

EQUALITY IMPACT ASSESSMENT RECORD

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|--|---|----------------------------------|
| Title of policy/ practice/ strategy/ legislation etc. | Expanding on existing student support residency criteria to include spouse, civil partner or children of settled persons | |
| Minister | Minister for Higher Education, Further Education, Youth Employment and Training | |
| Lead official | Iain McGarry | |
| Officials involved in the EQIA | name | team |
| | Iain McGarry | Student Financial Support |
| Directorate: Division: Team | Higher Education and Science: Student Financial Support | |
| Is this new policy or revision to an existing policy? | Revision to an existing policy. | |

Screening

Policy Aim

To extend the residency criteria of student support to make the spouse, civil partner or child of settled persons eligible for support. This change will grant those persons access to home fee status and living cost support.

This contributes to the following national outcomes:

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

At present, in order to access tuition fee and living cost support, students are required to meet residency rules which are laid out in legislation and require students to:

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

Under the current regulations there is no exception in place for the spouse, civil partner or children of those who are settled in the UK within the meaning of the Immigration Act 1971. Those individuals will instead have to satisfy the above criteria or one of the exceptions to the above criteria (i.e. have been granted leave to remain as a Stateless Person or as a survivor of human trafficking).

It should also be noted that many of the exceptions referred to above do contain references to extending support to the spouse, civil partner or child of the qualifying person. In this sense, the spouse, civil partner or child of a person settled in Scotland could argue that they are currently being treated discriminatorily by comparison to those in a similar situation whose family member is a Stateless Person or an EU National granted leave to remain in the UK through the EU Settlement Scheme.

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

Who will it affect?

The proposed change to the residency criteria would benefit that any spouse, civil partner or children of persons settled in the UK within the meaning of the Immigration Act 1971 currently of an age to apply for Further or Higher education courses and those who would become eligible over the next few years.

Each institution is currently allocated a number of full time equivalent funded places via the Scottish Funding Council for eligible Scottish domiciled and EU students on full-time undergraduate courses. The total number of funded places in Scottish universities is 131,320 in 2020-21.

Universities are able to decide according to their own requirements how to distribute these places between faculties, the courses they offer, and how many of the total funded places will be available on each course. To enable flexibility in student recruitment, the Scottish Funding Council allows universities to recruit up to 10% above the number of funded places awarded. On that basis, it is currently for universities to determine how the funded places are allocated to Scottish domiciled students.

Limited funding necessarily restricts the number of Scottish domiciled student places. This can lead to increased competition for places for Scottish students. As this change would be extending the amount of students qualifying for a funded place, it would necessarily increase this competition.

Universities may recruit as many international and rUK students as they have capacity for. However, such students are unable to apply for the funded places currently allocated to each institution for Scottish domiciled students. This is reciprocated in the sense that it is not possible for Scottish domiciled students to apply for an rUK or international place at a university and pay the associated tuition fees. While it is considered that eligibility for a funded place is a positive development, there is potential that some of those who are captured within this changing policy will find that while they would previously have been able to apply for an international place without restriction, they will now have to compete for a funded place.

What might prevent the desired outcomes being achieved?

In amending the residency criteria to allow this group of people to access tuition fee and living-cost support, we must be mindful of the potential financial implications to the student support budget. There may also be a call to increase the number of funded places allocated to Scottish Universities in order to address the increased competition that Scottish domiciled students will experience as a result of expanding the residency criteria in this way.

Stage 1: Framing

Results of framing exercise

An initial framing exercise was undertaken by Higher Education and Science Division and stakeholders identified to gather evidence to inform this EQIA. It should be noted that identifying potential students fitting the criteria of spouse, civil partner or child of a person settled within the meaning of the Immigration Act 1971 has been extremely challenging. Though anecdotally it is clear that these students exist from correspondence received by the Scottish Government and applications made to the Students Awards Agency Scotland (SAAS), these are not groups easily tracked in data.

SAAS – Out of 100 sample cases of applications which were refused on residency grounds, 2 students were confirmed to have been married to a UK National and a further 2 may potentially have been married to a UK National but there was not enough evidence to confirm this.

Extent/Level of EQIA required

This policy has relevance to the protected characteristic of: Race

As the change to the residency criteria would open up opportunities and have a positive impact on any prospective students, it is considered that a concise and focussed Equality Impact Assessment is proportionate in these circumstances.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

| Characteristic¹ | Evidence gathered and Strength/quality of evidence | Source | Data gaps identified and action taken |
|-----------------------------------|---|---------------|--|
| AGE | Insufficient evidence to break down in terms of protected characteristic. | | As SAAS gather statistical data on student applications we will be able to monitor the impact of the policy change on relevant groups going forward. |
| DISABILITY | Insufficient evidence to break down in terms of protected characteristic. | | SAAS do not gather statistical data on this protected characteristic via student applicants and therefore this information is not readily available. |
| SEX | Insufficient evidence to break down in terms of protected characteristic. | | As SAAS gather statistical data on student applications we will be able to monitor the impact of the policy change on relevant groups going forward. |
| PREGNANCY AND MATERNITY | Insufficient evidence to break down in terms of protected characteristic. | | SAAS do not gather statistical data on this protected characteristic via student applicants and |

¹ Refer to Definitions of Protected Characteristics document for information on the characteristics

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| | | | therefore this information is not readily available. |
| GENDER REASSIGNMENT | Insufficient evidence to break down in terms of protected characteristic. | | SAAS do not gather statistical data on this protected characteristic via student applicants and therefore this information is not readily available. |
| SEXUAL ORIENTATION | Insufficient evidence to break down in terms of protected characteristic. | | SAAS do not gather statistical data on this protected characteristic via student applicants and therefore this information is not readily available. |
| RACE | Insufficient evidence to break down in terms of protected characteristic. | | SAAS do not gather statistical data on this protected characteristic via student applicants and therefore this information is not readily available. |
| RELIGION OR BELIEF | Insufficient evidence to break down in terms of protected characteristic. | | SAAS do not gather statistical data on this protected characteristic via student applicants and therefore this information is not readily available. |
| MARRIAGE AND CIVIL PARTNERSHIP | Insufficient evidence to break down in terms of protected characteristic. | | SAAS do not gather statistical data on this protected characteristic via |

(the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)

student applicants and therefore this information is not readily available.

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

| Age | Positive | Negative | None | Reasons for your decision |
|---|----------|----------|------|--|
| Eliminating unlawful discrimination, harassment and victimisation | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Advancing equality of opportunity | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Promoting good relations among and between different age groups | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

Do you think that the policy impacts disabled people?

| Disability | Positive | Negative | None | Reasons for your decision |
|---|----------|----------|------|--|
| Eliminating unlawful discrimination, harassment and victimisation | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

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|---|--|--|---|--|
| Advancing equality of opportunity | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Promoting good relations among and between disabled and non-disabled people | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

Do you think that the policy impacts on men and women in different ways?

| Sex | Positive | Negative | None | Reasons for your decision |
|--|-----------------|-----------------|-------------|--|
| Eliminating unlawful discrimination | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Advancing equality of opportunity | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Promoting good relations between men and women | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

Do you think that the policy impacts on women because of pregnancy and maternity?

| Pregnancy and Maternity | Positive | Negative | None | Reasons for your decision |
|-------------------------------------|-----------------|-----------------|-------------|--|
| Eliminating unlawful discrimination | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

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|-----------------------------------|--|--|---|--|
| Advancing equality of opportunity | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Promoting good relations | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)

| Gender reassignment | Positive | Negative | None | Reasons for your decision |
|-------------------------------------|-----------------|-----------------|-------------|--|
| Eliminating unlawful discrimination | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Advancing equality of opportunity | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Promoting good relations | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

Do you think that the policy impacts on people because of their sexual orientation?

| Sexual orientation | Positive | Negative | None | Reasons for your decision |
|-------------------------------------|-----------------|-----------------|-------------|--|
| Eliminating unlawful discrimination | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Advancing equality of opportunity | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

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| Promoting good relations | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
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Do you think the policy impacts on people on the grounds of their race?

| Race | Positive | Negative | None | Reasons for your decision |
|-------------------------------------|-----------------|-----------------|-------------|--|
| Eliminating unlawful discrimination | X | | | There is no information to identify that the proposed policy change will impact on people on the grounds of their race. However, opening up student support to the spouse, civil partner or child of settled persons is generally seen as a positive change. This will allow those individuals the opportunity to study courses of further and higher education and have access to tuition fee and living cost support while they study. |
| Advancing equality of opportunity | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Promoting good race relations | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

Do you think the policy impacts on people because of their religion or belief?

| Religion or belief | Positive | Negative | None | Reasons for your decision |
|-------------------------------------|-----------------|-----------------|-------------|--|
| Eliminating unlawful discrimination | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Advancing equality of opportunity | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

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| Promoting good relations | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |
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Do you think the policy impacts on people because of their marriage or civil partnership?

| Marriage and Civil Partnership² | Positive | Negative | None | Reasons for your decision |
|---|-----------------|-----------------|-------------|--|
| Eliminating unlawful discrimination | | | X | Insufficient evidence to draw conclusions in terms of protected characteristics. |

² In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

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| Have positive or negative impacts been identified for any of the equality groups? | Insufficient evidence to draw conclusions in terms of protected characteristics. |
| Is the policy directly or indirectly discriminatory under the Equality Act 2010 ³ ? | We do not consider that there is any direct or indirect discrimination as a result of the proposed policy change. Individuals who benefit from the extended eligibility criteria are not being treated more favourably than others on the grounds of their nationality, but because of their relationship to persons with an established connection to Scotland. This change also removes a potential discrimination against those persons, as other eligibility criteria do extend to the spouse, civil partner or child of the qualifying person. The Scottish Government considers that this proposed policy change can be objectively justified as a proportionate means of achieving a legitimate aim. |
| If the policy is indirectly discriminatory, how is it justified under the relevant legislation? | N/A |
| If not justified, what mitigating action will be undertaken? | N/A |

³ See EQIA – Setting the Scene for further information on the legislation.

Describing how Equality Impact analysis has shaped the policy making process

The Equality Impact Assessment has identified information gaps relating to the impact on the protected characteristics of the spouse, civil partner or children of persons with a relevant connection to Scotland. .
However, opening up student support to these persons would be seen as a positive change. This is because it would allow individuals to access tuition fee and living cost support to study courses of further and higher education.

Monitoring and Review

SAAS will be able to collect statistical data on student applications and we will therefore hopefully be able to monitor the impact of this policy change on the relevant groups.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for expanding on existing student support residency criteria to include spouse, civil partner or children of settled persons and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Roddy MacDonald

Position: Deputy Director, Higher Education and Science Division

Authorisation date: