



ACCESS TO EDUCATION

Your Right to Study in Scotland

This factsheet provides a brief summary of your right to study in Scotland for people with different immigration statuses. This factsheet covers: access to pre-school, primary and secondary school; and access to further and higher education.

STUDY vs FUNDING

Everyone has the right to access school, further and higher education in Scotland. However, not everyone has access to educational funding. Some types of immigration status do not qualify for funding. Without funding, education is often not accessible!

Pre-School, Primary & Secondary School

In Scotland **every child has the right to a free place at primary and secondary school education until the age of 18**, irrespective of their immigration status.

Children subject to immigration control (i.e. undocumented or limited leave to remain), are also entitled to the same support accorded to all families who are in receipt of income-based benefits regardless of whether they have no recourse to public funds (NRPF):

- Free school lunches
- Milk, breakfast and fruit if the local authority or school provides this scheme
- School meals during the holidays
- Clothing grants if local authority provides this scheme

Pre-School

Early education and childcare is funded by the Scottish Government and is accessible for free by the following children:

- All 3 and 4-year-olds (up to 30 hours per week)
- 2-year-olds who are 'looked after' by a local authority or where the parent is receiving certain benefits (including support for Asylum seekers).

Local authorities may choose to provide access to free early learning and childcare to any other child, as they see fit. This varies between each local authority area.

Both Primary and Secondary School remain free for their duration. It is a legal requirement for children to attend school until they are aged 16.

Primary & Secondary School

In Scotland children start primary school aged either 4 or 5. Children start in Primary 1 (P1) and progress each academic year until they reach Primary 7 (P7). Children then progress to secondary school aged 11 or 12. Children start in first year (S1) and progress each academic year until they reach sixth year (S6).

Schools are run by educational authorities which are part of the local authority. They are required to provide school places for children of school age (4-16 year olds). Children are normally provided with a place at a local school where they live.

You can enrol your child in a primary or secondary school by making an application to your local council. You must prove your child's identity and your residence in the local area. More information can be found here:

<https://www.mygov.scot/register-your-child-for-a-school>

Additional Support

All children enrolled in school, regardless of their immigration status, are entitled to additional support for learning provided by their local educational authority. Requests for additional support are made to individual schools and/or educational authorities.

This support can include internal support within school using school resources, for example to assist with language (English as Additional Language). It can also include external support such as assistance from social workers or psychotherapists.

Further Education

Further education includes any study after secondary school that is not part of higher education (i.e., university). In Scotland this includes English for Speakers of Other Languages (ESOL) courses; National Certificate (NC) courses; and Scottish Credit and Qualifications Authority (SCQF) level 6 courses.

Asylum seekers and their dependants can access some further education courses while waiting for a decision from the Home office (either an initial decision or fresh claim decision). Someone in this situation is entitled to tuition fee support and help with travel and study costs for full-time or part-time ESOL courses and/or for part-time 'advanced' or 'non-advanced' courses.

'Non-Advanced' courses are subjects that a student would study as part of their secondary school education but they have decided to study them at college. These are usually SCQF level 4,5 or 6.

'Advanced' courses are those that are in subject areas that are considered more challenging or practical to prepare you for university degrees, such as engineering or nursing.

These are at SCQF level 7 or 8. 'Advanced' courses have more demanding entry requirements than 'Non-Advanced'.

Further Education Following Asylum Decision

If you receive a refusal of **all forms of leave to remain** from the Home Office, and become Appeal Rights Exhausted ("ARE"), then you lose your educational funding. That is at least until you make a fresh claim for asylum.

If you receive a decision from the Home Office that refuses asylum but grants **limited leave to remain** for another reason (e.g. family or private life reasons), then you can apply for student finance support, including living expenses.

If you receive a grant of **asylum** (Refugee Status, Temporary Protection Status or Humanitarian Protection), you can apply for student finance support, including living expenses.

Higher Education

Higher Education generally refers to degree level courses, i.e. those studied at university.

Eligibility and Funding

People Seeking Asylum

If you are an asylum seeker, regardless of whether you are waiting on a decision or are “Appeal Rights Exhausted” (“ARE”), you are not eligible for educational funding from Student Awards Agency Scotland (SAAS). You may be treated as an international student and will be required to pay international student fees at the discretion of the university.

However, a number of institutions offer ‘Sanctuary Scholarships’ for those claiming asylum or those who are dependent upon someone claiming asylum. These allow a person to access university education at both undergraduate and postgraduate level. Eligibility criteria is set out by the university offering the scholarship.

<https://www.refugee-study.co.uk/Refugee-university-scholarships-directory-S-Z.php>

People with other types of immigration status

For higher education, student funding is provided by SAAS which is governed by specific regulations: The Student Support (Scotland) Regulations 2022. These regulations set out the criteria that all non-British citizens have to meet to receive funding.

Parts of these regulations have recently been found to be unlawful¹. This means that in 2023 they are going to change. The below sets out the position before the law change, and what is currently being proposed to change. This factsheet will be updated when the changes happen.

If you have **Indefinite Leave to Remain (ILR)** in the UK, are ordinarily resident in Scotland and have lived in the UK for 3 years up to the start date of your course, then you are eligible for student funding (tuition and living support) from SAAS. This part of the law will not change.

The ‘relevant date’ refers to the first day of the first year of your academic course, which is the 1st of August for courses starting in the Autumn.

1. The regulations were found to be unlawful in *Jasim v Scottish Ministers* as per Article 14 (the right not to be discriminated against) and Article 2 of Protocol 1 (the right to education) of the European Convention on Human Rights.

Until recently, the law stated that if you have **Limited Leave to Remain (ILR)** in the UK then in addition to being ordinarily resident in Scotland and having lived in the UK for 3 years up to what is called the '**relevant date**' (usually 1 August for courses that start in Autumn), you must also satisfy **one** of the below additional criteria based on your age. These are called the 'long residence' criteria:

1. Under 18 – required to have lived in the UK for 7 years (e.g., someone who arrived in the UK at 10 years old and applied to university at 17).
2. Between 18-25 – required to have lived in the UK for at least half your life or 20 years (e.g., someone who arrived is 22 years old and had lived in the UK for at least 11 years)
3. Be aged over 18 and were granted funding under (1) above; or
4. Be the spouse, civil partner or child of someone with Indefinite Leave to Remain.

The legal case of *Jasim v Scottish Ministers* found number 1 and 2 of the above criteria to be in violation of the European Convention on Human Rights. To solve this, SAAS have set up an interim payment scheme to support students who have been refused funding or who did not apply because they thought they would be refused.

You can find out about how to contact SAAS here:

<https://www.saas.gov.uk/news/payment-scheme-long-residence-rule>

Interim SAAS Payment Scheme

The interim scheme, and the new rules that the Scottish Government have proposed, require a student to:

- Have **Limited Leave to Remain in the UK (ILR)**;
- Have lived in the UK for 3 years; and
- Be ordinarily resident in Scotland on the relevant date.

The Scottish Government are holding a public consultation on how they will change the law. We will update this factsheet when the new law comes into force.

If you are not sure whether you will qualify for student funding or not, we recommend that you contact SAAS:

- 0300 555 0505
- <https://www.saas.gov.uk/contact-us>

The following categories of people are not affected by any law changes:

If you are an **EU national** or their family member with pre-settled status and were living in the UK throughout the previous 3 years before your course starts and live in Scotland on the start date of your course, you are entitled to free higher education funding.

If you are someone with **Refugee status**, or are their spouse, civil partner or child, and have remained living in the UK at all times since you received this status; and live in Scotland on the start date of your course, you are entitled to free higher education funding.

If you are someone who has been **refused asylum but granted Limited Leave to Remain (LLR) as a result of this refusal**, and have lived in the UK at all times since you were granted LLR, and live in Scotland on the start date of your course, then you are entitled to access free higher education funding.

If you are someone who has been granted **Discretionary Leave to Remain** as a **victim of trafficking/modern slavery**, have lived in the UK at all times since this was granted and live in Scotland at the start date of the course, then you are entitled to access higher education funding.

The regulations also make provision for a number of other individuals who have arrived in the UK based on a unique pathway. These individuals are entitled to access free higher education funding. This includes:

- **Syrians** resettled through the Syrian Vulnerable Persons Relocation Scheme
- **Afghans** resettled through the Afghan Citizens Resettlement Scheme (ACRS) or the Afghan Relocations and Assistance Policy Scheme (ARAP)
- **Ukrainians** with leave to remain obtained in connection with the Russian invasion – e.g. the Ukraine Family Scheme; Ukraine Sponsorship Scheme; Ukraine Extension Scheme; and leave outside the Immigration Rules
- **Stateless persons** with leave to remain
- Persons granted Indefinite Leave to Remain as a victim of **domestic abuse/violence** under the Immigration Rules

Where can I get more help or advice?

If you have questions about your right to study in Scotland, your eligibility for student loans, or if you think you have been discriminated against in accessing education, you can seek help and advice here:

Primary and Secondary Education:

Parentzone Scotland Choosing a School:

<https://education.gov.scot/parentzone/my-school/choosing-a-school/local-state-school/>

Scottish Government Register your Child for a School:

<https://www.mygov.scot/register-your-child-for-a-school/>

Citizens Advice Scotland:

<https://www.citizensadvice.org.uk/scotland/family/education/school-and-pre-school-education-s/education-choices-from-5-to-16-s/>

Your Local Authority:

<https://www.mygov.scot/find-your-local-council>

Further and Higher Education

We recommend contacting the college or university you wish to study at.

UKCISA Scotland:

<https://www.ukcisa.org.uk/information--advice/fees-and-money/scotland-fee-status>

Student Awards Agency for Scotland Guidance on General Residence:

<https://www.saas.gov.uk/need-to-know/brexit>



JustRight Scotland

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PEOPLE'S RIGHTS**

