the remainder of that course bar a few exceptions (i.e. obtaining Refugee status etc.) This issue appears to be more specific to Higher Education due to the length of courses.

Consideration has previously been given to adopting a flexible approach when assessing eligibility – whereby those students who were just 'short' of reaching the eligibility criteria may be deemed eligible on a case-by-case basis. However, risks were identified with this approach, in effect it introduces additional 'cut off' dates in the assessment process. There could still be students who fall outwith any new 'flexibility window' and this approach could lead to an inconsistency of approach when undertaking assessments.

The consultation exercise and stakeholder engagement were generally positive towards re-assessment of eligibility throughout the course of study (or if there were changes in circumstance). Through some of the responses and engagement, officials recognise that the biggest impact on any such change would be particularly felt by universities. Whilst a few universities responded to the consultation and confirmed the difficulties with this proposal, it was felt there were insufficient responses from that sector to properly assess the impact of such a change for the upcoming academic year.

Such a change could have an impact on the funding stream for universities and without properly knowing the scale of re-assessments which could take place each year, it was considered prudent to undertake further engagement on this issue before reaching a conclusion on the matter.

## **6.6 Armed Forces**

There have been a significant number of responses in the consultation in relation to armed forces personnel and/or their dependants. Several bodies representing various factions of the Armed Forces were critical of the current policies around access to home fee status and student financial support.

The Scottish Government has a four nations approach with the other Devolved Administrations in the UK regarding support at HE level for Armed Forces personnel. The agreement is that ordinary residence is generally decided by the country in which the member of the military enlists. Therefore, their allocated funding body for the purposes of HE student financial support regardless of where the personnel and



their family reside at the point of application is decided by where they are considered ordinarily resident. There is no four nations policy in place in regards to Further Education.

The current Higher Education policy is particularly criticised by those who may have enlisted in England or Wales and have been based in Scotland for a number of years – the consultation exercise particularly highlighted a difficulty with those who reside in Service Accommodation. The consultation responses were also critical of the approach taken within Further Education.

Given the complexities of the subject due to the four nation approach in HE, potential differing approaches in FE across the UK and requirement for engagement with the Ministry of Defence, it was not possible to reach a conclusion on this issue in the current regulatory timescales. Scottish Government officials will consider this matter further and acknowledge that many of the stakeholder groups who responded to the consultation noted their willingness to engage further on the matter.

## **7. Annex A - List of organisations that responded**

- 31 organisations
- 97 individual
- 3 campaigns

### **7.1 Organisations who permitted their response to be published**

- Royal Air Force
- RAF Lossiemouth
- West College Scotland
- North East Scotland College
- National Association of Student Money Advisers
- Dundee and Angus College
- Scottish Funding Council
- Children and Young Persons Commissioner Scotland
- University and College Union Scotland
- RAF Families Federation
- University of St. Andrews
- Army Families Federation
- Student Action for Refugees
- Forces Children Scotland
- UK Council for International Student Affairs
- Maryhill Integration Network
- Robert Gordon University
- JustRight Scotland
- Edinburgh College
- University of Aberdeen
- Scottish Social Services Council
- National Union of Students Scotland
- Colleges Scotland
- University of Edinburgh

- University of Strathclyde

## **7.2 Campaign organisations**

- Our Grades Not Visas
- The Poverty Truth Community
- JustCitizens

## **8. Annex B - Glossary**

### **Further Education (FE)**

Is a term to describe courses undertaken at a college under Higher National (HN) level i.e. SCQF level 6 or below, National Certificate courses, Access courses, National Qualifications (NQ) or Scottish Vocational Qualifications (SVQ).

### **Higher Education (HE)**

Is a term used to describe SCQF level 7 courses and above i.e. Higher National Certificate (HNC) and Higher National Diploma (HND) courses at college and degree level courses undertaken at university

### **Living cost support**

Are bursaries, grants or loans that the student is entitled to depending on their household income (i.e. means tested). There are exceptions, FE students cannot access student loans. HE students who are Care Experienced or studying Paramedic Science, Nursing or Midwifery access non-means tested bursaries (cannot access loans). Estranged students in HE can access a non-means tested financial package comprising bursary and student loan.

### **Tuition Fees**

Free tuition is paid in the form of a tuition fee grant directly to the college/ university/ private provider of Higher Education. Scottish students studying elsewhere in the UK and those studying at Postgraduate level are entitled to a tuition fee loan. Students studying at a private provider of HE in Scotland are provided with a grant of £1,205 per year, however, the fees charged may be higher.

### **Ordinary residence**

Is not defined in legislation but does feature as a descriptive schedule within regulations. It has an established meaning in case law as a person living in a place lawfully, voluntarily and for a settled purpose as part of their day to day life, whether for a short or long time. As set out in the Ordinary Residence schedule to the Regulations, a person moving to Scotland purely for educational purposes would not be deemed to be ordinarily resident in that country.

### **Relevant Date**

Is defined in regulation 2(1) of the Education (Fees) (Scotland) Regulations 2022. In relation to a course, means for a course starting in the period:

1 August to 31 December, the relevant date is 1 August

1 January to 31 March, the relevant date is 1 January

1 April to 30 June, the relevant date is 1 April

1 July to 31 July, the relevant date is 1 July

### **Leave to remain**

Limited leave to remain refers to the status of UK visa holders who have been approved to enter the UK and remain here until their visa expires. Whilst holders of certain visa types will be expected to eventually return to their home country, some categories of limited leave may lead to settled status in the UK (e.g. in the form of British nationality or indefinite leave to remain) which gives the holder permission to stay in the UK on a permanent basis.

### **Universities of Sanctuary**

National network of university staff, lecturers, academics and students working to make Higher Education institutions places of safety, solidarity and empowerment for people seeking sanctuary. Further information can be found at: [Home - Universities of Sanctuary \(cityofsanctuary.org\)](https://www.cityofsanctuary.org)



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