

Annex 2: New eligibility category for higher education student support response form

Question 1

1. Do you agree that it is reasonable to introduce a requirement that students who are under 18 years old and who are not settled in the UK should have to demonstrate seven years continuous residence in the UK (including three years' ordinary lawful residence immediately before the start of their course) in order to be eligible for student support?

Comments:

Please see UKCISA's full submission which includes a suggested draft for a new category to be included within the regulations for Student Support, NHS Bursaries, all other student support regulations, the Fees and Awards regulations and the Qualifying Courses and Persons regulations.

Question 2

2. Do you agree that it is reasonable to introduce a requirement that students who arrived in the UK as children and are aged 18 to 24 years and who are not settled in the UK should have to demonstrate that they have spent at least half their life continuously resident in the UK (including three years' ordinary lawful residence immediately before the start of their course) in order to be eligible for student support?

Comments:

A requirement of continuous residence for at least half of their life is far too harsh.

Please see UKCISA's full submission which includes a suggested draft for a new category to be included within the regulations for Student Support, NHS Bursaries, all other student support regulations, the Fees and Awards regulations and the Qualifying Courses and Persons regulations.

Question 3

3. Question 3: Would you support a rule allowing those who are aged 25 or above and who are not settled in the UK to become eligible for student support if they have been continuously resident on the UK for at least 20 years (including three years' ordinary lawful residence immediately before the start of their course)?

Comments:

A requirement of at least 20 years' continuous residence is far too harsh.

Please see UKCISA's full submission which includes a suggested draft for a new category to be included within the regulations for Student Support, NHS Bursaries,

all other student support regulations, the Fees and Awards regulations and the Qualifying Courses and Persons regulations.

Question 4

4. Can you supply any additional information in support of or against these proposed extensions of eligibility, including any statistical data, or identify unintended consequences for other cohorts or sub-groups?

Comments:

Question 5

5. Do you have any evidence that the policy proposal will have any equality implications and affect persons with a protected characteristic?

Comments:

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Please see UKCISA's full submission which includes a suggested draft for a new category to be included within the regulations for Student Support, NHS Bursaries, all other student support regulations, the Fees and Awards regulations and the Qualifying Courses and Persons regulations.

BIS/15/650/RF

UKCISA's full submission follows on the pages below

UKCISA's full submission

UKCISA would wish to thank BIS for meeting with us along with colleague organisations and two prospective students during the consultation period and for the consultation itself.

UKCISA proposes new regulation wording (below) to provide for the proposed new category in the relevant schedule of each appropriate set of regulations. Along with this, we offer some ideas for definitions which could be included within the regulations to help achieve greater clarity and simplicity for decision-making on fees assessments and student support.

Proposed wording for a new paragraph, for the Schedule of each set of regulations, to provide for eligibility

UKCISA proposes that a new eligible category is added to the regulations for Student Support, Fees & Awards, Qualifying Courses and Persons, NHS Bursaries and all other student support provisions that would provide for any student who:

- entered the UK when aged under 18; and
- on the first day of **an** academic year of the course has been **continuously** resident in the UK and Islands for at least seven years [*in the Student Support regulations, attaining seven years' residence in the UK would be added to the list of 'events' for each provision that would trigger eligibility for that element of support from the appropriate point in that same academic year*]; and
- has been **lawfully** and ordinarily resident in the UK and Islands throughout the three-year period preceding the first day of the first academic year of the course

Notes on highlighted words and terms:

"first day of **an** academic year" [in relation to needing to have 7 years' continuous residence] – we are recommending that the 7-year condition is linked to the first day of **an** academic year, rather than the first day of **the first** academic year as this category would seem to be analogous to those who obtain (or whose relevant family member obtains) either Refugee Status or Humanitarian Protection – in such circumstances, the student becomes eligible for Student Support and (from the start of the following academic year) for 'home' fees if they meet the relevant eligibility criterion after the start of their first academic year

“continuously” – we would recommend that the regulations include a definition of the word “continuously” that would allow for absences from the UK and Islands of up to 6 months in each of the 7 years – a precedent for this could be lifted from regulation 3 of the Immigration (European Economic Area) Regulations 2006/1003.

“lawfully” – we would recommend that this word be defined as follows, to ensure that those who during the 3-year period have been waiting for the final outcome of an asylum of human rights application are not excluded:

“(1) For the purposes of these regulations, a person who made a claim for asylum or a claim on human rights grounds and has leave to enter or remain in the UK is to be treated as having been lawfully resident in the UK and Islands throughout any period that their asylum claim or claim on human rights grounds was pending.

(2) For the purposes of these regulations

- (i) a “claim for asylum” means a claim by a person that it would be contrary to the United Kingdom's obligations under the Refugee Convention to remove him from or require him to leave the United Kingdom;
- (ii) a “claim on human rights grounds” means a claim by a person that it would be contrary to the United Kingdom's obligations under the European Convention on Human Rights to remove him from or require him to leave the United Kingdom
- (iii) A claim is pending
 - (a) while it is neither decided nor withdrawn,
 - (b) while an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought while the appellant is in the United Kingdom against the decision on the application (ignoring any possibility of an appeal out of time with permission), or
 - (c) an appeal under that section against that decision is pending (within the meaning of section 104 of that Nationality, Immigration and Asylum Act 2002)
 - (d) an application for permission to apply for judicial review of the decision on that application has been made and permission or the application for judicial review has not been refused or withdrawn.”

Precedents for reference:

Definition of ‘claim for asylum’ – see Nationality Immigration and Asylum Act 2002 s 77, s 78

‘Pending’ - see s 3C of the immigration act 1971; ‘pending’ refers to the 2002 Act

Explanations and context

The combination of the three eligibility criteria above would have the following advantages:

- relative simplicity as compared with the proposals in the consultation document for differing age-related periods of long residence and, therefore, less

challenging evidence requirements (for example, many who arrive as children will have school and/or further education college records);

- would provide only for students who had come to the UK as children and would, therefore, exclude from this category those who had arrived, or remained, unlawfully in the UK as adults;
- limiting this category to those who have arrived in the UK when they were under 18 would have the advantage of being inclusive of those who had not attended school for one reason or another, while those who *had been* in education (school and/or further education college) while under 18 would have a very straightforward route for obtaining evidence open to them; and
- would remove the substantial and inequitable differentials in 'long residence' years that would be required for those aged:
 - 18 as compared with a 17-year-old
 - 25 (requiring 20 years – ie since they were 5 years old) as compared with a 24-year-old (who would require 12 years – ie since they were 12 years old).

Time in the UK as a temporary migrant

Paragraphs 27 to 30 propose that the calculation of any 'long residence' period should exclude time in the UK as a temporary migrant. This would exclude time that the student had been in the UK, for example, as a worker [eg under Tiers 1 or 2 of the immigration points-based system (PBS)] or as a student [eg under Tier 4 of PBS] or as the family member of any such categories.

We would propose that such periods as temporary migrants should not be excluded from the 'long residence' period because:

- any less favourable treatment for those with periods of lawful residence that fall to be excluded from any 'long residence' calculation might appear to be unfair those; as presently suggested in the consultation document, those whose period of long residence has included periods of lawful residence could end up being treated less favourably than those whose periods of residence have included periods of unlawful residence;
- any temporary migrant who had been continuously resident in the UK for seven years would normally have contributed to the UK economy and community in substantial ways;

- workers and their dependants who had been continuously resident in the UK for seven years would normally have strong connections with the UK whether or not they had applied for, or obtained, indefinite leave to remain in the UK;
- under the current Immigration Rules for Tier 4, students are generally subject to a lifetime 5-year cap on their leave as a student (including any extensions of their leave or any leave granted as the result of a subsequent entry clearance application) and additionally any applications for further student leave need to be for study that constitutes ‘academic progression’ – it is therefore unlikely that substantial numbers of Tier 4 students would attain seven years’ continuous residence in the UK **and** achieve three years’ lawful and ordinary residence in the UK and Islands;
- under the current Immigration Rules, only those taking a postgraduate course that is at least 12 months long, or government-sponsored students taking a course that is over six months long, can now come to the UK with their dependants – so this, combined with the 5-year cap above, would mean that very few dependants of Tier 4 students would attain seven years’ continuous residence in the UK; and
- it would appear, in relation to the above two bullet points, that a negligible number of Tier 4 students and their dependants would ever be able to qualify under the new category being proposed by UKCISA with the suggested regulation wording above.

It would also appear that excluding any periods in the UK as a temporary migrant from a ‘long residence’ calculation would introduce an unnecessary complication to the eligibility criteria as well as appearing to give unfavourable treatment to those whose long residence contains longer periods of lawful residence.

For further clarification

If you would wish to discuss or clarify any of the above, please do not hesitate to contact:

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