

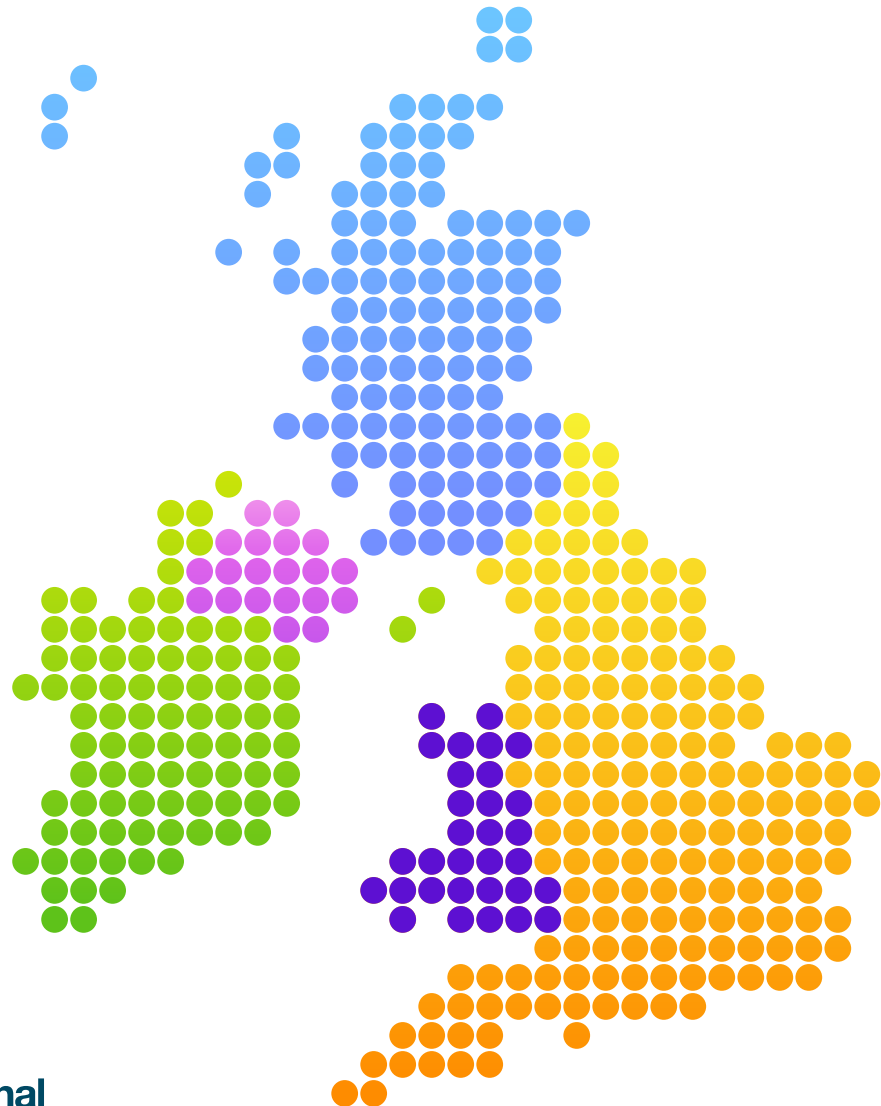
## Who pays 'home' fees for higher education in England?

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A guide for students starting courses on or after 1 August 2021

(plus any students who started their course before 1 August 2021 but want to use one of these categories for an academic year starting on or after 1 August 2021)

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UK Council  
for International  
Student Affairs

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## **Only use the latest version**

This is a 'living' document, and readers should expect to see it develop over time, to reflect changes in the content or interpretation of the regulations. Please check the version number you are looking at matches the latest version on display at [www.ukcisa.org.uk](http://www.ukcisa.org.uk).

The regulations are new and complex, and it may be some time before the Government's intentions about the interpretation of some parts of the regulations becomes clear. Changes will be made to this document to reflect any new information we receive.

## **Not all categories are described in this document**

See the 'Complete list of categories' (page 20 of this guide) for signposts to information about the other categories on the UKCISA website.

## Introduction

The rules about who pays 'home' fees for higher education courses in England are set by the Government's Department for Education (they are not set by UKCISA). They are set out in the following sets of regulations:

- the [Higher Education \(Fee Limit Condition\) \(England\) Regulations 2017](#) (as [amended](#)) (S.I. 2017 No.1189)
- the [Education \(Fees and Awards\) \(England\) Regulations 2007](#) (as [amended](#)) (S.I. 2007 No.779)

The regulations identify all the different 'categories' of student who can insist on paying at the 'home' rate. They set out all the requirements a student needs to meet, to fit one of those categories. You only need to find one category that you fit into (if you fit more than one, that is not a problem).

The regulations can be difficult to understand, so UKCISA has provided this guide to help you.

## Where to start?

There are lots of categories to look at, so if you think you might be a 'home' student, use the following hints to find the right category quickly. Remember, you only need to find one category that you fit (so if you do not fit the category suggested here, you will need to look through all the others).

If there is no suggestion here for you, you will have to look through all the categories.

- **If you are Irish**
  - ➔ first check category '3 years in Republic of Ireland/UK/Islands, settled in UK' (page 26) **or** 'Brexit temporary offer for courses starting before 2028: Irish citizens with residence in Europe or overseas territories' (page 43)
- **If you have indefinite leave (but not through the EU Settlement Scheme)**
  - ➔ first check '3 years in UK and Islands, settled in UK' (page 22)
- **If you have settled status under the EU Settlement Scheme**
  - ➔ first check '3 years in UK and Islands, EUSS settled status connection' (page 30)
- **If you are the spouse/civil partner/child of a UK national and have lived in the UK for 3 years**
  - ➔ first check 'Family member of a UK national' (page 34)
- **If you are a UK national or their spouse/civil partner/child, and have lived in Europe/Switzerland/an EU overseas territory for part of the last 3 years**
  - ➔ first check 'Brexit temporary offer for courses starting before 2028: UK nationals and family with residence in Europe or overseas territories' (page 35) **and** 'Brexit temporary offer for courses starting before 2028: Settled and exercised a right of residence' (page 38)
- **If you are a UK national or their spouse/civil partner/child, and have lived in any of the British Overseas Territories (these include Gibraltar) for part of the last 3 years**
  - ➔ first check 'Residence in British Overseas Territories' (page 45)

- **If you have residence rights in Gibraltar**  
 → first check 'Residence in Gibraltar' (page 47)
- **If you are an EU national or their spouse/civil partner/child, and you (or the EU national) moved to the UK before the end of 2020**  
 → first check 'Brexit protected rights: EU national / EU family / Family of relevant person of Northern Ireland' (page 50)
- **If you are an EU national and have lived in the UK or Channel Islands or Isle of Man for the last 3 years**  
 → first check 'Brexit protected rights: EU national, 3 years in UK & Islands' (page 54)
- **If you are a national of Switzerland, Norway, Liechtenstein or Iceland, or their spouse/civil partner/child, and one of you moved to the UK before the end of 2020**  
 → first check 'Brexit protected rights: Worker and family' (page 55)
- **Your parent has been an EU or EEA worker in the UK in the past**  
 → first check 'Brexit protected rights: Child of worker' (page 62)
- **Your Swiss parent has pre-settled status or settled status under the EU Settlement Scheme**  
 → first check 'Brexit protected rights: Child of a Swiss national' (page 63)
- **Your Turkish parent lives in the UK, and you moved to the UK before the end of 2020**  
 → first check 'Brexit protected rights: Child of a Turkish worker' (page 65)

## Definitions

Whenever you see a word written in *blue italics*, it is a technical term. The regulations have defined it, so look here to see what it means. It is not the same as in ordinary life.

### Ascendant

This includes a person's "parent, stepparent, adoptive parent or grandparent", according to the Student Finance England Assessing Eligibility Guidance.<sup>1</sup>

### Civil partner

Look under 'Spouse or civil partner' for the definition.

### Dependant

To be a 'dependant', the Student Finance England Assessing Eligibility Guidance says you need to have "factual dependency...dependency for any reason, financial or otherwise"<sup>2</sup>.

### Direct descendant

The regulations do not define what a 'descendant' means. However, the Department for Education has confirmed to us that it considers a 'direct descendant' to "include child, grandchild and great-grandchild (to include step and adopted children, but not foster children)".

### EEA (European Economic Area)

The EEA is a larger area than the EU. It is made up of all the countries in the EU plus:

- Iceland
- Liechtenstein
- Norway (including Svalbard)

For categories where the residence area includes the EEA, the residence area is made up of all 30 countries in the EEA including the whole of the island of Cyprus (that is, including Northern Cyprus).

### EU (European Union)

You are an EU national if you are a national or citizen of one of the following:

- Austria
- Belgium
- Bulgaria
- Republic of Cyprus (but not the Turkish Republic of Northern Cyprus)
- Croatia

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<sup>1</sup> Student Finance England Assessing Eligibility Guidance paragraph 3.13.2. No definition is provided in the regulations.

<sup>2</sup> Student Finance England Assessing Eligibility Guidance paragraph 3.13

- Czech Republic
- Denmark
- Estonia
- Finland (extra note: the territory of Finland includes the Aland Islands)
- France (extra note: the territory of France includes the French Overseas Departments of Guadeloupe, Martinique, Mayotte, French Guyana, Reunion and Saint-Martin)
- Germany (extra note: the territory of Germany includes Heligoland)
- Greece (The Consular Office of the Greek Embassy in the UK confirmed for us that "anyone who holds a passport / ID card issued by the Greek Government would be a Greek national who is registered with the Greek Municipal Authorities. This would include those whose documentation describes them as Greek nationals of Hellenic descent. Any such person is, therefore, an EU national [...] unless [...] nationality has been revoked in accordance with Greek law".)
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal (extra note: the territory of Portugal includes Madeira and the Azores)
- Romania
- Slovakia
- Slovenia
- Spain (extra note: the territory of Spain includes the Balearic Islands, the Canary Islands, Ceuta, and Melilla)
- Sweden

### **First day of the academic year**

The 'first day of the academic year' is defined in the fees and Student Support regulations, which say that if your academic year starts between:

- 1 August and 31 December inclusive, the first day of the academic year is 1 September
- 1 January and 31 March inclusive, the first day of the academic year is 1 January
- 1 April and 30 June inclusive, the first day of the academic year is 1 April
- 1 July and 31 July inclusive, the first day of the academic year is 1 July

This date is used regardless of when your course term starts or when your lectures commence.

Read the text carefully to see whether you are being told to think about the 'first day of the academic year you are paying fees for', or the 'first day of the first academic year of the course'.

### **Islands**

The Channel Islands and the Isle of Man.

## Ordinarily resident

You are ordinarily resident in the residence area for your category if you have habitually, normally and lawfully resided in that area from choice. Temporary absences from the residence area should be ignored and therefore would not stop you being ordinarily resident. It is also accepted in the UK courts that an individual can be ordinarily resident in more than one place at the same time; individuals wishing to demonstrate this would have to be living a lawful, normal and habitual residence in each of the areas in question.

If you can demonstrate that you have not been ordinarily resident in the relevant residence area only because you, or a family member, were temporarily working outside the relevant residence area, you will be treated as though you have been ordinarily resident there.

For people who apply to the EU Settlement Scheme but do that late (after the deadline by which they were supposed to have applied), there is a special concession. It means the period of residence after they reached the deadline, but before they made their application, is always treated as lawful residence. This was announced by the Department for Education in a policy paper titled 'Access to student finance in England: late applications to the EU Settlement Scheme' on 6 October 2021 ([www.gov.uk/government/publications/student-finance-eligibility-2021-to-2022-academic-year](http://www.gov.uk/government/publications/student-finance-eligibility-2021-to-2022-academic-year)):

“Those who fail to apply to the EU Settlement Scheme within the applicable deadline... but do so at a later date, any period of unlawful residence in the UK and Islands beyond the expiry of the deadline up to the date a valid late application is made is to be treated as lawful residence for the purpose of considering the 3-year ordinary residence requirement.”

You can read some case law that explores the topic of 'ordinary residence' at [www.ukcisa.org.uk/Information--Advice/Fees-and-Money/Ordinary-residence-case-law](http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/Ordinary-residence-case-law).

## Overseas territories

- Anguilla
- Aruba
- Bermuda
- British Antarctic Territory
- British Indian Ocean Territory
- British Virgin Islands
- Cayman Islands
- Falkland Islands
- Faroe Islands
- French Polynesia
- French Southern and Antarctic Territories
- Gibraltar
- Greenland
- Mayotte
- Montserrat
- Netherlands Antilles (Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten)
- Pitcairn, Henderson, Ducie and Oeno Islands
- South Georgia and the South Sandwich Islands
- St Barthélemy
- St Helena and Dependencies (Ascension Island and Tristan da Cunha)
- St Pierre et Miquelon
- the Territory of New Caledonia and Dependencies
- Turks and Caicos Islands
- Wallis and Futuna Islands

## Person with protected rights

The definition is very long, so it has its own section starting on page 9.

## Relevant person of Northern Ireland

A person counts as a 'relevant person of Northern Ireland' if they:

- were born in Northern Ireland, and
- at the time they were born, at least one of their parents was any of the following:
  - British Citizen
  - Irish Citizen
  - both a British Citizen and an Irish Citizen
  - not British or Irish, but was entitled to reside in Northern Ireland and had no immigration time limit on their stay

and

- they themselves are a British Citizen, or an Irish Citizen, or both a British Citizen and an Irish Citizen

## Spouse or civil partner

'Spouse' means someone who is in a valid marriage. It does not include people who are living together but who are not married.

'Civil partners' are same-sex or opposite-sex couples who have registered their partnership and who have thereby gained formal legal recognition of their relationship. [Schedule 20 of the Civil Partnership Act 2004](http://www.legislation.gov.uk/ukpga/2004/33/schedule/20) ([www.legislation.gov.uk/ukpga/2004/33/schedule/20](http://www.legislation.gov.uk/ukpga/2004/33/schedule/20)) provides a list of partnerships in countries outside the UK that are automatically treated as civil partnerships. Opposite-sex couples were only included in the definition of 'civil partners' in 2019, so these individuals only count as having been 'civil partners' from 2 December 2019 (in England and Wales), and from 13 January 2020 (in Northern Ireland). The definition of 'civil partners' given above is the one used in England, Wales and Northern Ireland, not Scotland.

## UK

The United Kingdom, which consists of England, Wales, Scotland and Northern Ireland.

## UK and Islands

The residence area described as the 'UK and Islands' consists of:

- England, Wales, Scotland and Northern Ireland (the 'UK'); and
- Channel Islands and Isle of Man (the 'Islands')



## ‘Person with protected rights’

The term ‘person with protected rights’ is important for many categories. The definition is very long, so we explain it once, here.

You are a ‘person with protected rights’ for the purpose of this guide if you fall into A or B or C or D or E or F or G:

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### A. You have pre-settled status or settled status under the EU Settlement Scheme.

Take care not to lose your pre-settled status or settled status automatically. This will happen if you stay outside the UK and Islands for a continuous period of more than:

- 2 years if you have pre-settled status, or
- 5 years if you have settled status (or 4 years if you are a Swiss national or a family member of a Swiss national)

If you seem to have been missing from the UK and Islands for a long period, your fee assessor will want to check this with you, even if your digital status says you have pre-settled or settled status.

Note that if you have pre-settled status, you will not want to leave the UK and Islands much at all anyway, in case you risk prejudicing your chance to obtain settled status. However, that is for you to research, it will not be of any concern to your fee assessor – they do not give immigration advice.

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**B. You are still waiting for a decision on an application you made under the EU Settlement Scheme, and you have a Certificate of Application (it does not matter if you made the EU Settlement Scheme application late, after the deadline).**

**Or you are waiting for the outcome of an administrative review or appeal about that application (your request for an administrative review or appeal needs to have been made in-time, or accepted by the authorities for consideration despite being outside the time limit), or you are still within the time limit for submitting one.**

Note: There are two reasons this is a less useful route to eligibility:

1. Institutions won't be able to assess you against this particular route to eligibility until it is past the first day of the academic year (because they need to check this is your situation on that date).
2. It doesn't give you any security about what your fee status will be for the following year, as your status will have to be re-assessed then.

So if you are someone who is making an application to the EUSS, make your EUSS application as early as possible, so you are able to show them your pre-settled or settled status, instead of having to fall back on this route to eligibility.

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**C. You are an Irish citizen who fits into X or Y or Z:**

**X. You are an Irish citizen who “exercised their right to reside in the UK in accordance with European law before the end of the transition period and continues to reside thereafter”.**

You will have “exercised your right to reside in the UK in accordance with European law before the end of the transition period” if either:

1. You were lawfully resident in the UK by virtue of European rights at 10.59pm on 31 December 2020

Note that some people who were physically absent from the UK on that date will still count as having been lawfully resident in the UK on that date. The following types of absence were allowed for these purposes:

- absences that didn't exceed 6 months in total during that year
- absence on compulsory military service
- one absence not exceeding 12 months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training, or an overseas posting

or

2. You had a right of permanent residence under European law in the UK at 10.59pm on 31 December 2020

The most common way a person acquired a right of permanent residence under European law was if they were an EEA or Swiss national, or their accompanying family member, and they lived in the UK for 5 years. The right arose automatically at the 5-year point, there was no need to make any application for it.

Note that anyone who had had a right of permanent residence under European law in the UK in the past was treated as still having it at 10.59pm on 31 December 2020, provided they had not been absent from the UK for more than the 5 years leading up to 10.59pm on 31 December 2020. Any absences before they acquired the right of permanent residence were disregarded when calculating the 5 years.

**Y. You are an Irish citizen who met the definition of a ‘frontier worker’ from the Frontier Workers regulations at 10.59pm on 31 December 2020, and who still meets that definition. Note that to meet the definition, you don’t need to have been in the UK at 10.59pm on 31 December 2020.**

To meet the definition of a ‘frontier worker’ in the Frontier Workers regulations, it must be the case that from 10.59pm on 31 December 2020 onwards, you carry on being A, B and C:

A. an EEA or a Swiss national

and

B. ‘not primarily resident in the UK’

It is easier to satisfy this requirement than you might think: It is enough if you return to your country of residence outside the UK at least once every 6 months, or twice every 12 months; and this requirement can even be ignored sometimes if there are ‘exceptional reasons’ for not meeting it. An alternative way of satisfying the requirement is if you are in the UK for less than 180 days in 12 months.

and

C. a worker or self-employed person in the UK (or someone who has ‘retained’ that status – see the note towards the bottom of this category that is headed ‘Note, if you are a frontier worker...’, to see who will retain that status)

Confusingly, this does not mean you need to stay in the UK. You will leave the UK for periods, and will only stop meeting the definition if you fail to come back to the UK for work at least once in every rolling 12-month period (you count the rolling 12 months from the end of the period of work in 2020 that you relied on to qualify you as a frontier worker in the first place).

Important: If you do not meet B or C for coronavirus-related reasons, go to the UK Home Office’s ‘Frontier worker permit scheme caseworker guidance’ at [www.gov.uk/government/publications/frontier-worker-permit-scheme-caseworker-guidance](http://www.gov.uk/government/publications/frontier-worker-permit-scheme-caseworker-guidance). Look under the heading ‘Coronavirus (COVID-19)’. There are a number of useful policies there, which might mean you should be treated as though you do meet B or C.

**Z. You are an Irish citizen and all these five large bullet points are true:**

- You lived outside the UK at 10.59pm on 31 December 2020
- You have come to the UK to join an EEA or Swiss national family member
- That EEA or Swiss national either:
  - “exercised their right to reside in the UK in accordance with European law before the end of the transition period and continues to reside thereafter”; or
  - (unless they are a Swiss national) met the definition of a ‘frontier worker’ from the Frontier Workers regulations at 10.59pm on 31 December 2020, and they still meet that definitionRead X or Y (above) if you don’t know what these terms mean.
- You were their family member at 10.59pm on 31 December 2020, unless:
  - you were born to or adopted by them later than that (or in the case of a Swiss national, you become their child later than that), or
  - they are a Swiss national and you become their spouse or civil partner and come to join them at any point before 11pm on 31 December 2025)
- You are still their family member

In Z, ‘family member’ means:

- *spouse / civil partner*
- *direct descendant* of the person, or of their spouse / civil partner, who is:
  - under 21 years old; or
  - 21 or over and *a dependant* of the person or of the person's spouse / civil partner
- the dependent direct *ascendant* of:
  - the person; or
  - the person's spouse / civil partner
- unmarried partner (you will need to have been living together in a relationship akin to a marriage or civil partnership for at least two years before 10.59pm on 31 December 2020, unless you had a child or a pregnancy together at that point)

Provision C exists because unlike other European citizens, Irish citizens don’t have to make applications under the EU Settlement Scheme.

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**D. You lived outside the UK at 10.59pm on 31 December 2020, but you have now used the right given to you by the Withdrawal Agreements to come to the UK as a ‘joining family member’ of a EU/Norway/Iceland/Liechtenstein citizen.** It must be the case that a, b and c are all true:

- a. The EU/Norway/Iceland/Liechtenstein citizen “exercised their right to reside (or their right as a frontier worker) in the UK in accordance with EU law before the end of the transition period and continues to reside (or continues to exercise their right as a frontier worker) thereafter”
- b. On the first day of the academic year you are paying fees for, it is not more than 3 months since you came to the UK
- c. You were one of the following types of ‘family member’ of the EU/Norway/Iceland/Liechtenstein citizen both at 10.59pm on 31 December 2020, and at the point when you came to the UK:
  - spouse / civil partner
  - direct descendant of the person, or of their spouse / civil partner, who is:
    - under 21 years old; or
    - 21 or over and a dependant of the person or of the person’s spouse / civil partner
  - the dependent direct ascendant of:
    - the person; or
    - the person’s spouse / civil partner
  - unmarried partner (you will need to have been living together in a relationship akin to a marriage or civil partnership for at least two years before 10.59pm on 31 December 2020, unless you had a child or a pregnancy together at that point)

Note: The drawback to using this route to eligibility is that it doesn’t give you any security about what your fee status will be for the following year, as your status will have to be re-assessed then.

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**E. You lived outside the UK at 10.59pm on 31 December 2020, but you have now used the right given to you by the Withdrawal Agreements to come to the UK as a ‘joining family member’ of a Swiss citizen.** It must be the case that a, b and c are all true:

- a. The Swiss citizen “exercised their right to reside in the UK in accordance with the Swiss free movement of persons agreement before the end of the transition period and continues to reside thereafter”
- b. On the first day of the academic year you are paying fees for, it is not more than 3 months since you came to the UK
- c. You were one of the following types of ‘family member’ of the Swiss citizen both at 10.59pm on 31 December 2020, and at the point when you came to the UK:
- **spouse / civil partner** (but note that if your marriage or civil partnership begins between 11pm on 31 December 2020 and 11pm on 31 December 2025, and you come to the UK before 11pm on 31 December 2025, then the requirement to be a family member on 31 December 2020 which is mentioned above does not apply to you)
  - descendant of the person, or of their spouse / civil partner, who is:
    - under 21 years old; or
    - 21 or over and a **dependant** of the person or of the person’s spouse / civil partner
  - the dependent **ascendant** of:
    - the person; or
    - the person’s spouse / civil partner
  - unmarried partner (you will need to have been living together in a relationship akin to a marriage or civil partnership for at least two years before 10.59pm on 31 December 2020, unless you had a child or a pregnancy together at that point)

But requirement c is different if the person you joined was a student. If that is the case, then you must have been one of the following types of ‘family member’ of the Swiss citizen, both at 10.59pm on 31 December 2020, and at the point when you came to the UK:

- **spouse / civil partner** (but note that if your marriage or civil partnership begins between 11pm on 31 December 2020 and 11pm on 31 December 2025, and you come to the UK before 11pm on 31 December 2025, then the requirement to be a family member on 31 December 2020 which is mentioned above does not apply to you)
- a **dependant** child of the person or of the person’s spouse / civil partner (and your age does not matter)
- unmarried partner (you will need to have been living together in a relationship akin to a marriage or civil partnership for at least two years before 10.59pm on 31 December 2020, unless you had a child or a pregnancy together at that point)

Note: The drawback to using this route to eligibility is that it doesn’t give you any security about what your fee status will be for the following year, as your status will have to be re-assessed then.



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**F. You were legally adopted (or alternatively the UK courts appointed someone in a guardian-type role for you; formal or informal fostering arrangements don't count for this) after the end of the Brexit transition period (11pm on 31 December 2020), and all the following requirements (a, b, c and d) are met:**

- a. The person who has legally adopted you (or been appointed as your guardian) is an EU/Norway/Iceland/Liechtenstein citizen who “exercised their right to reside (or their right as a frontier worker) in the UK in accordance with EU law before the end of the transition period and continues to reside (or continues to exercise their right as a frontier worker) thereafter”
- b. On the first day of the academic year you are paying fees for:
  - it is not more than 3 months after you were legally adopted (or since your guardian was appointed); or
  - it is not more than 3 months since you came to the UK (if you came after you were legally adopted, or after your guardian was appointed)
- c. When you joined the person who has legally adopted you (or been appointed as your guardian), you were the **direct descendant** of the person, or of their spouse / civil partner, and you were:
  - under 21 years old; or
  - 21 or over **and** a **dependant** of the person or of the person's spouse / civil partner
- d. It must be the case that your parents fit any one of the following three scenarios:
  1. both parents are EU/Norway/Iceland/Liechtenstein citizens who “exercised their right to reside (or their right as a frontier worker) in the UK in accordance with EU law before the end of the transition period and continue to reside (or continue to exercise their right as a frontier worker) thereafter”
  2. one parent is an EU/Norway/Iceland/Liechtenstein citizen who “exercised their right to reside (or their right as a frontier worker) in the UK in accordance with EU law before the end of the transition period and continues to reside (or continues to exercise their right as a frontier worker) thereafter”, and the other parent is a UK national
  3. one parent is an EU/Norway/Iceland/Liechtenstein citizen who “exercised their right to reside (or their right as a frontier worker) in the UK in accordance with EU law before the end of the transition period and continues to reside (or continues to exercise their right as a frontier worker) thereafter”, and has joint or sole rights of custody of you

Note: The drawback to using this route to eligibility is that it doesn't give you any security about what your fee status will be for the following year, as your status will have to be re-assessed then.

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**G. You were legally adopted (or became a person's child) after the end of the Brexit transition period (11pm on 31 December 2020), and all the following requirements (a, b and c) are met:**

- a. The person who has legally adopted you (or whose child you have become) is a Swiss citizen who “exercised their right to reside in the UK in accordance with the Swiss free movement of persons agreement before the end of the transition period and continues to reside thereafter”
- b. On the first day of the academic year you are paying fees for:
  - it is not more than 3 months after you were legally adopted (or you became their child); or
  - it is not more than 3 months since you came to the UK (if you came after you were legally adopted, or after you became their child)
- c. When you joined the person who has legally adopted you (or whose child you have become), you were the descendant of the person, or of their spouse / civil partner, and you were:
  - under 21 years old; or
  - 21 or over and a **dependant** of the person or of the person's spouse / civil partner

But requirement c is different if the person you joined was a student. If that is the case, then when you joined the person who has legally adopted you (or whose child you have become), the requirement is that you were:

- a **dependant** of the person or of the person's spouse / civil partner (and your age does not matter)

Note: The drawback to using this route to eligibility is that it doesn't give you any security about what your fee status will be for the following year, as your status will have to be re-assessed then.

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**Note, if you are a frontier worker, you will ‘retain’ the status of a worker or self-employed person in the UK even if you stop work, if any single one of the following bullet points is true:**

- you are temporarily unable to do the work because of illness or accident, or
- you met the definition of a ‘frontier worker’ in the UK for at least one year immediately before that, and you are involuntarily unemployed, and you are seeking employment or self-employment in the UK, and you are registered as a jobseeker with a relevant unemployment office or recruitment agency (if you fall into this bullet, you will retain your status for 6 months, but after that you will have to provide ‘compelling evidence’ that you are continuing to seek employment or self-employment in the UK if you want to retain your status longer than 6 months), or
- you met the definition of a ‘frontier worker’ in the UK for less than one year immediately before that, and you are involuntarily unemployed, and you are seeking employment or self-employment in the UK, and you are registered as a jobseeker with a relevant unemployment office or recruitment agency (if you fall into this bullet point, you will only retain your status for 6 months), or
- you are involuntarily unemployed, and are doing vocational training, or
- you have voluntarily stopped work, to start vocational training related to your previous work, or
- you are temporarily unable to work in the UK due to pregnancy or childbirth. If it is more than 12 months since you stopped work, then you will additionally need to show that you are seeking employment or self-employment in the UK, and you are registered as a jobseeker with a relevant unemployment office or recruitment agency. One point worth knowing is that periods on paid maternity leave don’t count as being ‘temporarily unable to work’ – instead they count as work.

## Complete list of categories

Here is a list of all the categories (grouped together by theme), with a note about where to find further details. Not all the categories are described in this guide, so for those categories we tell you where to look on the UKCISA website.

### Settled

3 years in UK and Islands, settled in UK	page 22 of this guide
3 years in Republic of Ireland/UK/Islands, settled in UK	page 26 of this guide
3 years in UK and Islands, EUSS settled status connection	page 30 of this guide

### Family member of a UK national

Family member of a UK national	page 34 of this guide
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### Residence in Gibraltar

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### Residence in British overseas territories

Residence in British overseas territories	page 45 of this guide
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### Brexit temporary offers for courses starting before 2028

UK nationals and family with residence in Europe or overseas territories	page 35 of this guide
Settled and exercised a right of residence	page 38 of this guide
Irish citizens with residence in Europe or overseas territories	Page 43 of this guide

### Brexit protected rights

EU national and family / family of relevant person of Northern Ireland	page 50 of this guide
EU national, 3 years in UK & Islands	page 54 of this guide
Worker and family	page 55 of this guide
Child of worker	page 62 of this guide
Child of a Swiss national	page 63 of this guide
Child of a Turkish worker	page 65 of this guide

### Long residence

Long residence	<a href="http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#12-long-residence">www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#12-long-residence</a>
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### Special status

Refugee and family	<a href="http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#9-refugees-and-family">www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#9-refugees-and-family</a>
Humanitarian protection and family	<a href="http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#10-those-granted-humanitarian-protection-and-family">www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#10-those-granted-humanitarian-protection-and-family</a>
Stateless leave and family	<a href="http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#11-those-granted-stateless-leave-and-family">www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#11-those-granted-stateless-leave-and-family</a>

Section 67 leave	<a href="http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#13-those-with-section-67-leave">www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#13-those-with-section-67-leave</a>
Calais leave	<a href="http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#15-persons-granted-calais-leave-to-remain">www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#15-persons-granted-calais-leave-to-remain</a>
Domestic violence or domestic abuse	<a href="http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#14-person-granted-indefinite-leave-as-a-victim-of-domestic-violence-or-abuse">www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#14-person-granted-indefinite-leave-as-a-victim-of-domestic-violence-or-abuse</a>
Bereaved partner	

### **Students who started courses before 1 August 2021**

Students who started courses before 1 August 2021	<a href="http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#layer-6082">www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#layer-6082</a>
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## 3 years in UK and Islands, settled in UK

Tip: If your 'settled' immigration status does not come through in time for the first day of the first academic year of the course, see if you can use the category '3 years in Republic of Ireland/UK/Islands, settled in UK' instead. You might not want to do that though, because it gives poorer access to Student Support.

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (e) must be met:

**(a) you must be 'settled' in the UK on the *first day of the first academic year of the course***

To be 'settled' you must be both ordinarily resident in the UK and without any immigration restriction on the length of your stay in the UK. The regulations take this definition of 'settled' from immigration law (section 33(2A) of the Immigration Act 1971).

You have no immigration restriction on the length of your stay in the UK if you fall into one of the following groups (A or B or C or D or E):

### **A. 'Indefinite Leave to Remain' or 'Indefinite Leave to Enter' ('ILR'/'ILE')**

If you have Indefinite Leave to Enter (ILE) or Indefinite Leave to Remain (ILR) in the UK, you have no immigration restriction on the length of your stay in the UK.

If you have been given 'settled status' under the EU Settlement Scheme, there is a special category for you to use instead of this one, it is the category headed '3 years in UK and Islands, EUSS settled status connection'. Even though you do have ILE or ILR, you cannot meet the criteria for the '3 years in UK and Islands, settled in UK' category, because of criterion (b), below. So look at the other category instead.

If you have ILE or ILR in Jersey, Guernsey, or the Isle of Man, then this is considered to be ILE or ILR in the UK whenever you are in the UK.

## **B. British Citizen**

If your passport describes you as a 'British Citizen', you have no immigration restriction on the length of your stay in the UK.

### A special note for British Overseas Territories Citizens (BOTCs)

Many British Overseas Territories Citizens (BOTCs) are also British Citizens. The easiest way to show you are a British Citizen is to have a passport that lists your nationality as 'British Citizen'. If you do not have one, England's Department for Education indicates in its Assessing Eligibility Guidance 2021/22 (paragraph 3.1.3) that any of the following will be acceptable instead:

- a British Overseas Territories Citizen passport issued before 21 May 2002; or
- a British Dependent Territories Citizen passport issued before 21 May 2002; or
- a British Overseas Territories Citizen passport issued on or after 21 May 2002, but only if you also provide evidence that either:
  - you or your parent was born in a British overseas territory (check the list of 'qualifying territories' at [www.gov.uk/types-of-british-nationality/british-overseas-territories-citizen](http://www.gov.uk/types-of-british-nationality/british-overseas-territories-citizen)); or
  - you or your parent was registered or naturalised as a citizen (for example, as a British Subject, a Citizen of the UK and Colonies, a British Citizen, a British Dependent Territories Citizen, or a British Overseas Territories Citizen) before 21 May 2002.

If you are a British Overseas Territories Citizen who is also a British Citizen, another category you might fit is the one headed 'Residence in British overseas territories', where the residence area is bigger.

## **C. Right of Abode**

If you have a Certificate of Entitlement to the Right of Abode in the UK in your passport, you have no immigration restriction on the length of your stay in the UK.

## **D. Republic of Ireland citizen**

If you are a citizen of the Republic of Ireland, you have no immigration restriction on the length of your stay in the UK. You are also an EU national and an EEA national.

## **E. Non-British Citizen serving in the British armed forces**

If you are not a British Citizen and you are serving in the British armed forces, you are treated as having no immigration restriction on the length of your stay in the UK, while you serve in the British armed forces. This is because of section 8(5) of the Immigration Act 1971.

### Examples of where status is not 'settled'

You are not 'settled' if you:

- have a time limit on the length of your stay in the UK, as shown by your current immigration permission (you have 'limited leave'); or
- are exempt from immigration control (unless you fit box E). For example, you are living in the UK as a diplomat or a member of their household/family; or
- have a type of British passport that does not give you British Citizenship (for example a British National (Overseas) passport), and you do not have Indefinite Leave

**(b) on the *first day of the first academic year of the course*, you must not be someone who qualifies for 'home' fees under the category headed '3 years in UK and Islands, EUSS settled status connection'**

If you are someone who qualifies for 'home' fees under that other category, you will be assessed under that category instead. It includes an easier test about the 'main purpose' for your residence. The category covers people who have settled status under the EU Settlement Scheme, Irish citizens who at some point have lived in the UK and Islands for a 5-year period, and some people who used to have a right of permanent residence under European law and then applied for the EU Settlement Scheme.

**(c) you must have been ordinarily resident in the *UK and Islands* for the full three-year period before the *first day of the first academic year of the course*. For example, if your course begins in October 2021 you must have been ordinarily resident in the UK and Islands from 1 September 2018 to 31 August 2021**

Note that it is not necessary to have had 'settled' immigration status for the full three years. You can obtain 'settled' immigration status as late as the first day of the first academic year of the course.

**Note:** A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

**(d) the main purpose for your residence in the UK and Islands must not have been to receive full-time education during any part of that three-year period**

Tip if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the UK and Islands anyway, then you meet criterion (d).

**(e) you must be *ordinarily resident* in the UK on the *first day of the first academic year of the course***



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## 3 years in Republic of Ireland/UK/Islands, settled in UK

Tip: Usually you should only use this category if you have been ordinarily resident in the Republic of Ireland at some point during the three-year period. If you have not, then try to use the category headed '3 years in UK and Islands, settled in UK' instead. It gives better access to Student Support.

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (e) must be met:

**(a) you must be 'settled' in the UK on the day on which the first term of the first academic year actually begins** (note that this is a different date from the *first day of the first academic year of the course*)

To be 'settled' you must be both ordinarily resident in the UK and without any immigration restriction on the length of your stay in the UK. The regulations take this definition of 'settled' from immigration law (section 33(2A) of the Immigration Act 1971).

You have no immigration restriction on the length of your stay in the UK if you fall into one of the following groups (A or B or C or D or E or F):

### **A. Republic of Ireland citizen**

If you are a citizen of the Republic of Ireland, you have no immigration restriction on the length of your stay in the UK. You are also an EU national and an EEA national.

## **B. 'Indefinite Leave to Remain' or 'Indefinite Leave to Enter' ('ILR'/'ILE')**

If you have Indefinite Leave to Enter (ILE) or Indefinite Leave to Remain (ILR) in the UK, you have no immigration restriction on the length of your stay in the UK.

If you have been given 'settled status' under the EU Settlement Scheme, there is a special category for you to use instead of this one, if you meet the criteria for that category - it is the category headed '3 years in UK and Islands, EUSS settled status connection'. Even though you do have ILE or ILR, you will probably find that you do not meet the criteria for the '3 years in Republic of Ireland/UK/Islands, settled in UK' category, because of criterion (b), below. In that case, look at the other category instead.

If you have ILE or ILR in Jersey, Guernsey, or the Isle of Man, then this is considered to be ILE or ILR in the UK whenever you are in the UK.

## **C. British Citizen**

If your passport describes you as a 'British Citizen', you have no immigration restriction on the length of your stay in the UK.

### A special note for British Overseas Territories Citizens (BOTCs)

Many British Overseas Territories Citizens (BOTCs) are also British Citizens. The easiest way to show you are a British Citizen is to have a passport that lists your nationality as 'British Citizen'. If you do not have one, England's Department for Education indicates in its Assessing Eligibility Guidance 2021/22 (paragraph 3.1.3) that any of the following will be acceptable instead:

- a British Overseas Territories Citizen passport issued before 21 May 2002; or
- a British Dependent Territories Citizen passport issued before 21 May 2002; or
- a British Overseas Territories Citizen passport issued on or after 21 May 2002, but only if you also provide evidence that either:
  - you or your parent was born in a [British overseas territory](#) (check the list of 'qualifying territories' at [www.gov.uk/types-of-british-nationality/british-overseas-territories-citizen](http://www.gov.uk/types-of-british-nationality/british-overseas-territories-citizen)); or
  - you or your parent was registered or naturalised as a citizen (for example, as a British Subject, a Citizen of the UK and Colonies, a British Citizen, a British Dependent Territories Citizen, or a British Overseas Territories Citizen) before 21 May 2002.

If you are a British Overseas Territories Citizen who is also a British Citizen, another category you might fit is the one headed 'Residence in British overseas territories', where the residence area is bigger.

## **D. Right of Abode**

If you have a Certificate of Entitlement to the Right of Abode in the UK in your passport, you have no immigration restriction on the length of your stay in the UK.

### **E. Non-British Citizen serving in the British armed forces**

If you are not a British Citizen and you are serving in the British armed forces, you are treated as having no immigration restriction on the length of your stay in the UK, while you serve in the British armed forces. This is because of section 8(5) of the Immigration Act 1971.

### **F. Unusual scenario**

You meet all these 4 requirements:

1. You had the right of permanent residence under European law in the UK at 10.59pm on 31 December 2020; and
2. You failed to apply for the EU Settlement Scheme (EUSS) on or before the first day of the academic year you are paying fees for; and
3. You applied for the EUSS on or before the day on which the first term of the first academic year of the course actually begins; and
4. You are still waiting for a decision on your EUSS application, and you have a Certificate of Application (it does not matter if you made the EUSS application late, after the deadline).

Or you are waiting for the outcome of an administrative review or appeal about that application (your request for an administrative review or appeal needs to have been made in-time, or accepted by the authorities for consideration despite being outside the time limit), or you are still within the time limit for submitting one.

### **Examples of where status is not 'settled'**

You are not 'settled' if you:

- have a time limit on the length of your stay in the UK, as shown by your current immigration permission (you have 'limited leave'); or
- are exempt from immigration control (unless you fit box E). For example you are living in the UK as a diplomat or a member of their household/family; or
- have a type of British passport that does not give you British Citizenship (for example a British National (Overseas) passport), and you do not have Indefinite Leave

**(b) on the day on which the first term of the first academic year actually begins, you must not be someone who qualifies for ‘home’ fees under the category headed ‘3 years in UK and Islands, EUSS settled status connection’**

If you are someone who qualifies for ‘home’ fees under that other category, you will be assessed under that category instead. The three-year residence area for that category is smaller, it does not include the Republic of Ireland. The category covers people who have settled status under the EU Settlement Scheme, Irish citizens who at some point have lived in the UK and Islands for a 5-year period, and some people who used to have a right of permanent residence under European law and then applied for the EU Settlement Scheme.

**(c) you must have been ordinarily resident in the Republic of Ireland and/or *UK and Islands* for the full three-year period before the *first day of the first academic year of the course*. For example, if your course begins in October 2021 you must have been ordinarily resident in the Republic of Ireland and/or UK and Islands from 1 September 2018 to 31 August 2021**

Note that it is not necessary to have had ‘settled’ immigration status for the full three years. You can obtain ‘settled’ immigration status as late as the day on which the first term of the first academic year actually begins.

**Note:** A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as ‘ordinary residence’.

**(d) the main purpose for your residence in the large area described in (c) must not have been to receive full-time education during any part of that three-year period**

Tip: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of the Republic of Ireland/UK/Islands anyway, then you meet criterion (d).

**(e) you must be *ordinarily resident* in the UK on the day on which the first term of the first academic year actually begins**

## 3 years in UK and Islands, EUSS settled status connection

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (d) must be met:

(a) on the *first day of the academic year* you are paying fees for, you must fall into A or B or C:

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### A. You have settled status under the EU Settlement Scheme.

Take care not to lose your settled status automatically. This will happen if you stay outside the [UK and Islands](#) for a continuous period of more than 5 years (or 4 years if you are a Swiss national or a family member of a Swiss national).

If you seem to have been missing from the UK and Islands for a number of years, your fee assessor will want to check this with you, even if your digital status says you have settled status.

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### B. You are someone who meets requirements (i) and (ii):

(i) you had a right of permanent residence under European law in the UK at 10.59pm on 31 December 2020

The most common way a person acquired a right of permanent residence under European law was if they were an EEA or Swiss national, or their accompanying family member, and they lived in the UK for 5 years. The right arose automatically at the 5-year point, there was no need to make any application for it.

Note that anyone who had had a right of permanent residence under European law in the UK in the past was treated as still having it at 10.59pm on 31 December 2020, provided they had not been absent from the UK for more than the 5 years leading up to 10.59pm on 31 December 2020. Any absences before they acquired the right of permanent residence were disregarded when calculating the 5 years.

and

(ii) you are still waiting for a decision on an application you made under the EU Settlement Scheme, and you have a Certificate of Application (it does not matter if you made the EU Settlement Scheme application late, after the deadline).

Or you are waiting for the outcome of an administrative review or appeal about that application (your request for an administrative review or appeal needs to have been made in-time, or accepted by the authorities for consideration despite being outside the time limit), or you are still within the time limit for submitting one.

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**C. You are an Irish citizen and you meet requirements (i) and (ii):**

(i) you are currently *ordinarily resident* in the UK; and

(ii) you don't have settled status under the EU Settlement Scheme, but you would qualify for it if you chose to make an application (this is because unlike other European citizens, Irish citizens don't have to make applications under the EU Settlement Scheme)

The only scenario in which an institution is likely to accept that an Irish citizen counts as someone who would qualify for settled status under the EU Settlement Scheme if they were to choose to apply for it (without actually applying for it) is if:

- At some point in their life they lived in the *UK and Islands* for a 5-year period. It will count as a 5-year period provided they were not absent for more than a total of 6 months in any 12-month period, during the 5 years. But the following exceptions are allowed to that general rule:
  - one single absence which did not exceed 12 months and was for an important reason (such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting)
  - any period of absence on compulsory military service
  - any period of absence on a posting on Crown service (this includes HM Forces) or accompanying a person on a posting on Crown service
  - any period spent working in the UK marine area

and

- The start of the 5 years was before the end of the Brexit transition period (11pm on 31 December 2020);

and

- Since that 5-year period they have not been absent from the UK and Islands for a period of more than 5 consecutive years.

This is not the only scenario in which an Irish citizen will count as someone who would qualify for settled status under the EU Settlement Scheme if they were to choose to apply for it. But it is probably the only one that an institution will be feel comfortable testing themselves, without asking the Irish citizen to actually make an application to the EU Settlement Scheme for settled status.



**(b) you must have been ordinarily resident in the *UK and Islands* for the full three-year period before the *first day of the first academic year of the course*. For example, if your course begins in October 2021 you must have been ordinarily resident in the UK and Islands from 1 September 2018 to 31 August 2021**

**Note**: A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

**(c) if the main purpose of your residence for the three-year period was to receive full-time education, you must have been ordinarily resident in the *UK / EEA / Switzerland / the overseas territories* (these include Gibraltar) the day before the start of the three-year period**

**Tip**: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of the UK/EEA/Switzerland/overseas territories anyway, then you meet criterion (c).

**(d) you must be *ordinarily resident* in the *UK* on the *first day of the first academic year of the course***

## Family member of a UK national

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (e) must be met:

**(a) the UK national must be a *UK national* on the *first day of the first academic year of the course***

**(b) you must be the family member of that UK national on the *first day of the academic year* you are paying fees for**

For this category, 'family member' means:

- *spouse* or *civil partner* of the UK national
- *direct descendant* of the UK national, or of the UK national's spouse or civil partner, who is:
  - under 21 years old; or
  - 21 or over and *a dependant* of the UK national, or of the UK national's spouse or civil partner

**(c) you must have been *ordinarily resident* in the *UK and Islands* for the full three-year period before the *first day of the first academic year of the course*. For example, if your course begins in October 2021 you must have been ordinarily resident in the UK and Islands from 1 September 2018 to 31 August 2021**

**Note:** A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

**(d) the main purpose for your residence in the UK and Islands must not have been to receive full-time education during any part of that three-year period**

Tip: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the UK and Islands anyway, then you meet criterion (d).

**(e) you must undertake the course in the UK**

## Brexit temporary offer for courses starting before 2028: UK nationals and family with residence in Europe or overseas territories

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (e) must be met (plus (f) in some cases):

(a) on the **first day of the academic year** you are paying fees for, you must be either:

(i) a **UK national**; or

(ii) a family member of a person who is a **UK national**

For this category, 'family member' means:

- **spouse** or **civil partner** of the UK national
- **direct descendant** of the UK national, or of the UK national's spouse or civil partner, who is:
  - under 21 years old; or
  - 21 or over and a **dependant** of the UK national, or of the UK national's spouse or civil partner

(b) you were **ordinarily resident at 10.59pm on 31 December 2020** in either:

- the **EEA** (this does not include the UK) / Switzerland / the **EU** overseas territories (see the Note below for what is meant by 'the EU overseas territories', they do not include Gibraltar); or
- the UK – but this will only be acceptable if:
  - your period of ordinary residence in the UK started after 31 December 2017; and
  - it immediately followed a period of ordinary residence in the **EEA** (this does not include the UK) / Switzerland / the **EU** overseas territories (see the Note below for what is meant by 'the EU overseas territories', they do not include Gibraltar)

**Important:** If you are using this category as the family member of a UK national, then all of (b) will need to be true for the UK national as well as for you.

**Note:** Here the 'EU overseas territories' means Aruba, Faroe Islands, French Polynesia, French Southern and Antarctic Territories, Mayotte, Greenland, Netherlands Antilles (Bonaire, Curacao, Saba, Sint Eustatius, Sint Maarten), St Barthelemy, St Pierre et Miquelon, the Territory of New Caledonia and Dependencies, and Wallis and Futuna.

(c) you were ordinarily resident in the [UK](#) / [EEA](#) / Switzerland / [EU](#) overseas territories (these do **not** include Gibraltar) throughout the period from 11pm on 31 December 2020 until the *first day of the [first academic year of the course](#)*

**Important:** If you are using this category as the family member of a UK national, then (c) will need to be true for the UK national as well as for you.

(d) a three-year residence test is met. There are two alternatives way of meeting it, you can choose either (i) or (ii) below:

(i) You meet the three-year residence test yourself. You will meet the test yourself if:

- you have been ordinarily resident in the [UK](#) / [EEA](#) / Switzerland / [overseas territories](#) (these **do** include Gibraltar this time) for the full three-year period before the *first day of the [first academic year of the course](#)*; and
- the main purpose for your residence in the UK/EEA/Switzerland/overseas territories residence area must not have been to receive full-time education during any part of that three-year period

**Tip:** if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of the UK/EEA/Switzerland/overseas territories anyway, then you meet this 'main purpose' test.

**Note:** A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

or

(ii) You are the family member of a UK national, and the UK national meets the three-year residence test. For this to be acceptable:

- the UK national that you are a family member of must have exercised a right of residence in a European Union country other than the UK before 11pm on 31 December 2020. The right of residence can have been as a worker, a self-sufficient person, a student, or as a family member accompanying one of these types of people; and
- the UK national that you are a family member of must have been ordinarily resident in the [UK](#) / [EEA](#) / Switzerland / [overseas territories](#) (these **do** include Gibraltar this time) for the full three-year period before the *first day of the [first academic year of the course](#)*

**(e) you must undertake the course in the UK**

**(f) if you are using this category as the family member of a UK national, there is one extra requirement:**

- the UK national must have been ordinarily resident in the [UK](#) / [EEA](#) / Switzerland / [overseas territories](#) (these do include Gibraltar this time) for the full three-year period before the *first day of the [first academic year of the course](#)*

## Brexit temporary offer for courses starting before 2028: Settled and exercised a right of residence

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (g) must be met:

**(a) you left the UK and exercised a right of residence before 11pm on 31 December 2020, having already been settled in the UK**

**Note:** The meaning of having 'exercised a right of residence' is very limited. It only covers two groups.

First, UK nationals and their family members who went to the [EEA](#) / Switzerland exercising European rights of free movement as workers, students, self-sufficient people or as the family members of any of those people.

Second, people with the European right of permanent residence in the UK, who either:

- went elsewhere in the EEA / Switzerland exercising European rights of free movement as workers, students, self-sufficient people, or as the family members of any of those people; or
- went to the state in the EEA / Switzerland of which they or their family member was a national.

The most common way a person acquired a right of permanent residence under European law was if they were an EEA or Swiss national, or their accompanying family member, and they lived in the UK for 5 years. The right arose automatically at the 5-year point, there was no need to make any application for it.

The meaning of 'family member' in the Note above is:

- [spouse](#) / [civil partner](#)
- [direct descendant](#) of the person, or of their spouse / civil partner, who is:
  - under 21 years old; or
  - 21 or over and [a dependant](#) of the person, or of the person's spouse / civil partner
- additionally (but if the person is exercising rights as a student and is not exercising rights as a worker, then the person must be self-sufficient), the dependent direct [ascendant](#) of:
  - the person; or
  - the person's spouse / civil partner

**(b) you were *ordinarily resident* at 10.59pm on 31 December 2020 in either:**

- the *EEA* (this does not include the UK) / Switzerland / the *overseas territories* (these include Gibraltar); or
- the UK – but this will only be acceptable if:
  - your period of ordinary residence in the UK started after 31 December 2017; and
  - it immediately followed a period of ordinary residence in the *EEA* (this does not include the UK) / Switzerland / the *overseas territories* (these include Gibraltar)

**(c) you were ordinarily resident in the *UK / EEA / Switzerland / overseas territories* (these include Gibraltar) throughout the period from 11pm on 31 December 2020 until the *first day of the first academic year of the course***

**(d) you are ordinarily resident in the *UK* on the day on which the first term of the first academic year actually begins**

**(e) you have been ordinarily resident in the *UK / EEA / Switzerland / overseas territories* (these include Gibraltar) for the full three-year period before the *first day of the first academic year of the course***

Note: A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

**(f) if your three years' ordinary residence in the large area described in (e) was mainly for the purpose of receiving full-time education, you must have been ordinarily resident in the *UK / EEA / Switzerland / Gibraltar* (and not in any of the other overseas territories) the day before the start of the three-year period**

Tip: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of the UK/EEA/Switzerland/Gibraltar anyway, then you meet criterion (f).

**(g) you must be 'settled' in the *UK* on the *first day of the academic year* you are paying fees for**

To be 'settled' you must be both ordinarily resident in the UK and without any immigration restriction on the length of your stay in the UK. The regulations take this definition of 'settled' from immigration law (section 33(2A) of the Immigration Act 1971).

You have no immigration restriction on the length of your stay in the UK if you fall into one of the following groups (A or B or C or D or E or F):

**A. 'Indefinite Leave' or 'settled status under the EU Settlement Scheme'**

If you have been given 'settled status' under the EU Settlement Scheme, then you have no immigration restriction on the length of your stay in the UK. This is because you will have been given either Indefinite Leave to Enter (ILE) or Indefinite Leave to Remain (ILR).

See box F if you are still waiting for 'settled status' under the EU Settlement Scheme.

If you have Indefinite Leave to Enter (ILE) or Indefinite Leave to Remain (ILR) in the UK, you have no immigration restriction on the length of your stay in the UK.

If you have ILE or ILR in Jersey, Guernsey, or the Isle of Man, then this is considered to be ILE or ILR in the UK whenever you are in the UK.



## **B. British Citizen**

If your passport describes you as a 'British Citizen', you have no immigration restriction on the length of your stay in the UK.

### A special note for British Overseas Territories Citizens (BOTCs)

Many British Overseas Territories Citizens (BOTCs) are also British Citizens. The easiest way to show you are a British Citizen is to have a passport that lists your nationality as 'British Citizen'. If you do not have one, England's Department for Education indicates in its Assessing Eligibility Guidance 2021/22 (paragraph 3.1.3) that any of the following will be acceptable instead:

- a British Overseas Territories Citizen passport issued before 21 May 2002; or
- a British Dependent Territories Citizen passport issued before 21 May 2002; or
- a British Overseas Territories Citizen passport issued on or after 21 May 2002, but only if you also provide evidence that either:
  - you or your parent was born in a British overseas territory (check the list of 'qualifying territories' at [www.gov.uk/types-of-british-nationality/british-overseas-territories-citizen](http://www.gov.uk/types-of-british-nationality/british-overseas-territories-citizen)); or
  - you or your parent was registered or naturalised as a citizen (for example, as a British Subject, a Citizen of the UK and Colonies, a British Citizen, a British Dependent Territories Citizen, or a British Overseas Territories Citizen) before 21 May 2002.

If you are a British Overseas Territories Citizen who is also a British Citizen, another category you might fit is the one headed 'Residence in British overseas territories', where the residence area is bigger.

## **C. Right of Abode**

If you have a Certificate of Entitlement to the Right of Abode in the UK in your passport, you have no immigration restriction on the length of your stay in the UK.

## **D. Republic of Ireland citizen**

If you are a citizen of the Republic of Ireland, you have no immigration restriction on the length of your stay in the UK. You are also an EU national and an EEA national.

## **E. Non-British Citizen serving in the British armed forces**

If you are not a British Citizen and you are serving in the British armed forces, you are treated as having no immigration restriction on the length of your stay in the UK, while you serve in the British armed forces. This is because of section 8(5) of the Immigration Act 1971.

## **F. Waiting for 'settled status under the EU Settlement Scheme'**

If you had a right of permanent residence under European law in the UK at 10.59pm on 31 December 2020 and you have made an application to the EU Settlement Scheme (EUSS), you are in a special position. You will be treated as though you already have your settled status under the EUSS while:

- you wait for a decision on your application to the EUSS (but you must have a Certificate of Application for the EUSS). It does not matter if you made the EUSS application late, after the deadline; and
- you wait for the outcome of an administrative review or appeal about your EUSS application (your request for an administrative review or appeal needs to have been made in-time, or accepted by the authorities for consideration despite being outside the time limit). Or you are still within the time limit for submitting one.

## **Examples of where status is not 'settled'**

You are not 'settled' if you:

- have a time limit on the length of your stay in the UK, as shown by your current immigration permission (you have 'limited leave'); or
- are exempt from immigration control (unless you fit box E). For example, you are living in the UK as a diplomat or a member of their household/family; or
- have a type of British passport that does not give you British Citizenship (for example a British National (Overseas) passport), and you do not have Indefinite Leave

## **Brexit temporary offer for courses starting before 2028: Irish citizens with residence in Europe or overseas territories**

**Background:** This category did not appear in Versions 1 and 2 of this pdf, because it was not created until 11 August 2021 (by the Department for Education, in its Education (Student Fees, Awards and Support) (Amendment) (No.2) Regulations 2021). The category is available for any academic year that starts on or after 1 August 2021, where the fees are being charged on or after 1 September 2021.

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (e) must be met:

**(a) on the *first day of the academic year* you are paying fees for, you must be an Irish citizen**

**(b) you were *ordinarily resident* at 10.59pm on 31 December 2020 in either:**

- the *EEA* (this does not include the UK) / Switzerland / the EU overseas territories (see the Note below for what is meant by 'the EU overseas territories', they do not include Gibraltar); or
- the UK – but this will only be acceptable if:
  - your period of ordinary residence in the UK started after 31 December 2017; and
  - it immediately followed a period of ordinary residence in the *EEA* (this does not include the UK) / Switzerland / the EU overseas territories (see the Note below for what is meant by 'the EU overseas territories', they do not include Gibraltar)

**Note:** Here the 'EU overseas territories' means Aruba, Faroe Islands, French Polynesia, French Southern and Antarctic Territories, Mayotte, Greenland, Netherlands Antilles (Bonaire, Curacao, Saba, Sint Eustatius, Sint Maarten), St Barthelemy, St Pierre et Miquelon, the Territory of New Caledonia and Dependencies, and Wallis and Futuna.

**(c) you were ordinarily resident in the *UK* / *EEA* / Switzerland / EU overseas territories (these do not include Gibraltar) throughout the period from 11pm on 31 December 2020 until the *first day of the first academic year of the course***

**(d) you meet a three-year residence test. You will meet the test if:**

- you have been ordinarily resident in the *UK* / *EEA* / Switzerland / *overseas territories* (these do include Gibraltar this time) for the full three-year period before the *first day of the first academic year of the course*; and

- the main purpose for your residence in the UK/EEA/Switzerland/overseas territories residence area must not have been to receive full-time education during any part of that three-year period

Tip: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of the UK/EEA/Switzerland/overseas territories anyway, then you meet this 'main purpose' test.

**(e) you must undertake the course in the UK**

# Residence in British Overseas Territories

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (e) must be met:

**(a) you must fall into (i) or (ii):**

(i) You are a UK national on the *first day of the first academic year of the course.*

or

(ii) Both of the following bullet points are true:

- on the *first day of the academic year* you are paying fees for, you are a family member of another person; and
- that other person is or was a UK national on the *first day of the first academic year of the course.*

For this category, 'family member' means:

- *spouse* or *civil partner* of the UK national
- *direct descendant* of the UK national, or of the UK national's spouse or civil partner, who is:
  - under 21 years old; or
  - 21 or over and *a dependant* of the UK national, or of the UK national's spouse or civil partner

**(b) you must have been ordinarily resident in the 'specified British overseas territories' and/or *UK and Islands* for the full three-year period before *the first day of the first academic year of the course.* For example, if your course begins in October 2021 you must have been ordinarily resident in the 'specified British overseas territories' and/or UK and Islands from 1 September 2018 to 31 August 2021**

The 'specified British overseas territories' are:

- Anguilla
- Bermuda
- British Antarctic Territory
- British Indian Ocean Territory
- British Virgin Islands
- Cayman Islands
- Falkland Islands
- Gibraltar
- Montserrat
- Pitcairn, Henderson, Ducie and Oeno Islands
- South Georgia and the South Sandwich Islands
- St Helena and Dependencies (Ascension Island and Tristan da Cunha)
- Turks and Caicos Islands

**(c) the main purpose for your residence in the large area described in (b) must not have been to receive full-time education during any part of that three-year period**

Tip: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of the 'specified British overseas territories'/UK/Islands anyway, then you meet criterion (c).

**(d) you must have been *ordinarily resident* in the 'specified British overseas territories' at some point during the three-year period**

**(e) you must undertake the course in the UK**

# Residence in Gibraltar

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (c) must be met:

(a) on the **first day of the academic year** you are paying fees for, you must fall into A or B or C or D:

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## A. You are a UK national and you have resident status in Gibraltar granted by the Government of Gibraltar

You can show your 'red card' or 'blue card' issued by the Government of Gibraltar as evidence of your resident status.

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## B. All of the following three bullet points are true, on the **first day of the academic year** you are paying fees for:

- you are a family member of another person; and
- that other person is or was a UK national; and

For B, 'family member' means:

- spouse or civil partner of the UK national
- direct descendant of the UK national, or of the UK national's spouse or civil partner, who is:
  - under 21 years old; or
  - 21 or over and a dependant of the UK national or of the UK national's spouse or civil partner

- you have resident status in Gibraltar granted by the Government of Gibraltar

You can show your 'green card', 'red card' or 'blue card' issued by the Government of Gibraltar as evidence of your resident status.

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## C. You are an **EU** national and you have a 'right of residence in Gibraltar arising under the EU withdrawal agreement'

To show the fee assessor that you have a 'right of residence in Gibraltar arising under the EU withdrawal agreement', you should produce your 'blue card', issued by the Government of Gibraltar (not a 'green card').

**D. All of the following three bullet points are true, on the *first day of the academic year* you are paying fees for:**

- you are a family member of another person; and
- that other person is or was an *EU* national; and

For D, 'family member' means:

- *spouse / civil partner*
- *direct descendant* of the person, or of their spouse / civil partner, who is:
  - under 21 years old; or
  - 21 or over and *a dependant* of the person or of the person's spouse / civil partner
- additionally (but if the person is a student in Gibraltar and is not a worker, then the person must be self-sufficient), the dependent direct *ascendant* of:
  - the person; or
  - the person's spouse / civil partner

- you have a 'right of residence in Gibraltar arising under the EU withdrawal agreement'

To show the fee assessor that you have a 'right of residence in Gibraltar arising under the EU withdrawal agreement', you should produce your 'blue card', issued by the Government of Gibraltar (not a 'green card').

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**(b) a three-year residence test is met. There are two alternatives way of meeting it, you can choose either (i) or (ii) below:**

(i) You meet the three-year residence test yourself. You will meet the test yourself if:

- you have been *ordinarily resident* in the *UK / EEA / Switzerland / overseas territories* (these include Gibraltar) for the full three-year period before the *first day of the first academic year of the course*; and
- the main purpose for your residence in the UK/EEA/Switzerland/overseas territories residence area must not have been to receive full-time education during any part of that three-year period.

Tip: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of the UK/EEA/Switzerland/overseas territories anyway, then you meet this 'main purpose' test.

Note: A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

or

(ii) You are the family member of an *EU* national or the family member of a *relevant person of Northern Ireland* ('RPNI'), and the EU national or RPNI meets the three-year residence test. For this to be acceptable:

- the EU national or RPNI that you are a family member of must have been ordinarily resident in the *UK / EEA / Switzerland / overseas territories* (these include Gibraltar) for the full three-year period before the *first day of the first academic year of the course*.

Note: A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

**(c) you must undertake the course in the UK**

## Brexit protected rights: EU national / EU family / Family of relevant person of Northern Ireland

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (d) must be met:

### (a) on the *first day of the academic year* you are paying fees for, you must be a 'person with protected rights'

Turn to page 9 to read about who counts as a 'person with protected rights' (it does include people who have pre-settled status or settled status under the EU Settlement Scheme, as well as others).

### (b) you must fall into (i) or (ii) or (iii):

(i) You are an *EU* national on the *first day of the first academic year of the course*.

or

(ii) All three following bullet points are true:

- on the *first day of the academic year* you are paying fees for, you are a family member of another person; and
- that other person is or was an *EU* national on the *first day of the first academic year of the course*; and
- that *EU* national is in the UK as a self-sufficient person, student, or worker, on the *first day of the academic year* you are paying fees for.

or

(iii) Both the following two bullet points are true:

- on the *first day of the academic year* you are paying fees for, you are a family member of a *relevant person of Northern Ireland*; and
- the *relevant person of Northern Ireland* is in the UK as a self-sufficient person, student, or worker, on the *first day of the academic year* you are paying fees for.

For this whole category, 'family member' means:

- *spouse / civil partner*
- *direct descendant* of the person, or of their spouse / civil partner, who is:
  - under 21 years old; or
  - 21 or over and *a dependant* of the person or of the person's spouse / civil partner
- additionally (but if the person is a student and is not a worker, then the person must be self-sufficient), the dependent direct *ascendant* of:
  - the person; or
  - the person's spouse / civil partner

**(c) a three-year residence test is met. There are two alternative ways of meeting it, you can choose either (i) or (ii) below:**

(i) You meet the three-year residence test yourself. You will meet the test yourself if:

- you have been *ordinarily resident* in the *UK / EEA / Switzerland / overseas territories* (these include Gibraltar) for the full three-year period before the *first day of the first academic year of the course*; and
- the main purpose for your residence in the UK/EEA/Switzerland/overseas territories residence area must not have been to receive full-time education during any part of that three-year period.

Tip: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of the UK/EEA/Switzerland/overseas territories anyway, then you meet this 'main purpose' test.

**Note**: A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

or

(ii) You are the family member of an EU national or the family member of a *relevant person of Northern Ireland* ('RPNI'), and the EU national or RPNI meets the three-year residence test. For this to be acceptable:

- the EU national or RPNI that you are a family member of must have been ordinarily resident in the [UK](#) / [EEA](#) / Switzerland / [overseas territories](#) (these include Gibraltar) for the full three-year period before the [first day of the first academic year of the course](#); and
- the EU national or RPNI that you are a family member of must be in the UK as a self-sufficient person, student, or worker, on the [first day of the academic year](#) you are paying fees for.

**Note:** A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

#### **(d) you must undertake the course in the UK**

**Note, if you are a frontier worker, you will 'retain' the status of a worker or self-employed person in the UK even if you stop work**, if any single one of the following bullet points is true:

- you are temporarily unable to do the work because of illness or accident, or
- you met the definition of a 'frontier worker' in the UK for at least one year immediately before that, and you are involuntarily unemployed, and you are seeking employment or self-employment in the UK, and you are registered as a jobseeker with a relevant unemployment office or recruitment agency (if you fall into this bullet, you will retain your status for 6 months, but after that you will have to provide 'compelling evidence' that you are continuing to seek employment or self-employment in the UK if you want to retain your status longer than 6 months), or
- you met the definition of a 'frontier worker' in the UK for less than one year immediately before that, and you are involuntarily unemployed, and you are seeking employment or self-employment in the UK, and you are registered as a jobseeker with a relevant unemployment office or recruitment agency (if you fall into this bullet point, you will only retain your status for 6 months), or
- you are involuntarily unemployed, and are doing vocational training, or
- you have voluntarily stopped work, to start vocational training related to your previous work, or
- you are temporarily unable to work in the UK due to pregnancy or childbirth. If it is more than 12 months since you stopped work, then you will additionally need to show that you are seeking employment or self-employment in the UK, and you are registered as a jobseeker with a relevant unemployment office or recruitment agency. One point worth knowing is that periods on paid maternity leave don't count as being 'temporarily unable to work' – instead they count as work.

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# Brexit protected rights: EU national, 3 years in UK & Islands

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (e) must be met:

**(a) on the *first day of the academic year* you are paying fees for, you must be a 'person with protected rights'**

Turn to page 9 to read about who counts as a 'person with protected rights' (it does include people who have pre-settled status or settled status under the EU Settlement Scheme, as well as others).

**(b) you are an *EU* national on the *first day of the first academic year of the course***

**(c) you must have been ordinarily resident in the *UK and Islands* for the full three-year period before the *first day of the first academic year of the course*. For example, if your course begins in October 2021 you must have been ordinarily resident in the UK and Islands from 1 September 2018 to 31 August 2021**

Note: A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

**(d) if the main purpose of your residence for the three-year period was to receive full-time education, you must have been ordinarily resident in the *UK / EEA / Switzerland / the overseas territories* (these include Gibraltar) the day before the start of the three-year period**

Tip: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of the UK/EEA/Switzerland/overseas territories anyway, then you meet criterion (d).

**(e) you must be *ordinarily resident* in the *UK* on the *first day of the first academic year of the course***

# Brexit protected rights: Worker and family

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (d) must be met:

**(a) on the *first day of the academic year* you are paying fees for, you must fall into (i) or (ii) or (iii) or (iv):**

**(i) a 'person with protected rights'**

Turn to page 9 to read about who counts as a 'person with protected rights' (it does include people who have pre-settled status or settled status under the EU Settlement Scheme, as well as others).

or

**(ii) a *relevant person of Northern Ireland* who is either employed or self-employed in the UK (but you must not be someone who goes to a residence in the EEA or Switzerland at least once a week), or their family member**

Look at paragraph (b)(iii) below to see who counts as a 'family member'.

or

**(iii) the holder of a frontier worker permit, who still meets the definition of a 'frontier worker' from the Frontier Workers regulations**

The note below (headed 'Note, if you are a frontier worker') explains who still meets the definition of a 'frontier worker' from the Frontier Workers regulations.

or

**(iv) an Irish citizen who met the definition of a 'frontier worker' from the Frontier Workers regulations at 10.59pm on 31 December 2020, and who still meets that definition. Note that to meet the definition, you don't need to have been in the UK at 10.59pm on 31 December 2020.**

To meet the definition of a 'frontier worker' in the Frontier Workers regulations, it must be the case that from 10.59pm on 31 December 2020 onwards, you carry on being A, B and C:

A. an EEA or a Swiss national

and

B. 'not primarily resident in the UK'

It is easier to satisfy this requirement than you might think: It is enough if you return to your country of residence outside the UK at least once every 6

months, or twice every 12 months; and this requirement can even be ignored sometimes if there are 'exceptional reasons' for not meeting it. An alternative way of satisfying the requirement is if you are in the UK for less than 180 days in 12 months.

and

C. a worker or self-employed person in the UK (or someone who has 'retained' that status – see the note towards the bottom of this category that is headed 'Note, if you are a frontier worker', to see who will retain that status)

Confusingly, this does not mean you need to stay in the UK. You will leave the UK for periods, and will only stop meeting the definition if you fail to come back to the UK for work at least once in every rolling 12-month period (you count the rolling 12 months from the end of the period of work in 2020 that you relied on to qualify you as a frontier worker in the first place).

Important: If you do not meet B or C for coronavirus-related reasons, go to the UK Home Office's 'Frontier worker permit scheme caseworker guidance' at [www.gov.uk/government/publications/frontier-worker-permit-scheme-caseworker-guidance](http://www.gov.uk/government/publications/frontier-worker-permit-scheme-caseworker-guidance). Look under the heading 'Coronavirus (COVID-19)'. There are a number of useful policies there, which might mean you should be treated as though you do meet B or C.

**(b) on the *first day of the academic year* you are paying fees for, you must be one of the following (you can be (i) or (ii) or (iii) or (iv) or (v)):**

**(i) an EEA national or a Swiss national, and resident in the UK as a worker**

Here UKCISA uses the term 'worker' to include employed people and self-employed people.

Student Finance England's Assessing Eligibility Guidance includes these comments in their description of who is covered by the term 'worker':

- "the term 'worker'...must be interpreted broadly and not restrictively"
- "a person who enters the UK with the principal intention of pursuing a course of study, but who also pursues effective and genuine employment activities in the UK, is not precluded from having the status of a worker"
- "the services performed...must have some economic value and form part of the normal labour market"
- "a person is not precluded from being classified as a 'worker' where their work is part-time...low wage...below the minimum subsistence wage...on-call...or short-term"
- "a person is not required to complete a minimum period of employment before being able to attain the status of a worker"
- "the activity performed...must...be effective and genuine, to the exclusion of activities of such a small scale as to be regarded as purely marginal and ancillary"
- "work is marginal if it is minimal, negligible or insignificant"



- “work will be ancillary if it is done pursuant to some other relationship between the person providing the services and the person receiving the benefit of those services, such as where a lodger performs a small task for his landlord”
- “Department for Education has set an indicative threshold of 10 hours of paid work per week either in term time or during holiday. Where a student works 10 or more hours per week and is paid for that work under an employment contract, that is a strong indicator the student is a worker. It is important to note that where this threshold is not met, a person may still qualify as a worker”
- “consistent work for an employer over several years but only for a few hours a week, this could indicate they were a worker”
- “Self-employed persons are in a slightly different position to other workers. It is common for self-employed workers to have periods where no work is carried out. Irregular or intermittent work will not preclude a person from being properly regarded as self-employed (or as a worker). It must be considered whether the person is experiencing a temporary lull in work or whether the change in their working patterns means that they are no longer in continuing self-employment”
- “Where a person has ceased work either before undertaking their higher education studies or has ceased work during their higher education studies, the person will be able to retain their status as a worker...provided there is a link or connection between the previous work activities performed...in the United Kingdom, and the course of study...As an exception, such a connection may not be required where the person has involuntarily become unemployed and is obliged by labour market conditions to undertake occupational retraining in another field of activity...It is not necessary however to show any link or connection where the person works at the same time as studying”

For a more detailed explanation of the Government’s view of who is defined as a worker, read the following sections in the UK Home Office’s ‘Frontier worker permit scheme caseworker guidance’ at [www.gov.uk/government/publications/frontier-worker-permit-scheme-caseworker-guidance](http://www.gov.uk/government/publications/frontier-worker-permit-scheme-caseworker-guidance): ‘Workers’, ‘Self-employed persons’ and ‘Assessing whether the EEA citizen has retained worker or retained self-employed person status’. The section headed ‘Coronavirus (COVID-19)’ includes some special policies that might also be relevant to some people. Even though the guidance is targeted at ‘frontier workers’, it tells us who the UK Government thinks counts as a worker in general.

or

**(ii) a *relevant person of Northern Ireland* who is either employed or self-employed in the *UK* (but you must not be someone who goes to a residence in the EEA or Switzerland at least once a week)**

When considering whether you are employed or self-employed, similar considerations will apply as the ones explained in the note just above, about the term ‘worker’ (the note under (b)(i)).

or

**(iii) a family member of a person described in (i) or (ii)**

For this category, the 'family member' of an [EEA](#) national or a [relevant person of Northern Ireland](#) (Swiss nationals are different – see below) means their:

- [spouse / civil partner](#)
- [direct descendant](#) of the person, or of their spouse / civil partner, who is:
  - under 21 years old; or
  - 21 or over and [a dependant](#) of the person or of the person's spouse / civil partner
- the dependent direct [ascendant](#) of:
  - the person; or
  - the person's spouse / civil partner

For this category, the 'family member' of a [Swiss](#) national means their:

- [spouse / civil partner](#)
  - the child of:
    - the Swiss national; or
    - the Swiss national's spouse / civil partner
- Special note: Here the child can be over 21 and not dependent on anyone.
- The regulations simply state that "'parent' means a parent, guardian or any other person having parental responsibility for a child, and 'child' is to be construed accordingly".
- You can read a Government explanation of what 'parental responsibility' is <https://www.gov.uk/parental-rights-responsibilities>. If a person is already 18 then 'parental responsibility' cannot start if it has not already been established.

**or**

**(iv) an EEA or a Swiss national who meets the definition of a 'frontier worker' from the fees regulations**

The definition of a 'frontier worker' from the fees regulations is a person who:

- is a worker or self-employed person in the UK, and
- resides in an EEA country or Switzerland and goes back to their residence there at least once a week

Note that this is a different definition from the one you saw previously, which was from the Frontier Workers regulations.

See the note under (b)(i) if you do not know whether you will count as a worker or self-employed person.

**or**

**(v) a family member of a person described in (iv)**

See the note under (b)(iii) for who counts as a 'family member' of an EEA national, and who counts as the 'family member' of a Swiss national, for this category.

(c) you must be **ordinarily resident** in the **UK** on the **first day of the first academic year of the course** (unless you are EEA or a Swiss national who meets the definition of a ‘frontier worker’ from the **fees regulations**, or their family member)

The definition of a ‘frontier worker’ from the **fees regulations** is a person who:

- is a worker or self-employed person in the UK, and
- resides in an EEA country or Switzerland and goes back to their residence there at least once a week

(d) you must have been **ordinarily resident** in the **UK / EEA / Switzerland / overseas territories** (these include Gibraltar) for the full three-year period before the **first day of the first academic year of the course**

**Note:** A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as ‘ordinary residence’.

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If you or a relevant family member become an EEA or Swiss migrant worker part-way through your course, you might become entitled to pay 'home' fees. You should seek advice on this from your institution, from your Students' Union, or by telephoning UKCISA's students advice line.

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**Note, if you are a frontier worker:**

**To carry on meeting the definition of a ‘frontier worker’ in the Frontier Workers regulations**, it must be the case that from the date your frontier worker permit is issued onwards, you carry on being A, B and C:

A. an EEA or a Swiss national

and

B. ‘not primarily resident in the UK’

It is easier to satisfy this requirement than you might think: It is enough if you return to your country of residence outside the UK at least once every 6 months, or twice every 12 months; and this requirement can even be ignored sometimes if there are ‘exceptional reasons’ for not meeting it. An alternative way of satisfying the requirement is if you are in the UK for less than 180 days in 12 months.

and

C. a worker or self-employed person in the UK (or someone who has ‘retained’ that status - see below for who will ‘retain’ that status)

Confusingly, this does not mean you need to stay in the UK. You will leave the UK for periods, and will only stop meeting the definition if you fail to come back to the UK for work

at least once in every rolling 12-month period (you count the rolling 12 months from the end of the period of work in 2020 that you relied on to qualify you for the frontier work permit in the first place).

Important: If you do not meet B or C for coronavirus-related reasons, go to the UK Home Office's 'Frontier worker permit scheme caseworker guidance' at [www.gov.uk/government/publications/frontier-worker-permit-scheme-caseworker-guidance](http://www.gov.uk/government/publications/frontier-worker-permit-scheme-caseworker-guidance). Look under the heading 'Coronavirus (COVID-19)'. There are a number of useful policies there, which might mean you should be treated as though you do meet B or C.

**If you are a frontier worker, you will 'retain' the status of a worker or self-employed person in the UK even if you stop work**, if any single one of the following bullet points is true:

- you are temporarily unable to do the work because of illness or accident, or
- you met the definition of a 'frontier worker' in the UK for at least one year immediately before that, and you are involuntarily unemployed, and you are seeking employment or self-employment in the UK, and you are registered as a jobseeker with a relevant unemployment office or recruitment agency (if you fall into this bullet, you will retain your status for 6 months, but after that you will have to provide 'compelling evidence' that you are continuing to seek employment or self-employment in the UK if you want to retain your status longer than 6 months), or
- you met the definition of a 'frontier worker' in the UK for less than one year immediately before that, and you are involuntarily unemployed, and you are seeking employment or self-employment in the UK, and you are registered as a jobseeker with a relevant unemployment office or recruitment agency (if you fall into this bullet point, you will only retain your status for 6 months), or
- you are involuntarily unemployed, and are doing vocational training, or
- you have voluntarily stopped work, to start vocational training related to your previous work, or
- you are temporarily unable to work in the UK due to pregnancy or childbirth. If it is more than 12 months since you stopped work, then you will additionally need to show that you are seeking employment or self-employment in the UK, and you are registered as a jobseeker with a relevant unemployment office or recruitment agency. One point worth knowing is that periods on paid maternity leave don't count as being 'temporarily unable to work' – instead they count as work.

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## Brexit protected rights: Child of worker

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (d) must be met:

**(a) on the *first day of the academic year* you are paying fees for, you must be a 'person with protected rights'**

Turn to page 9 to read about who counts as a 'person with protected rights' (it does include people who have pre-settled status or settled status under the EU Settlement Scheme, as well as others).

**(b) on the *first day of the academic year* you are paying fees for, two requirements must be met:**

(i) you must be the child of either:

- an *EEA* national (Swiss nationality isn't enough); or
- a *relevant person of Northern Ireland* ('RPNI')

But it does not matter if you are now over 21 and are no longer dependent on the EEA national or RPNI.

and

(ii) your EEA national or RPNI parent must be someone who has been employed (not self-employed) in the UK, and at some point in time you must have lived in the UK as the child of that person whilst she/he was employed here. You should usually have started studying in the UK (not necessarily this course) while under the age of 21 or while still dependent on that person, and at a level lower than higher education. It does not matter if your EEA national or RPNI parent is not employed now, or is no longer in the UK.

**(c) you must be *ordinarily resident* in the *UK* on the *first day of the first academic year of the course***

**(d) you must have been *ordinarily resident* in the *UK / EEA / Switzerland / overseas territories* (these include Gibraltar) for the full three-year period before the *first day of the first academic year of the course***

Note: A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

# Brexit protected rights: Child of a Swiss national

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (e) must be met:

**(a) on the *first day of the academic year* you are paying fees for, you must be a 'person with protected rights'**

Turn to page 9 to read about who counts as a 'person with protected rights' (it does include people who have pre-settled status or settled status under the EU Settlement Scheme, as well as others).

**(b) on the *first day of the academic year* you are paying fees for, both (i) and (ii) must be true:**

(i) you must be the child of a Swiss national;

When this category refers to a 'child', there is no requirement for the 'child' to be below a certain age (so the 'child' can be over 21). There is also no requirement for the 'child' to be dependent on the 'parent' (or anyone else).

The regulations simply state that "'parent' means a parent, guardian or any other person having parental responsibility for a child, and 'child' is to be construed accordingly".

You can read a Government explanation of what 'parental responsibility' is <https://www.gov.uk/parental-rights-responsibilities>. If a person is already 18 then 'parental responsibility' cannot start if it has not already been established.

and

(ii) your Swiss parent must have pre-settled or settled status under the EU Settlement Scheme. Or your Swiss parent must fit the description given at B of the definition of a 'person with protected rights' (the definition starts on page 9).

If your Swiss parent has been missing from the UK and Islands for a long period, your fee assessor will want to check how long that was for. This is because your Swiss parent will have lost their pre-settled status or settled status automatically, as soon as they stayed outside the UK and Islands for a continuous period of more than:

- 2 years, if they had pre-settled status, or
- 4 years, if they had settled status

This will be true even if their digital status says they have pre-settled or settled status.

**(c) you have been *ordinarily resident* in the *UK / EEA / Switzerland / overseas territories* (these include Gibraltar) for the full three-year period before the *first day of the first academic year of the course***

Note: A person who makes a late application to the EU Settlement Scheme (EUSS) will have any period of residence in the UK and Islands between missing the deadline for the EUSS and making their EUSS application treated as lawful residence, even if it was unlawful. This means the residence can count as 'ordinary residence'.

**(d) if your three years' ordinary residence in the large area described in (c) was mainly for the purpose of receiving full-time education, you must have been ordinarily resident in the [UK / EEA / Switzerland / Gibraltar](#) (and not in any of the other overseas territories) the day before the start of the three-year period**

Tip: if you were in full-time education at some point during the three years, then ask yourself: If I had not been in education, where would I have been? If the answer is that you would have been somewhere in the large area that consists of UK/EEA/Switzerland/Gibraltar anyway, then you meet criterion (d).

**(e) you are ordinarily resident in the [UK](#) on the *first day of the first academic year of the course***



# Brexit protected rights: Child of a Turkish worker

In order to qualify for 'home' fees under this category, all of the following criteria (a) to (d) must be met:

**(a) at 10.59pm on 31 December 2020, all four bullet points were true:**

- you were *ordinarily resident* in the *UK*; and
- you were the child of a Turkish national; and
- that Turkish national was *ordinarily resident* in the *UK* ; and
- that Turkish national had been lawfully employed or self-employed in the UK at any moment in time before that (it does not matter how many years earlier the employment or self-employment was – it might have been years ago)

When this category refers to a 'child', there is no requirement for the 'child' to be below a certain age (so the 'child' can be over 21). There is also no requirement for the 'child' to be dependent on the 'parent' (or anyone else).

The regulations simply state that "'parent' means a parent, guardian or any other person having parental responsibility for a child, and 'child' is to be construed accordingly".

You can read a Government explanation of what 'parental responsibility' is <https://www.gov.uk/parental-rights-responsibilities>. If a person is already 18 then 'parental responsibility' cannot start if it has not already been established.

**(b) on the *first day of the academic year* you are paying fees for, both the following two bullet points must be true:**

- you are still the child of that Turkish national; and
- that Turkish national is *ordinarily resident* in the *UK* (this includes a requirement that their residence is lawful)

**(c) you have been *ordinarily resident* in Turkey / the *UK* / *EEA* / Switzerland / *overseas territories* (these include Gibraltar) for the full three-year period before the *first day of the first academic year of the course***

**(d) you are ordinarily resident in the *UK* on the *first day of the first academic year of the course***

# List of major changes to the pdf guide in each version

## Version 2, 28 May 2021

**Page 34 'Brexit protected rights: EU national/EU family/Family of relevant person of Northern Ireland' category:** explanation added in (c)(ii) that where a student is relying on someone else to meet the three-year residence test for them, the other person must be in the UK (as a self-sufficient person, student or worker) on the first day of the academic year.

## Version 3, 25 September 2021

**Page 27: Insertion of new category, 'Brexit temporary offer for courses starting before 2028: Irish citizens with residence in Europe or overseas territories'** (because of the Education (Student Fees, Awards and Support) (Amendment) (No.2) Regulations 2021).

**Page 14 '3 years in Republic of Ireland/UK/Islands, settled in UK' category:** requirements (a), (b) and (e) now relate to the day on which the first term of the first academic year actually begins, rather than the standardised 'first day of the first academic year of the course' (because of the Education (Student Fees, Awards and Support) (Amendment) (No.2) Regulations 2021). Tip added to top of page 11 '3 years in UK and Islands, settled in UK' category to prompt readers to consider that difference between the two categories.

**Definition of 'person with protected rights' (pages 35, 47, 58, 73 and 84): At B,** information about when an Irish citizen will count as a 'person with protected rights has been expanded, to mention situations where they are either frontier workers, or joining an EEA or Swiss national family member in the UK.

**Definition of 'person with protected rights' (pages 38, 50, 61, 76 and 87): At C,** in respect of those who have applied to the EU Settlement Scheme before July 2021, it now seems likely, because of a change in Government policy signalled in [www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme](http://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme), that the Government does not want 3 extra requirements to be checked (these included a check about comprehensive sickness insurance for some people). The note about 3 extra checks has therefore been deleted.

**Definition of 'person with protected rights' (pages 38, 50, 61, 76 and 87): At C,** special note added to explain that some people who make late applications to the EU Settlement Scheme might be included too (because of amendments in the Education (Student Fees, Awards and Support) (Amendment) (No.2) Regulations 2021), but it is not yet clear who is covered, or what requirements they need to meet.

**Definition of 'person with protected rights' (pages 39, 51, 61, 77 and 88): Groups D, E, F and G added,** because of amendments in the Education (Student Fees, Awards and Support) (Amendment) (No.2) Regulations 2021 – covering joining family members and those adopted.

**Introduction** (pages 3, 4, 8 and 9): Updated to reflect the changes outlined above.

## Version 4, 8 October 2021

**Definition of 'person with protected rights'** has been moved. Because it is now so long, it has been given a special section on page 9, and each relevant category refers readers there. Subcategories within the definition have been reordered, so the subcategory for those waiting for decisions on EUSS applications is closer to the top.

**Definition of ‘person with protected rights’, Category B (formerly category C) (page 9):**

Confirmation that late applicants to the EUSS are included as ‘persons with protected rights’ has been added, following the release of guidance from the Department for Education in the policy paper titled ‘Access to student finance in England: late applications to the EU Settlement Scheme’ ([www.gov.uk/government/publications/student-finance-eligibility-2021-to-2022-academic-year](http://www.gov.uk/government/publications/student-finance-eligibility-2021-to-2022-academic-year)). The special note explaining their position was unclear has been removed.

**3 years in Republic of Ireland/UK/Islands, settled in UK category (page 26):** Group F added to (a), to explain an extremely unusual scenario in which this category might be of use to a late applicant to the EUSS, because of guidance from the Department for Education in the policy paper ‘Access to student finance in England: late applications to the EU Settlement Scheme’ mentioned above.

**3 years in UK and Islands, EUSS settled status connection category (page 30):** Confirmation that late applicants to the EUSS are included has been added, following the release of guidance from the Department for Education in the policy paper ‘Access to student finance in England: late applications to the EU Settlement Scheme’ mentioned above.

**3 years in UK and Islands, EUSS settled status connection category (page 30):** In respect of those who have applied to the EUSS before July 2021, it now seems likely, because of a change in Government policy signalled in [www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme](http://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme), that the Government does not want 2 extra requirements to be checked, so reference to those has been deleted.

**Brexit temporary offer for courses starting before 2028: Settled and exercised a right of residence (page 38):** Group F added to (g), to explain that late applicants to the EUSS are now included, because of guidance from the Department for Education in the policy paper ‘Access to student finance in England: late applications to the EU Settlement Scheme’ mentioned above.

**Definition of ‘ordinarily resident’ (page 7) and descriptions of the three-year ordinary residence test on pages 24, 29, 33, 34, 36, 39, 49, 51, 54, 60, 63 and 64:** note added explaining the Department for Education’s concession that periods of residence between missing the deadline for an application to the EUSS and actually making the application can be treated as lawful, ordinary residence.

**Explanations of the circumstances in which a person acquired a right of permanent residence under European law have been adjusted on pages 12, 30 and 38,** so that there is no longer any reference to needing to have complied with UK Government regulations throughout the 5 years. This is because the Government signalled a change of policy in a 6 August 2021 press release by Kevin Foster MP titled ‘Temporary protection for more applicants to the Settlement Scheme’ ([www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme](http://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme)).

## **Version 5, 24 October 2021**

**References to ‘person with protected rights’ (pages 50, 54, 55, 62 and 63):** A short reminder that this includes people with pre-settled status or settled status under the EU Settlement Scheme (along with others) has been added.

**Definition of ‘person with protected rights’, E (page 16):** Explanation that you can be the ‘joining family member’ of a Swiss citizen if your marriage or civil partnership begins between 11pm on 31 December 2020 and 11pm on 31 December 2025 added.

**UK Council  
for International  
Student Affairs**

# UKCISA

The UK Council for International Student Affairs is the UK's national advisory body serving the interests of international students and those who work with them.

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