

# Study programme 16 to 19 Residency eligibility and evidence Guidance 2023 to 24.

This is guidance is to support MITSkills staff and learners **with evidencing residency only** for the ESFA 16 to 19 Study Programme (or those 19 to 24 with an EHC) and correct at 01/08/23 for full eligibility requirements and rules please refer to

<https://www.gov.uk/government/publications/advice-funding-regulations-for-post-16-provision>

All paragraph numbers are referenced to the original ESFA document v1 March 2023

## Introduction

26. This section sets out the rules on student residency eligibility for ESFA young people's funding, together with guidance on evidencing student eligibility to in enrolment processes.

27. Funding eligibility for young people post-16 is similar to the pre-16 school eligibility rules and students will consistently be either eligible or ineligible for ESFA funding at all institution types.

28. Most young people legally residing in England will be eligible for 16 to 19 study programme funding and the exceptions to this are set out in paragraphs 71 to 73.

The advice in paragraphs 38 to 41 provides further information on the detailed eligibility requirements.

To assist our funded institutions in keeping the student eligibility administration burden to a minimum, most students will simply need to confirm on their post-16 enrolment form they have legally lived in the UK for the 3 previous years. For the small number of eligible students who do not meet this test, institutions should take steps to satisfy themselves that the student is legally resident in the UK. To assist institutions and funding auditors' further advice on compliance evidence of student eligibility is set out in paragraphs 74 to 83.

29. We have based the three-year evidential advice on provisions of the Education (Fees and Awards) (England) Regulations 2007 (including any later amendments), which provide the basis for home-fee status for publicly funded Higher Education providers. We expect our funded institutions to make sure students on Level 3 programmes are made aware of the eligibility requirements in these Regulations, as part of their planning for Higher Education studies.

## EU and EEA students

30. The UK left the European Union (EU) and free movement between the UK and the EU has ended. The UK's [points-based immigration system](#) applies and treats EU (other than Irish citizens) and non-EU citizens equally. Students who are citizens of EU (or European Economic Area (EEA)) countries (other than Irish citizens) who enter the UK after 31 December 2020 are not automatically eligible for funding and must be able to demonstrate that they are legally resident in the UK to be funded.

31. Students who are citizens of EU (or EEA) countries or children of Turkish workers who are living in the UK and have started their programme on or before 31 December 2020 must be treated equally to UK residents. Once enrolled they will be eligible for funding for the full duration of their study programme. All Irish citizens continue to be automatically eligible for funding under immigration concessions agreed with the Irish Government before the UK was a member of the EU. Those who have already obtained the Home Office pre-settled and settled status will be eligible under paragraph 39 whilst those still completing this process should be assessed under paragraph 40.

## Residency eligibility

32. The following paragraphs set out the ESFA funding eligibility criteria for study programmes. Students only need to be eligible under any one point or sub-paragraph of the individual points or sub-paragraphs in paragraphs 38 to 40. All students eligible to start their study programme are eligible for the full duration of their study programme. Paragraphs 67 to 73 explain the main exceptions covering ineligible students for funding purposes.

33. For funding purposes, institutions must establish a student's eligibility at the start of their programme. Institutions must seek advice from their funding body regarding any case where they are having difficulty assessing student eligibility.

34. To be eligible for funding the student must have the legal right to be resident in the United Kingdom at the start of their study programme. A person subject to a Home Office deportation order will ordinarily be ineligible for funding until their situation has been resolved to the satisfaction of the Home Office. Students whose immigration permission to enter the UK is as short stay foreign visitor (also commonly known as a Tourist visa) are also ineligible for 16 to 19 funding.

35. In determining student eligibility, institutions must also satisfy themselves that there is a reasonable likelihood that the student will be able to complete their study programme before seeking funding for the student. This should include the practicality of providing a place for a student who may be unable to complete their programme if they are likely to leave the country permanently during their study programme. For the purposes of this paragraph, institutions must assume that all EEA student's resident in the UK before 1 January 2021 have the legal right to remain in the UK for the duration of their study programme. Once a student is enrolled, the institution is expected to take all reasonable steps to ensure that the student can complete their programme.

36. Students who are attending programmes of more than one term's duration and are eligible for funding at the start of their programme, will usually be eligible for funding for the whole duration of their study programme as well as subsequent funded study programmes studied immediately end-on to their initial funded programme. This includes students studying consecutive study programmes with no break in studies other than normal holiday periods. Similarly, students who are not eligible for funding at the start of their study programme are very unlikely to become eligible for funding during the period of their study programme.

## Definition of ordinarily resident

37. For funding purposes, ESFA regards as ordinarily resident in a given country any person who habitually, normally and lawfully resides from choice and for a settled purpose in that country.

Temporary absences from the relevant area should be ignored.

Someone who has not been ordinarily resident because he or she or the person's parent or spouse or civil partner was working temporarily abroad will be treated as if they have been ordinarily resident in the relevant area.

## Students eligible for funding

38. The following persons will be eligible for funding (these groups correspond to some of the groups in Schedule 1 to the Education (Fees and Awards England) Regulations 2007 (as amended):

a. a person on the 'relevant date'<sup>1</sup> who is 'settled' in the UK, and who has been ordinarily resident in the UK and Islands (that is including the Channel Islands and the Isle of Man) for the 3 years preceding the 'relevant date'. 'Settled' means having either indefinite leave to enter or remain (ILE/ILR), being an Irish citizen or having the right of abode in the UK. Students who are eligible for funding include:

<sup>1</sup> In the student eligibility paragraphs, the term 'relevant date' refers to 'the first day of the first academic (or teaching) year of the course' and this is defined as:

a. 1 September if the academic year starts between 1 August and 31 December

- b. 1 January if the academic year starts between 1 January and 31 March
- c. 1 April if the academic year starts between 1 April and 30 June
- d. 1 July if the academic year starts between 1 July and 31 July
- i. British citizens who hold a United Kingdom of Great Britain and Northern Ireland passport
- ii. Irish citizens
- iii. European Union citizens or family members of EEA and Swiss workers (resident in the UK before 1 January 2021) with settled status
- iv. Students who are children of Turkish workers where the Turkish worker has been lawfully employed and resident in the UK before 1 January 2021
- v. British Dependent Territory Citizens (now known as British Overseas Territory Citizens)
- vi. those whose passports have been endorsed to show they have right of abode in the UK
- vii. those who have a certificate of naturalisation or registration as a British Citizen
- viii. those with Hong Kong British National (Overseas) (BN(O)) visa who have been given Home Office permission to reside in the UK

39. In addition to the groups outlined above, ESFA will also consider the following groups of students **(including those who may not have lived in the UK for the last 3 years)** to be eligible for funding:

- a. people with refugee status (RS) or humanitarian protection (HP) or discretionary leave (DL) or exceptional leave to enter or remain (ELE/ELR), their spouses, civil partners and children.
- b. people with recently settled status (this means those having been granted indefinite leave to enter or remain, right of abode or British citizenship within the 3 years immediately preceding the start of the course)
- c. people granted pre-settled status following our exit from EU.

40. In addition to the groups above, ESFA will also consider the following groups of students (including those who may not have lived in the UK for the last 3 years), aged up to and including the age of 18, as eligible for funding as follows:

- a. those who are accompanying or joining parents or spouses or civil partners<sup>2</sup> who have the right of abode or leave to enter or remain in the UK (or accompanying or joining relevant family members, usually parents, who are UK or Irish citizens), or those who are children of diplomats.
- b. those who are dependants of teachers coming to the UK on a teacher exchange scheme.
- c. those who are residing legally in the UK (including those entering the UK in the last 3 years who are or were not accompanied by their parents) who are British (or Irish) citizens or those whose passports have been endorsed (or as part of move to digital immigration systems, either a biometric residency permit (BRP), or an equivalent digital status and/or an endorsement letter) to either show they have the right of abode in this country or to show that they have no restrictions on working in the UK
- d. those who are dependants of adults residing legally in the UK who have been given immigration rights as workers to reside in the UK.
- e. those who are dependants of foreign students where the accompanying parent or legal guardian has a student visa (the accompanying parent or legal guardian is excluded from our funding as set out in paragraph 71)
- f. asylum seekers
- g. those having been granted leave under section 67 of the [Immigration Act 2016](#) (the 'Dubs' amendment)
- h. those having been granted Calais leave to remain.
- i. those who are (including unaccompanied asylum seekers) placed in the care of social services or those in receipt of Section 4 support.

41. In addition to considering students in the categories listed in the 3 paragraphs above, the funding body will consider other exceptional circumstances. When an institution believes that a student

should be considered for ESFA funding under exceptional circumstances, it must contact ESFA for guidance before claiming funding.

## EEA, Switzerland and the overseas territories

42. For funding eligibility purposes only, we have defined the EEA on 31 December 2020 as including Switzerland, as well as all members of the EU, Iceland, Liechtenstein, and Norway and each of their overseas territories as listed in [Annex E](#). Students who are citizens of certain British Overseas Territories are eligible for funding. Certain European Overseas Territories citizens will also be eligible for funding but only if they moved to the UK before 1 January 2021. Qualifying territories are listed in [Annex E](#).

## No recourse to public funds

43. Someone who has 'no recourse to public funds' included in their passport stamp would not be in breach of their immigration conditions if they had access to state-funded education in the UK. 'Public funds' are defined in the immigration rules, and the benefits and services listed do not include education or any education funding. This condition in a passport therefore makes no difference to a student's eligibility, which must be determined under the normal eligibility criteria described in the paragraphs above.

## Compliance evidence of student eligibility

74. This is the core ESFA funding compliance or funding audit guidance on evidencing existence and eligibility of all students on ESFA young people's funded study programmes.

75. ESFA recognises that different procedures and emphasis will be appropriate to different types of student. It is for institutions to decide what procedures to carry out. Institutions that choose not to carry out any procedures will put their programme funding at risk. Therefore, institutions must have auditable evidence of:

- the process used for the enrolment.

- the record of teaching or support activity for each student

- evidence of the students age to support the safeguarding of all students attending the institution

76. Institutions must scrutinise applications for study by all students to ensure that they are eligible for ESFA funding according to all advice in this section and to support the student's case for consideration as ordinarily resident in England.

77. In line with the GDPR, we advise institutions to record documentation, rather than take copies to prove eligibility. This includes relevant documentary evidence to support individual student eligibility granted for students who have not been ordinarily resident for 3 years. When institutions record that they have seen documentation, they must be fully aware of the implications of the documents they are approving. **ESFA advises institutions that they do not need to copy passports and should record passport numbers or references only where necessary.**

78. **Foreign nationals will have Home Office documentation** that outlines their status, for example, refugee status, humanitarian protection, discretionary leave or ELE/ELR in the UK. Asylum seekers will be able to produce an application registration card (ARC) which is issued on or close to the date of their asylum claim. The date of issue will be recorded on the ARC. EU, EEA or Swiss students can use an [online service](#) to prove their immigration status. Institutions can continue to accept EU citizens' passports and identity cards as evidence of their immigration status until 30 June 2021.

79. Institution management must check enrolment forms to see if evidence has been gathered on the residency status and eligibility of the student.

## **Annex E: Defining EU, EEA and eligible overseas dependent territories as at 31 December 2020**

1. This annex lists the qualifying countries and/or areas that establish student eligibility for ESFA young people's study programme funding. This annex applies up to the end of the United Kingdom transition arrangements with the EU on 31 December 2020.

### **Member states of the European Union**

Austria	Germany	Netherlands
Belgium	Greece	Poland
Bulgaria	Hungary	Portugal
Croatia	Ireland	Romania
Cyprus	Italy	Slovakia
Czech Republic	Latvia	Slovenia
Denmark	Lithuania	Spain
Estonia	Luxembourg	Sweden
Finland	Malta	
France		

2. The following notes provide further guidance as to those territories which are regarded as part of the European Union (EU) for the purposes of funding eligibility for those who moved to the UK before the 1 January 2021:

- a. Finland: includes Aland Islands
- b. France: the French Overseas Department (DOMS) (Guadeloupe, Martinique, French Guiana (Guyana), Reunion and Saint-Pierre et Miquelon) is part of metropolitan France and is part of the EU
- c. Germany includes territory of the former German Democratic Republic prior to

German unification. The tax-free port of Heligoland is included within the EU

- d. Portugal: Madeira and the Azores are part of the EU. Macao is not
- e. Spain: the Balearic Islands, the Canaries, Ceuta and Melilla are part of the EU
- f. Other territories: Andorra, Monaco, San Marino and the Vatican are not part of the EU

### **Member states of the European Economic Area (EEA)**

3. This includes all the EU countries and territories listed above, together with Iceland, Liechtenstein and Norway. For simplicity, for institutions that have to assess students for eligibility for ESFA funding, Switzerland is treated as within the EEA. In law, Switzerland is not part of the formally recognised EEA but its citizens are similarly eligible under various international treaties signed by the UK and Swiss governments.

## Eligible overseas territories

4. These will be either UK or EU overseas territories for which ESFA will allow institutions to claim funding (please refer to paragraph 42 in the main guidance).

### Eligible British overseas territories

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

Eligible British overseas territories

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean Territory

British Virgin Islands

Cayman Islands

Falkland Islands

Gibraltar

Montserrat

Pitcairn, Ducie and

Oeno Islands;

Henderson Island

British Virgin Islands

Cayman Islands

Falkland Islands

Gibraltar

Montserrat

Pitcairn, Ducie and

Oeno Islands;

Henderson Island

South Georgia and

the South Sandwich

St Helena and its

Dependencies

Turks and Caicos

Islands

South Georgia and

the South Sandwich

St Helena and its

Dependencies

Turks and Caicos

Islands