

## EQUALITY IMPACT ASSESSMENT RECORD

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	<b>Change to residency criteria for eligibility to student support in Scotland</b>	
<b>Minister</b>	<b>Minister for Higher Education and Further Education, Youth Employment and Training</b>	
<b>Lead official</b>	<b>Iain McGarry</b>	
<b>Officials involved in the EQIA</b>	<b>name</b>	<b>team</b>
	<b>Iain McGarry</b>	<b>Student Financial Support Team</b>
<b>Directorate: Division: Team</b>	<b>ALS: HES: Student Financial Support Team</b>	
<b>Is this new policy or revision to an existing policy?</b>	<b>Revision to an existing policy</b>	

### Screening

#### *Policy Aim*

To update and clarify the current residency criteria and eligibility for student support for foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain. This contributes to the following national outcomes:

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

Under the current regulations, in order to qualify for home rate fees and student support in Scotland, students generally require to have been ordinarily resident in the UK for 3 years prior to the start of their course, and be ordinarily resident in Scotland. Students are also required to be “settled in the United Kingdom within the meaning given by section 33(2A) of the Immigration Act 1971”.

Foreign nationals who have been resident in the UK for significant periods of time, but only have discretionary leave to remain or limited leave to remain (that was not granted as the result of an asylum application) did not meet this eligibility criteria as they were not “settled” within the meaning of the Immigration Act and so were not eligible for support.

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 an international student by institutions for fee purposes.

Following a ruling by the UK Supreme Court which determined that the application of the equivalent provision in the Education (Student Support) Regulations 2011 in England (which prevented a Zambian national who had been resident in the UK from the age of six, but without indefinite leave to remain, from receiving a student loan in England) was an unjustified breach of their rights under the ECHR – namely, their right to education- Business, Innovation and Skills (BIS) introduced a ‘long residency rule’.

This means a person of any nationality would be eligible if at the start of their course they:

- are ordinarily resident in Scotland;
- have been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- are either:
  - 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
  - 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 throughout either—
    - half their life; or
    - a period of twenty-years.

After considering the implications of the ruling for Scotland, it was agreed that the additional ‘long residency’ criteria should be added to our regulations to enable students who meet the following

criteria to access tuition fees and living-costs equal to the standard student support package.

However, over time two issues with the drafting of this criteria have become apparent:

1. A small gap exists between those students who qualify while under the age of 18 and those students who qualify when aged 18 or over. Specifically, certain students who began their studies when under the age of 18 (for example, carrying out a further education course), could then find themselves ineligible to progress to the next stage of their education after turning 18.

This will typically be because while students under the age of 18 only need to have lived in the UK for a seven-year period, students over the age of 18 must have lived in the UK for a period of twenty-years or half of their life. This creates the contradictory situation where a student may go from eligible to ineligible purely as a result of turning 18.

2. The phrase ‘first day of the first academic year’ as used within the current regulations has created some potential dubiety as to when this might be. It has always been the case that ‘first day of the first academic year’ has referred to the relevant date, ie, the date in the year of commencement of the appropriate academic year of the course. To reflect the different times of year that course may start, there have always been four versions of the relevant date:

- a. 1 August to 31 December, 1 August,
- b. 1 January to 31 March, 1 January,
- c. 1 April to 30 June, 1 April,
- d. 1 July to 31 July, 1 July,

However, some students have previously argued that ‘first day of the first academic year’ could be interpreted to mean the date they initially start their course. This is of particular importance to students qualifying through the Long Residence criteria, as their time spent living in the UK is calculated up to the relevant date. It is therefore considered that consistent reference to “relevant date” clarifies the process utilised within these regulations.

This amendment to the regulations aims to address and correct these issues, by:

- introducing an exception to the above criteria for those students who are aged 18 and above and received support by virtue of fulfilling the criteria for under-18 students, and
- removing references to the 'first day of the first academic year' and consistently referencing 'relevant date' going forwards.

### ***Who will it affect?***

Foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain (that was not granted as the result of an asylum application).

### ***What might prevent the desired outcomes being achieved?***

In amending the residency criteria to allow any groups of people to access tuition fee and living-cost support, we must be mindful of the potential financial implications to the student support budget.

On the 'relevant date' change in particular, as noted above some students have interpreted that 'the first day of the first academic year of the course' should refer to the specific date when each individual course starts, which can vary across institution and even across individual courses. This will often come later in the month than the relevant date, which is significant as the long residence criteria is judged on the amount of time a student has been in the UK and when they turn 18. A student who is over the age of 18 and reaches half their life living in the UK on the 15<sup>th</sup> of January and whose course starts on the 1<sup>st</sup> of February might have reasons would be eligible under the long residence criteria if the date at which they were judged was the 1<sup>st</sup> of February, but would be ineligible if it was the appropriate relevant date, in this case the 1<sup>st</sup> of January.

It should be noted that whilst students may have interpreted when the first day of the first academic year of the course may be, operationally students have always been assessed as at the relevant date. Accordingly, the number of students for whom the relevant date may impact upon is considered likely to be limited. It

is however considered that a defined relevant date that is consistent for all students is preferable to a situation where a student's eligibility is decided by course dates, which can be moved for a number of different reasons, and where students with the same circumstances attending different universities or different courses within the same university will receive differing treatment.

## **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.

### ***Extent/Level of EQIA required***

This policy has relevance to the protected characteristic of age and race.

As the change to the residency policy will open up opportunities to foreign nationals who are:

- under the age of 18 and have lived in the United Kingdom throughout the seven-year period preceding relevant date,
- aged 18 years old or above and, preceding relevant date, has lived in the United Kingdom throughout either—
  - half their life, or
  - a period of twenty-years, or
- aged 18 or above and received support by virtue of the first bullet for the academic year immediately preceding the relevant date

It is considered that a concise and focused 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.

Characteristic <sup>1</sup>	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
<b>AGE</b>	We do not have a data marker for long residency to identify such students in our student application systems. However, where a student is eligible for funding via the long residency rule, typically a free-text note is created on their student record to explain this. A free-text search of caseworker notes suggests that, among identifiable long-residency-eligible applications, there were fewer than 5 SAAS-funded applications that started a course in January or July in the 2020-21 and 2021-22 sessions combined.	SAAS	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.
<b>DISABILITY</b>	No data to identify disability in foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain.		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.

<sup>1</sup> Refer to Definitions of Protected Characteristics document for information on the characteristics

<b>SEX</b>	No data to identify the sex of foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain.		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.
<b>PREGNANCY AND MATERNITY</b>	No data to identify pregnancy and maternity in foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain.		SAAS do not gather statistical data on this protected characteristics via student applications and therefore this information will not be readily available.
<b>GENDER REASSIGNMENT</b>	No data to identify gender reassignment in foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain.		SAAS do not gather statistical data on this protected characteristics via student applications and therefore this information will not be readily available.
<b>SEXUAL ORIENTATION</b>	No data to identify the sexual orientation of foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain.		SAAS do not gather statistical data on this protected characteristics via student applications and



			therefore this information will not be readily available.
<b>RACE</b>	We do not have a data marker for long residency to identify such students in our student application systems. However, where a student is eligible for funding via the long residency rule, typically a free-text note is created on their student record to explain this. A free-text search of caseworker notes suggests that, among identifiable long-residency-eligible applications, there were fewer than 5 SAAS-funded applications that started a course in January or July in the 2020-21 and 2021-22 sessions combined.	SAAS	SAAS do not gather statistical data on this protected characteristics via student applications and therefore this information will not be readily available.
<b>RELIGION OR BELIEF</b>	No data to identify religion or belief in foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain.		SAAS do not gather statistical data on this protected characteristics via student applications and therefore this information will not be readily available.
<b>MARRIAGE AND CIVIL PARTNERSHIP</b> (the Scottish Government does not require assessment	N/A		

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)

### 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	This change to the residency criteria will affect those who have turned 18 and subsequently seek to move onto a different course.	This change will have a negative impact on students who turn 18 after the relevant date but before their course starts (for example, those who turn 18 in the autumn and start their course in the following January).		<p>Age is a factor in the change to the residency criteria to extend eligibility to foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain.</p> <p>This change positively impacts on those students for whom the following is true:</p> <ul style="list-style-type: none"> <li>• Previously qualified for support due to being under 18 and having lived in the UK throughout the seven year period preceding the relevant date of their course.</li> <li>• Have turned 18 and are seeking to progress their studies.</li> <li>• Do not meet the requirement of having lived half their life or a period of twenty-</li> </ul>

				years preceding the relevant date of their new course.  These students will now qualify for support, whereas previously they would have been forced to wait until they met the previous criteria to continue their studies.
Advancing equality of opportunity	X			This policy change will open up student support to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland.  No evidence of differential impact at this time.
Promoting good relations among and between different age groups			X	

### Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination,	X			There is no information to confirm the impact on disability as a result of this policy change. However, the change will apply to a small group of

harassment and victimisation				eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland, irrespective of disability and is therefore seen as a positive change for all.
Advancing equality of opportunity	X			This policy change will open up student support to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland.
Promoting good relations among and between disabled and non-disabled people			X	No evidence of differential impact at this time.

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

<b>Sex</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	X			There is no information to confirm the impact on gender as a result of this policy change. However, the change will apply to a small group of eligible

				foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland, irrespective of disability and is therefore seen as a positive change for all.
Advancing equality of opportunity	X			This policy change will open up student support to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland.
Promoting good relations between men and women			X	No evidence of differential impact at this time.

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

	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination	X			There is no information to confirm the impact on pregnancy and maternity as a result of this policy change. However, the change will apply to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but

				less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland, irrespective of pregnancy and maternity and is therefore seen as a positive change for all.
Advancing equality of opportunity	X			This policy change will open up student support to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland.
Promoting good relations			X	No evidence of differential impact at this time.

**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)**

	Positive	Negative	None	Reasons for your decision
Gender reassignment Eliminating unlawful discrimination	X			There is no information to confirm the impact on gender reassignment as a result of this policy change. However, the change will apply to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but

				less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland, irrespective of gender reassignment and is therefore seen as a positive change for all.
Advancing equality of opportunity	X			This policy change will open up student support to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland.
Promoting good relations			X	No evidence of differential impact at this time.

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

<b>Sexual orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	X			There is no information to confirm the impact on sexual orientation as a result of this policy change. However, the change will apply a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long



				residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland, irrespective of sexual orientation and is therefore seen as a positive change for all.
Advancing equality of opportunity	X			This policy change will open up student support to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland.
Promoting good relations			X	No evidence of differential impact at this time.

### Do you think the policy impacts on people on the grounds of their race?

<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	X	This change will have a negative impact on students who turn 18 after the relevant date but before their course starts		Race is a factor in the change to the residency criteria to extend eligibility to foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain.  This change positively impacts on those students for whom the following is true:

		(for example, those who turn 18 in the autumn and start their course in the following January).		<ul style="list-style-type: none"> <li>• Previously qualified for support due to being under 18 and having lived in the UK throughout the seven year period preceding the relevant date of their course.</li> <li>• Have turned 18 and are seeking to progress their studies.</li> <li>• Do not meet the requirement of having lived half their life or a period of twenty-years preceding the relevant date of their new course.</li> </ul> <p>These students will now qualify for support, whereas previously they would have been forced to wait until they met the previous criteria to continue their studies.</p>
Advancing equality of opportunity	X			<p>This policy change will open up student support to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland.</p> <p>No evidence of differential impact at this time.</p>
Promoting good race relations			X	

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

<b>Religion or belief</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	X			There is no information to confirm the impact on religion or belief as a result of this policy change. However, the change will apply a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland, irrespective of religion or belief and is therefore seen as a positive change for all.
Advancing equality of opportunity	X			This policy change will open up student support to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland.
Promoting good relations			X	No evidence of differential impact at this time.

**Do you think the policy impacts on people because of their marriage or civil partnership?**

<b>Marriage and Civil Partnership<sup>2</sup></b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination	N/A			

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<sup>2</sup> 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*

<p>Have positive or negative impacts been identified for any of the equality groups?</p>	<p>Positive impacts as a result of extending the residency criteria to include a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, allowing the opportunity for them to continue to access further and higher education in Scotland, have been identified for students in all equality groups.</p> <p>This change will have a negative impact on students who turn 18 after the relevant date but before their course starts (for example, those who turn 18 in the autumn and start their course in the following January).</p>
<p>Is the policy directly or indirectly discriminatory under the Equality Act 2010<sup>3</sup>?</p>	<p>Yes</p>
<p>If the policy is indirectly discriminatory, how is it justified under the relevant legislation?</p>	<p>It is the actual start date of the course that determines the appropriate 'relevant date' to be used in assessing eligibility.</p> <p>While the vast majority of courses commence in the autumn, there are some that start at other points within the academic year. Those students may</p>

<sup>3</sup> See EQIA – Setting the Scene for further information on the legislation.

	<p>benefit under the Long Residence rule as they may have a longer period available to them to meet the eligibility criteria.</p> <p>The justification for this change is to provide greater clarity within the regulations around the existing eligibility criteria for students under the Long Residence rule, and to remove any potential dubiety as to the date when eligibility is assessed. With any fixed date/s set in regulations, some will benefit based on the timing and others may not. Clarity around the 'relevant date' to be used in determining eligibility provides a positive impact for some students who start their courses outside of the autumn period, enabling them a longer period to meet that eligibility criteria. Conversely, as described under the impact assessment on the characteristic of age and race, a student who turned 18 in the Autumn and started their course in January, would be negatively impacted by this policy change as they'd require to be OR in the UK for a longer period of time.</p>
<p>If not justified, what mitigating action will be undertaken?</p>	<p>N/A</p>

***Describing how Equality Impact analysis has shaped the policy making process***

The EQIA identified that there is no information available relating to the characteristics of foreign nationals who have been resident in the UK for significant periods of time but only have discretionary leave to remain or limited leave to remain and therefore the impact that this policy change will have on the protected characteristics. The UK government publish immigration statistics but not in that level of detail.

However, opening up student support to a small group of eligible foreign nationals who have been resident in the UK for more than seven years but less than twenty years/half their life, have previously been funded through the long residency criteria, and have recently turned 18, is seen as a positive change as it allows those in further and higher education to access tuition fee and living-cost support.

### ***Monitoring and Review***

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.

### **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 changes to the residency criteria to include the long residence rule and give my authorisation for the results of this assessment to be published on the Scottish Government's website.**

**Name: Roddy Macdonald**

**Position: Head of Higher Education and Science Division**

**Authorisation date: 10/05/2022**