

## EQUALITY IMPACT ASSESSMENT RECORD

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	<b>Extending the residency criteria for Afghan Female Students to study in Scotland and access to the home tuition fee rate and student support.</b>	
<b>Minister</b>	<b>Minister for Higher Education and Further Education &amp; Minister for Veterans</b>	
<b>Lead official</b>	<b>David Mackay</b>	
<b>Officials involved in the EQIA</b>	<b>name</b>	<b>team</b>
	<b>David Mackay</b>	<b>Student Financial Support Team</b>
<b>Directorate: Division: Team</b>	<b>Lifelong Learning and Skills: Learner Experience Division: Student Financial Support Team</b>	
<b>Is this new policy or revision to an existing policy?</b>	<b>Revision of existing eligibility criteria</b>	

### Screening

#### *Policy Aim*

To extend the residency eligibility criteria for access to the home tuition fee rate and student financial support for Afghan female students who have been prohibited in their higher education journey in Afghanistan because of the Taliban regime.

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

The current eligibility criteria for access to the home tuition fee rate and student financial support requires students to meet certain rules which are laid out in legislation and generally require students to:

- Be ordinarily resident in Scotland on the relevant date (the relevant date is the 1 August for Autumn start courses; 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 for 3 years immediately prior to the relevant date, and
  - (i) is settled in the UK within the meaning given by section 33(2A) (Interpretation) of the Immigration Act 1971; **OR**
  - (ii) have been granted a form of leave to enter or remain in the UK, where that leave has not expired. **OR**
  - Is a family member of a person described in (i) or (ii).

There are also a number of student categories, such as certain groups of asylum seekers, refugees or those granted special leave under Home Office schemes, which provide an exception to these residency criteria. Most relevant to the proposed change for the Afghan female students is the exception for those granted leave under the Afghan Citizens Resettlement Scheme (ACRS) (<https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>). Although these women would be eligible to apply to the ACRS, the scheme has been closed by the Home Office with no indication as to when it might open again.

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

The plight of female Afghan students has been highlighted by the Linda Norgrove Foundation (LNF) who have recently been working to try and arrange safe passage to the UK for a group of female medical students so that they can continue their studies in Scotland. The Taliban's indefinite ban on higher education for women has excluded these students from university, some of whom only have one year of their studies left. LNF have been in discussion with the Home Office to try and agree an immigration route into the UK so that they can start the process of trying to get them out of Afghanistan.

The Home Office have confirmed that the current route into the UK for Afghan nationals, the ACRS, is closed for new applications and there are no immediate plans for this to re-open. They have suggested that if individuals were to apply for a student visa to gain entry to the UK then this could be considered by the Home Office; however this raises the issue of international tuition fees which these women would be unable to fund.

As highlighted above, provisions in the current regulations allow for those who have been awarded leave under the ACRS to access the home tuition fee rate and student support but the current drafting prevents individuals granted a student visa from being able to access such funding. An amendment would therefore be required to include an additional exceptional category for these women to allow them to continue their educational journey in Scotland.

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

When considering amending the residency criteria to expand eligibility to additional student groups, we must be mindful of the potential financial implications to the student support budget.

There may also be calls to increase the number of funded places allocated to Scottish institutions in order to accommodate the individuals who would be eligible under the new criteria to make allowance for the increased competition that Scottish domiciled students may experience as a result of expanding the residency criteria in this way.

We may also be challenged by students who have found it impossible to continue with their education in their home country as a result of ongoing difficult circumstances. However, we are aware that Afghan women are a unique group because they are being systematically precluded from accessing higher education and Afghanistan is the only country in the world that is imposing this type of nationwide ban.

## **Stage 1: Framing**

### ***Results of framing exercise***

An initial framing exercise was undertaken by the Lifelong Learning and Skills Division to gather evidence to inform this EQIA.

The proposed change to the residency criteria would impact on a small number of Afghan women who are able to access student visas to come to the UK. The Taliban position on women's access to higher education has also been in place since the regained power in 2021 and therefore the number of women who will be able to benefit from this change will be limited.

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

The proposed change has relevance to the protected characteristics of sex and race.

As the proposed change to the residency criteria would open up opportunities to this group of individuals, 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.

Characteristic <sup>1</sup>	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
<b>AGE</b>	<p>Eligible students will have had their Higher Education learner journey interrupted by the Taliban regime's ban on female education.</p> <p>Student visas can only be accessed by those over the age of 16 <a href="http://www.gov.uk">Student visa : Overview - GOV.UK (www.gov.uk)</a></p>	LNF Home Office Scotland Office	Information on their age will be collected by SAAS as part of the application process for student support.
<b>DISABILITY</b>	This information is not known.		As SAAS gather statistical data on student applications for disability related student support, we will be able to monitor the impact on groups going forward.
<b>SEX</b>	The proposed change relates only to female Afghan students and therefore all individuals impacted by this are female.	LNF Home Office Scotland Office	

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

<p><b>PREGNANCY AND MATERNITY</b></p>	<p>This information is not known.</p>		<p>This information is not captured as part of the student application process and not relevant to this change.</p>
<p><b>GENDER REASSIGNMENT</b></p>	<p>This information is not known.</p>		<p>This information is not captured as part of the student application process and not relevant to this change.</p>
<p><b>SEXUAL ORIENTATION</b></p>	<p>This information is not known.</p>		<p>This information is not captured as part of the student application process and not relevant to this change.</p>
<p><b>RACE</b></p>	<p>The change only affects female Afghan nationals who have been residing in Afghanistan since the removal of US/ UK forces from the country (August 2021) and January 2024.</p>	<p>LNF Home Office</p>	

**RELIGION OR BELIEF**

This information is not known.

This information is not captured as part of the student application process and not relevant to this change.

### 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	The introduction of support for Afghan female students has no impact on this protected characteristic although it is worth noting that individuals must be a minimum of 16 years old in order to apply for a student visa.
Advancing equality of opportunity			X	
Promoting good relations among and between different age groups			X	While the restriction to students who have already begun their studies may mean that younger students are not able to take advantage, it is considered that the restrictions on female secondary education in Afghanistan will preclude any younger students from achieving the necessary qualifications that will be required for entry to higher education courses in Scotland.



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

<b>Disability</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation			X	The introduction of support for Afghan female students has no impact on this protected characteristic.
Advancing equality of opportunity			X	
Promoting good relations among and between disabled and non-disabled people			X	

**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			The introduction of support for Afghan female students has a positive impact on eliminating unlawful discrimination. The proposed amendment to the regulations would open up support to Afghan females who are banned from accessing support in their own country.

				It should be noted that access to Higher Education in Afghanistan for Afghan males is not restricted unlike that of females.
Advancing equality of opportunity	X			The introduction of support for Afghan female students has a positive impact on advancing equality of opportunity. The proposed amendment to the regulations would open up support to Afghan females who are banned from accessing support in their own country.
Promoting good relations between men and women			X	We do not have enough evidence to confirm whether the proposed change would have positive or negative impacts on promoting good relations between men and women.

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

<b>Pregnancy and Maternity</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			X	The introduction of support for Afghan female students has no impact on this protected characteristic.
Advancing equality of opportunity			X	
Promoting good relations			X	

**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)**

<b>Gender reassignment</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			X	The introduction of support for Afghan female students has no impact on this protected characteristic.
Advancing equality of opportunity			X	
Promoting good relations			X	

**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	The introduction of support for Afghan female students has no impact on this protected characteristic.
Advancing equality of opportunity			X	
Promoting good relations			X	

**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			The introduction of support for Afghan female students has a positive impact on eliminating unlawful discrimination. The proposed amendment

				to the regulations would open up support to Afghan female students who are banned from accessing support to continue their studies in their own country and therefore is putting them on a level footing with women in other countries who are not suffering from the same restriction.
Advancing equality of opportunity	X			The introduction of support for Afghan female students has a positive impact on advancing equality of opportunity. The proposed amendment to the regulations would open up support to Afghan female students who are banned from accessing support to continue their studies in their own country and therefore is putting them on a level footing with women in other countries who are not suffering from the same restriction
Promoting good race relations			X	We do not have enough evidence to confirm whether the proposed change would have positive or negative impacts on promoting good race relations. There are however already a number of exceptions within the regulations to allow access to the home tuition fee rate and student support for different nationalities. These include, but are not limited to; Iraqi nationals, Syrian nationals, Ukrainian nationals, Afghan nationals granted a status through one of the designated home office schemes, as well as provisions for refugees and unaccompanied asylum seeking children.

**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	The introduction of support for Afghan female students has no impact on this protected characteristic.
Advancing equality of opportunity			X	
Promoting good relations			X	

**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			X	The introduction of support for Afghan female students has no impact on this protected characteristic.

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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*

Have positive or negative impacts been identified for any of the equality groups?	Yes, positive impacts have been identified for the protected characteristics of sex and race. The proposed change specifically relates to female Afghan students who have been prevented from continuing their higher education studies by the Taliban regime.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 <sup>3</sup> ?	No, as far as we are aware, there is no one else in a directly comparable position to the proposed new category of eligible students, namely female Afghan students prevented from continuing their higher education as a result of a nationwide ban on female education by a governing regime.
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

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

The assessment has identified issues with the proposed policy change relating to the protected characteristics of sex and race.

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

Based on the information contained in the impact assessment, which provides objective justification for the nature of this change, we do not consider that any changes are necessary to this policy.

The development of the EQIA along with engagement with the relevant stakeholders has helped to inform the detail of the final policy position.

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

Officials in the Student Financial Support team will continue to engage with LNF, the Scotland Office and the Home Office to understand the impact that the proposed policy change has had. We will also be able to monitor any enquiries received by the Scottish Government and consider how this change might impact on other protected 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 the extension of support for Afghan female students to study in Scotland and access the home tuition fee rate and student support and give my authorisation for the results of this assessment to be published on the Scottish Government's website.**

**Name: Naureen Ahmad**

**Position: Deputy Director, Learner Experience Division**

**Authorisation date: 2 May 2024**