



## Further and Higher Education financial support - changes to residency criteria consultation: our response

### About JustCitizens

JustCitizens is a migrant advisory panel hosted by JustRight Scotland and funded by the Paul Hamlyn Foundation, the Joseph Rowntree Charitable Trust, and the Esmee Fairbairn Foundation.

We are a collective of migrants living in Scotland from diverse backgrounds, including with experience of the UK asylum system and surviving in the UK with no recourse to public funds (NRPF). Our aim is to build a fairer and more equal vision of citizenship and belonging, for people living in Scotland.

### About JustRight Scotland

JustRight Scotland is a registered charity (SO305962) established by an experienced group of human rights lawyers. We use the law to defend and extend people's rights, working collaboratively with non-lawyers across Scotland towards the shared aims of increasing access to justice and reducing inequality.

### Our Response

Our response to the Scottish Government's consultation on changes to residency criteria for access to financial support in Further and Higher Education.

#### JustCitizens

JustCitizens is a project of JustRight Scotland, a Scottish Charitable Incorporated Organisation (SC047818) which provides legal services through its limited liability partnership, JustRight Scotland LLP which trades as JustRight Scotland (SO305962)

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### **Question 1**

**Do you agree with the overarching policy aim that students need to be able to demonstrate a connection to Scotland in order to obtain financial support from the Scottish Government for their studies?**

Yes

### **Question 2**

**Please provide any relevant comments you may have in regard to your answer at question one.**

JustCitizens understand and agree with the overarching policy aim that suggests that students need to be able to demonstrate a connection to Scotland to obtain financial support from the Scottish Government for their studies. With this in mind, we want to highlight that the term “connection” is broad and wide encompassing; it can be defined in multiple ways.

As a lived-experience panel comprised of New Scots, we want to ensure the term “connection” encapsulates our experiences as well. We believe that “connection” should not be narrowed to the number of years people have lived in Scotland, or whether individuals were born in this country. For us, our connection to Scotland should be also defined by our future here - the possibilities of a new life, the urge to contribute to society in this country, and the desire to make Scotland our home.

### **Question 3**

**Do you agree that the length of a person’s residence in the UK (together with a requirement to be ordinarily resident in Scotland on the relevant date) is an appropriate way of assessing whether a person has a sufficient connection with Scotland to qualify for the financial support package in Further / Higher Education?**

Yes

We understand the reason for using the length of a person’s residence in the UK to assess sufficient connection, and we are aware that this measure is used for all applicants to SAAS as it stands. We welcome the reduction of the residency criteria to 3 years. However, we believe this measurement should not be used as a golden standard for “connection”.

There needs to be some flexibility in this. People have a range of different experiences that can see them excluded from education based on not having lived in the UK long enough to demonstrate a “connection” to Scotland.

In particular, children and young people, should not be punished and excluded from education based on where they were born as they had no say in the matter. Through our Grades Not Visas survey<sup>1</sup>, we have collected testimonies from countless young people who have been forced to take gap years due to their inability to meet

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<sup>1</sup> <https://www.ognv.org.uk/>

<https://www.justrightscotland.org.uk/2023/03/access-to-education-is-a-human-right-for-everyone-our-gradesnotvisas-campaign-is-working-to-make-this-right-real-for-all/>

residency criteria when graduating from school<sup>2</sup>. They achieved the grades needed, can demonstrate a connection to their community, speak the language, and have the urge and desire to live in Scotland for the foreseeable future. Yet, due to circumstances outside their control, they are being financially barred from accessing education. Many people who take gap years do not return to their studies. This will trap people in lower-income roles and increase racial inequality that is already rife in the UK.

#### **Question 4**

**Do you agree that 3 years' residence in the UK is a suitable minimum residence requirement for setting eligibility for student support in Scotland?**

Yes

As mentioned, we welcome the reduction of the minimum residence requirement for setting eligibility for student support in Scotland to 3 years. However, we believe that residence only is not a sufficient measure of "connection to Scotland". We find it dangerous to put migrants' futures in Scotland on hold due to technicalities. We believe there can and should be a more inclusive way of assessing eligibility for student support.

#### **Question 5**

**Do you agree that residence based on any form of leave to enter or remain from the Home Office in the UK should entitle a person to student support in Scotland, provided they otherwise meet the residence requirements?**

Yes

#### **Question 6**

**Do you agree that individuals who are here specifically for education purposes and are on a student visa, should remain ineligible for the financial support package from Scottish Government.**

Yes

#### **Question 7**

**Do you think eligibility should be extended to the dependents (child, spouse or civil partner) of those with student visas?**

Yes

JustCitizens think that eligibility should be extended to the dependents of those with student visas. Much of the time, the dependents of those here on a student visa do not have much of a choice on where they are or come here because the situation in this country is better than that of their home country. They should not be forced to sit

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<sup>2</sup> <https://www.justrightscotland.org.uk/wp-content/uploads/2023/03/Our-Grades-Not-Visas-Dec-2022-Report-002.pdf>

at home idle for the length of time that their partner or guardian is in full-time education, they should be given the opportunity to integrate, grow, and contribute in their own ways- especially if they meet the requirements set out for other migrants in this country. If they are unable to gain rights under the regulations, alternative pathways should be set up for the dependents of those on student visas to access further and higher education.

### **Question 8**

**Should financial support beyond support already given through discretionary funds be extended to students who are currently ordinarily resident in Scotland and have sought asylum from the UK Home Office, but whose application is still pending?**

Yes

We feel very strongly about this question- the answer is a strong yes from us. Asylum seekers have come here to find safety and to build a new life. One of our members says:

*“We need to be given the tools to support ourselves and have something to do while we wait for a decision. We want to better ourselves and contribute to this country, but we are being stopped from doing so. We are not leeches, we are not wanting to just take and take. We want to give back, but we are not allowed to. We want to move on, but we are not allowed to. The current system forces us to be dependent, but then it complains that we are dependent.”*

Asylum seekers are currently barred from working and are forced to live off £6 a day<sup>3</sup>. With the roll-out of institutionalised hotel accommodation, along with the introduction of increasingly hostile immigration policies, asylum seekers will continue to be marginalised and pushed to the fringes of society. This will create a space of division and put barriers to integration- something that actively undermines the New Scots refugee integration strategy 2018-2022 put in place by the Scottish Government<sup>4</sup>.

Giving asylum seekers access to education equips them with the necessary tools to be able to take an active role in society when a decision is reached on their asylum case. It also helps provide structure and meaning to individuals who have had their civil rights stripped from them - this can help with combatting the mental health crisis amongst this group. It can provide people with connection, knowledge and skills needed to actively play a role in society.

Additionally, we would like to highlight that as a direct result of the asylum backlog, people are being forced to spend more time in limbo. After putting out Our Grades Not Visas<sup>5</sup> survey, over 25% of 78 respondents had been in the asylum system for

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<sup>3</sup> <https://www.refugeecouncil.org.uk/information/refugee-asylum-facts/the-truth-about-asylum/>

<sup>4</sup> Scottish Government. New Scots: refugee integration strategy 2018-2022  
<https://www.gov.scot/publications/new-scots-refugee-integration-strategy-2018-2022>

<sup>5</sup> [ognv.org.uk](https://www.ognv.org.uk)

<https://www.justrightscotland.org.uk/2023/03/access-to-education-is-a-human-right-for-everyone-our-grades-not-visas-campaign-is-working-to-make-this-right-real-for-all/>

over 2 years<sup>6</sup>. This demonstrates the number of people that would be able to access further and higher education funding if the rules were expanded to include them.

Another point is that universities offer sanctuary scholarships to asylum seekers to support them to study. We would like to emphasise that this is not sufficient for two reasons. The first reason is that scholarships are concessions offered by universities, not by the government. This effectively shifts the responsibility to offer accessible and non-discriminatory education opportunities from the government to university institutions. The second argument we would like to put forward is that these scholarships are severely limited in number, with an extremely high level of applicants vying for positions each year.

One of our members pointed out that the threshold for acceptance to scholarships is extremely high and requires applicants to have achieved academic excellence. She says, *“this is not realistic in many circumstances, since many asylum seekers have had their education interrupted by war, dictatorship, sanctions, environmental catastrophes and displacement”*. She also argues that *“the vast majority of asylum seekers have been traumatised in one way or another; this can provide its own barrier to achieving high grades and needs to be taken into account when pointing at scholarships and suggesting that this is the only way for people to access education”*.

The inability to extend the regulations to include this group of residents effectively excludes most asylum seekers from accessing or entering further and higher education in Scotland.

### **Question 9**

**Do you think eligibility for student financial support should be fixed according to an assessment at the start of their course (i.e., with reference to the relevant date)?**

No

We do not think it is fair to implement this fixture without discretion or reviews of circumstances. Fixing student financial support eligibility to an assessment at the start of the applicant's course does not leave room to consider various changes to circumstances. For example, one of our members had applied to a course and did not meet the requirements for funding at the start of the programme. They were able to apply for funding from another institution to cover the first year. Although their immigration circumstances had changed halfway through the first year and meant that they would now be eligible for funding, they were not allowed to access these funds due to the first-year rule. This meant that the member had to drop out of the programme as they could not afford to pay the tuition. This effectively undermined their right to education and left them in a position of not being able to continue the course and go into teaching.

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<sup>6</sup> <https://www.justrightscotland.org.uk/wp-content/uploads/2023/03/Our-Grades-Not-Visas-Dec-2022-Report-002.pdf>

This is the case for many applicants who can scrape together funds for the first year of tuition, or until they know they will meet the requirements but are then forced to drop out because of the anchor SAAS puts on the assessment at the start of courses. We do not believe the current reasons given for this are enough to justify excluding individuals from accessing education. It can be discriminatory and unfair.

### *Case study*

At the event we put on for Our Grades Not Visas<sup>7</sup> campaign, one of our speakers discussed graduating from school in Glasgow and being accepted to university to study medicine.

She aspires to work for the NHS. She is a migrant and did not meet the requirements for funding at the start of her course. Although she could meet the requirements in the second year of her course, she was denied funding due to the first-year rule. She spoke about being a financial burden to her parents and discussed the weight that comes from her parents having to use all their savings to put her through school. She has no intention of leaving Glasgow and wants to contribute to the public health of this country.

She acknowledged that she was lucky enough to have parents who could afford to put her through university but highlighted that this is not the case for most people in her position.

She missed the criteria through no fault of her own, she was a child and had no say in where she was going to live and when.

We ask back, why should people be excluded based on circumstances outside of their control? And why, when they fit the arbitrary definition of “having a connection to Scotland”, are they then punished because this connection could not be demonstrated - according to government measurements - on the first day of their course?

### **Question 10**

**Do you have any comments on the sort of ‘events or changes in circumstances that should trigger reassessment of a student’s eligibility after the first academic year of their course?’**

We think that changes in an applicant’s immigration status must be considered as a circumstance that triggers reassessment of a student's eligibility after the first academic year of their course.

We also think it is important that the initial assessment of a student’s circumstances upon applying needs to consider the prospect of the student meeting residency requirements halfway through their course. This improves accessibility and undermines the prospect of disruption to the course. It gives the applicant an

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<sup>7</sup> <https://www.justrightscotland.org.uk/2023/03/access-to-education-is-a-human-right-for-everyone-our-gradesnotvisas-campaign-is-working-to-make-this-right-real-for-all/>

opportunity to decide whether to postpone the start date of their course, or whether they can partially fund their course until they qualify for student funding.

We believe that improving this aspect of accessibility is incredibly important in combating discrimination in education.

We also want to flag that once a person is out of the education system for a prolonged period, they are less likely to return to full time education. This aspect of the student finance regulations is more likely to affect migrants, placing them in a position of having to accept lower-wage jobs and unequal access to education.

### **Question 11**

#### **Do you have any other comments on the current policy of carrying out an assessment of eligibility on the relevant date, or the proposals to change it?**

As mentioned, we believe that these assessments need to be carried out with a degree of flexibility and discretion.

If the assessing officer notes that the applicant will meet the criteria in two months, this needs to be considered when making a decision. They should not be barred from accessing funds because of this.

We highly encourage the Scottish Government to take this opportunity to put forward fairer, more just processes that consider the different situations which may contribute to an applicant missing eligibility by a margin. We urge flexibility to be used, and a more human approach to education to be taken. We want an accessible, inclusive education system which gives people the tools to improve their life and society.

For further information, please contact JustCitizens at:  
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