



Fees assessment form guidance notes

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1. Background

The fees regulations determine whether or not a student is eligible to be charged the lower “home” tuition fee. This depends on a combination of:

- Residence
- Immigration status and/or
- Nationality

The Education (Fees and Awards) (England) Regulations 2007 Statutory Instrument No 779 applies nationally to all publicly funded educational institutions.

UKCISA – The UK Council for International Student Affairs publish a Guidance Note called ‘Tuition fees will I pay ‘home’ or ‘overseas’ rate?’ This can be downloaded from their website at www.ukcisa.org.uk.

2. Overview – Fees Regulations

Only certain categories of students are normally charged the 'home' fee. Broadly speaking they are:

- Persons who are settled in the UK and have been ordinarily resident in the UK for the full 3 year period before the relevant date (except for temporary absences). The main purpose for residence in the UK must not have been to receive full-time education;
- EU nationals and their children who have lived in the EEA for the last three years (except for temporary absences). The main purpose for residence in the EEA must not have been to receive full-time education;
- EEA (+ Swiss) nationals (and their families) resident in the UK as a “migrant worker” who have been ordinarily resident in the EEA (+Switzerland) for the last three years; The main purpose for your residence in the EEA (+Switzerland) must not have been to receive fulltime education;



- Refugees (recognised by the UK government) and their families;
- Persons who applied for asylum and have been granted Humanitarian Protection (HP), Discretionary Leave (DL) or Exceptional Leave to Enter/Remain (ELR/E) in the UK, and their families.
- Exchange students.

3. Who decides?

The decision on a student’s fees status rests with the institution. The Department for Business, Innovation & Skills (DBIS) offers written guidance. EU nationals apply direct to the DBIS for fees-only support (unless they are EEA migrant workers).

The institution will use the DBIS letter as guidance but will make its own decision as to fee status. Students have a right to ask the institution for an assessment that is independent from their DBIS decision.

Students should put any appeal against the College’s decision in writing. It should be clear who sits on the appeals panel and there should be a clear appeals procedure. The decision about fees status is made by Finance.

4. What evidence?

Students will have to prove their eligibility for “home” fees status. As well as completing a checklist that asks all the relevant questions, it is necessary for Heythrop College to see documents that supply the evidence for eligibility.

Nationality	Birth certificate (if it states nationality), nationality certificate, passport or national identity card.
Immigration Status	Evidence of settled status: Except with UK and EU nationals, immigration status should be recorded in the passport or there should be a Home Office letter giving additional information on status (e.g. refugee status, humanitarian protection or discretionary leave). EU students may have applied for indefinite leave to remain - although the necessity for this is currently being challenged in the European Court of Justice. EU / EEA and Swiss migrant workers would need to show migrant worker status, though this is not recorded in their passport.
Ordinary Residence	Ordinary residence in the relevant place can sometimes be hard to prove. A student may be able to show one of the following for the relevant period:



	<p>Letters from:</p> <ul style="list-style-type: none"> • School or college confirming attendance. • An employer, a wage slip, a letter confirming payment of taxes. • A Benefits Agency confirming receipt of benefits etc. • Utility bills, council tax notices etc.
<p>Temporary Absence</p>	<p>Temporary or occasional absences from the UK or EEA (as appropriate) will not interrupt ordinary residence. Each case must be assessed on its own merits. Evidence could be documents showing:</p> <ul style="list-style-type: none"> • The reason why the applicant was abroad (e.g. own or parent’s temporary employment abroad, education abroad, holidays, study, voluntary service). • That the absence was temporary. • Details of tax paid in the UK/ EEA (own or parents). • Evidence of a continued link with the UK/EEA, e.g. continuing to keep a property in the UK/EEA. • Regular visits home. • Continued business interests in the UK/EEA.

N.B.: If a student does not have the necessary documentation, Heythrop College also accepts a letter from a “responsible person”, confirming the relevant information (e.g. date and country of birth). Heythrop College also accepts certified copies of original documents, as long as they have been stamped and signed as being a true copy by a “responsible person”.

Heythrop College considers a responsible person to be: a consular official, minister of religion, doctor, lawyer, permanent civil servant, teacher, lecturer, police officer. The person certifying the copy or writing the letter must provide their name, job title, address and contact telephone number and must not be a relative of the student.

5. Definitions

“Relevant Date”

The three-year period prior to the start of the course is counted from the 1 September, 1 January or 1 April – whichever of these is nearest to the start of a course. For most courses, 1 September will be the most frequently used cut-off date.

“Settled”

'Settled' is defined in the Immigration Act 1971 as being ordinarily resident in the UK/EEA without being subject under the immigration laws to any restriction on the period for which a person may stay.

The main categories of people who are not subject to any restriction on the period for which they may stay in the UK are those who either have:



- Right of abode in the UK; or
- Indefinite leave to enter or indefinite leave to remain in the UK

The necessity for EU students to be able to show that they have indefinite leave to remain in the UK is currently being challenged in the European Court of Justice.

“Ordinary residence”

"Being ordinarily resident may be summarised as being lawfully, habitually and normally resident from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences." (DBIS Guidance on Fees).

So, to be treated as ordinarily resident the person must be lawfully living in the UK and Islands (or EEA):

- for a settled purpose (but this does not mean permanently)
- in a habitual and normal manner

“Main Purpose”

A student is not excluded from the “main purpose” rule simply because they have been in full-time education during the relevant three years. A student will only be excluded by this rule if full-time education was the main or only reason for residence in the relevant area (UK or EEA) during any part of the three years.

6. Temporary absence

This term is relevant when considering absences from the UK and/or the EEA, as applicable, when an applicant fulfils all the other eligibility criteria for home fees status.

Lord Scarman's judgement and subsequent guidance from DBIS (formerly DfEE) make clear that temporary or occasional absences will not interrupt ordinary residence:

"In the Court's view temporary or occasional absences do not break ordinary residence. Lord Scarman did not define what a temporary or occasional absence might be, but he indicated that it would be possible for an individual to establish ordinary residence in two countries simultaneously. This leads to the conclusion that such breaks could be periods extending to months or even years". (Paragraph 2, Letter from the then Department for Education and Science to LEAs, 30 April 1985 - reference: ACL 2/85).

People who have lived all or most of their lives in the UK [or EEA, where relevant] clearly do not break their ordinary residence if they go abroad for a visit. Their visit could be for many purposes such as holiday, visiting relatives or even study. Longer absences may still be regarded as temporary, depending on the circumstances.

In considering whether or not a student's absence is temporary, it is helpful to bear in mind that, according to Lord Scarman's definition, a key element of 'ordinary residence' is that one must



establish a habitual, normal mode of life in a particular place. If that is maintained, despite absences, then ordinary residence is probably not broken. Absence for reasons of voluntary service or education might reasonably be considered to be temporary. So might an extended holiday abroad.

In considering whether an absence is temporary, it may be necessary to consider the person's intentions on leaving the UK (or EEA). Someone who decides to leave the UK (EEA) permanently, with no intention of return, and to settle in another country may, in so doing, cease to be ordinarily resident in the UK (EEA) as soon as they leave to settle elsewhere.

Nationality and place of birth are not themselves decisive factors but may be relevant. A person who does not have right of abode or a right of residence in the UK (EEA) may be less able to demonstrate that she or he had a realistic intention to return after an absence than a person who does have automatic right of re-entry or settlement. However, you must take all factors into account when formulating an assessment.

Temporary employment abroad

The regulations provide specifically for cases where ordinary residence in the relevant area has been interrupted because the student, their spouse or their parent or guardian was temporarily employed outside the relevant area.

Paragraph 2 (4) of the fees regulations states:

"... a person shall be treated as ordinarily resident in... [the relevant place: England and Wales, UK, UK and Islands or EEA, depending on the regulations concerned]... if he would have been so resident but for the fact that he, his spouse, his parent, guardian or any other person having responsibility for him, or any other person having care of him while he is a child, is or was temporarily employed outside the area in question."

Guidance from the DBIS stresses the importance of assessing each case on its merits, and avoiding the use of 'rules of thumb'. The Guidance states that the onus is on the applicant to satisfy the institution that:

1. The absence is/was because of employment abroad
2. The employment is/was temporary; and
3. If it were not for the employment the applicant would have been resident in the UK and Islands (or EEA, depending on which category applies).

Remember that it may not necessarily be the student who has been employed: it may be a spouse or a parent or other carer as described in the regulation. The DBIS provides a list of questions to consider when assessing whether an absence is due to temporary employment abroad. This checklist is reproduced below.



Members of the armed forces

Members of the UK's regular armed forces who are stationed outside the UK should be regarded as temporarily employed abroad. Regulation 2 (3) of the Student Support regulations states that: "... members of the regular military and air forces and the Royal Navy forces shall be treated as being temporarily employed within the meaning of this paragraph for any period during which they serve outside the UK as members or the armed forces".

The fees regulations were amended to include the same wording by the Education (Fees and Awards) (Amendment No 2) Regulations 2000 (SI 2000 No 2945).

CHECKLIST: absence due to employment abroad

1. The reason for the absence

(i) *Job obtained prior to departure:*

Does she or he, spouse or parents have a contract or letter showing employment to be the cause of absence?

"Where an applicant (or his spouse, parent, guardian etc.) has obtained a post, or a promise of a post, prior to his departure, and can demonstrate that fact by production of a contract or employer's letter, it would be reasonable to conclude that employment is the cause of the absence." ACL 2/85 paragraph 11a

(ii) *No post abroad at time of departure:*

- Had the applicant, spouse, or parents applied for jobs prior to departure?
- How long did his/her spouse or parents spend overseas before obtaining work?
- Had she/he/they resided in the same overseas country before and after obtaining the job?
- What was the applicant doing before obtaining the job, or between jobs if they took several jobs abroad?

2. Whether the employment is temporary

The nature of the contract

- Was/is employment for a specified period? Or is it until retirement? Or if for an unspecified period, why was/is this?
- What is the length of the contract?
- Is the contract renewable? Would it be normal or unusual for the contract to be renewed on its completion? Has the contract already been renewed or is it one of a succession of contracts abroad?
- Does the contract allow automatic rights of return to UK/EEA from time to time?
- If there is no contract, how long has the employee been resident abroad?
- Does the contract include liability for UK (EEA) tax on earnings?

The nature of the work

- Is it the nature of the work to be mobile and is mobility a condition of service?

A right of return

- Does the employee have an automatic right of return to work in his/her organisation (or related one) on completion of the employment abroad?



Periods between overseas postings

- Have periods between employment been spent in the UK/EEA or in the employer's office?

Previous contracts

Is the present contract the first overseas posting of its type, or is it a continuation of previous similar contracts? The DBIS refers to domestic employment case law in which industrial tribunals have decided that a succession of similar temporary contracts can be construed as permanent employment.

The DBIS stresses that the list is not exhaustive and that not all of the questions apply in every case:

"Each case must be dealt with on its own individual merits, and decisions on whether employment abroad is permanent or temporary must not be decided solely on the length of period spent abroad, but in conjunction with the nature of the work and the employment pattern of the applicant."

3. Place of residence

"The applicant should be able to demonstrate that, other than for the temporary employment abroad, he would have been ordinarily resident here during the prescribed period. In some cases, an authority may judge that a statement of intention will provide sufficient evidence, but in most cases authorities will require something more concrete."

Therefore institutions may wish to consider:

- Does the person in question own property in the UK/EEA? In many cases this will be sufficient evidence that an applicant would otherwise be ordinarily resident in the UK/EEA although in some cases it will not. For example, property may be an investment or be intended for occupation only on retirement following a considerable period of time abroad. Failure to own property in the UK/EEA should not exclude an applicant.
- Were holidays/study leave spent in the UK/EEA?
- Other business interests - does the applicant have other business interests which would suggest she or he would be likely to return on completion of the employment abroad?

The DBIS have also provided useful guidance on how children who are left behind in the UK while their parents go abroad for work should be treated. Sometimes institutions assume that such children are resident in the UK/EEA wholly or mainly for the purpose of full-time education, and do not therefore meet the residence conditions.