

Who Needs to Comply?

1. Introduction to the authors

Article 26

Article 26 is a project of the Helena Kennedy Foundation and takes its name from the Universal Declaration of Human Rights, which states that everyone has the right to education and specifies that higher education should be accessible on the basis of merit. Article 26 was developed to meet the needs of students from an asylum-seeking background who are ineligible for student finance or any other source of funding to meet the cost of higher education, as well as universities prepared to provide opportunities on degree programmes for these students.

Article 26 coordinates a network, which offers support and guidance to universities to create bursaries for students from a forced-migration background and thus enable them to access higher education. A bursary typically includes a full tuition-fee waiver and funding to help meet the additional costs of studying. The model of support designed by Article 26 was pioneered over a period of four years, before Article 26 began to support universities to establish their own in-house schemes. *Education for All* is Article 26's comprehensive guide to support universities to deliver bursary schemes for students who have sought asylum. Article 26 currently works with universities across the UK, and has supported 49 students to enter and thrive in higher education. Detailed information on student bursaries, an extensive set of resources (including *Education for All*), the history and everything else project-related can be found at: article26.hkf.org.uk.

Coram Children's Legal Centre

Coram Children's Legal Centre (CCLC), part of the Coram group of charities, is an independent charity working in the United Kingdom and around the world to protect and promote the rights of children, through the provision of direct legal services; the publication of free legal information online and in guides; research and policy work; law reform; training; and international consultancy on child rights. Founded in 1981, CCLC has over 30 years' experience in providing legal advice and representation to children, their parents and carers and professionals throughout the UK. The CCLC's legal practice specialises in education, family and immigration law and CCLC operates several free advice phone lines including the Child Law Advice Service and the Migrant Children's Project advice line. The Migrant Children's Project at CCLC is a centre of specialist expertise on the rights of children and young people affected by the UK immigration system. The Migrant Children's Project's work includes providing legal advice, guidance and training on

how immigration status affects access to education, as well as policy work to access to education. More information about our work, training and resources can be found on our website: www.childrenslegalcentre.com

2. Purpose of this guide

This guide is primarily to assist universities in England in making decisions on eligibility for scholarships for refugee and asylum-seeking students based in England. It aims to help those making decisions about an individual's scholarship to identify what level of fees they are likely to have to pay, and what alternatives they can access to finance their studies. However, this will depend on individual circumstances, as well as where a prospective student is based. Before making a final decision, it is always important to check with a university's internal finance team. We also recommend checking with the UK Council for International Student Affairs (UKCISA), who provide up-to-date information on student eligibility.

It is also intended to assist with managing a university's relationship with the Home Office and the Tier 4 regulations. This guide is based on the experience of Article 26 and universities with whom we work in close partnership, several of whom have highlighted the need for a separate guide that clarifies the eligibility and monitoring processes that can be applied to international students to whom Tier 4 regulations do not apply.

3. Status of this guide

This guide is intended as an aid to university teams and does not replace any official guidance published by the Home Office or any UK Government agency. This guide is not intended as immigration advice and should not be taken as such, nor should it be used to advise individuals regarding their immigration status. The purpose of this document is to assist universities in clarifying the status of students who they are considering for the grant of a scholarship or bursary and in the event that a student's status changes whilst they are enrolled, to clarify whether they remain entitled to continue studying. Neither Coram Children's Legal Centre nor Article 26 can take any responsibility for decisions made as a result of this guide. It should also be noted that it is a criminal offence to provide immigration advice to an individual unless qualified to do so.

Where students are not attending a university as a home student, or as a Tier 4 student, then consideration will need to be made regarding their situation on an individual basis. This should include a consideration of their immigration status but should not include an assessment of the presumed merits of an individual's asylum or immigration case.

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4. Table: Immigration status and monitoring requirements for English universities

IMMIGRATION STATUS	FEE STATUS IN ENGLAND	FINANCE STATUS IN ENGLAND	MONITORING
<p>Refugee Status</p> <p>A refugee is someone who has a recognised need for protection under the Refugee Convention.</p>	<p>Refugees are usually given home fee status if:</p> <ol style="list-style-type: none"> 1. Ordinarily resident on first day of first academic year; and 2. Recognised as a refugee by the first day of an academic year; and 3. Has not ceased to be ordinarily resident since being given refugee status. <p>http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#RL</p>	<p>Refugees are usually eligible for Student Finance (England) where they are ordinarily resident on the first day of the first academic year.</p> <p>http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/Government-Student-Support#layer-3942</p>	<p>Refugee status lasts for a fixed period of time (usually 5 years). Ask for:</p> <ul style="list-style-type: none"> - BRP card; or - Home Office letter confirming refugee status <p>Note the expiry or end date and ask student to update on further applications near this date, for example:</p> <ul style="list-style-type: none"> - Solicitor's letter confirming application - Home Office acknowledgement of application - Proof application sent <p>Status is retained while a further in time application is made. An in time application is one made before the expiry of existing leave.</p>
<p>Spouse or civil partner, or child of a refugee</p> <p>If relationship existed at time of application for asylum then treated the same as refugee.</p>	<p>As above.</p>	<p>As above.</p>	<p>Will usually be granted "leave in line" or leave as a refugee dependent and will have:</p> <ul style="list-style-type: none"> - BRP; or - Home Office letter confirming grant of leave. <p>Note that this will have an expiry date that is the same as the person with refugee status. Further applications will depend on them, so you may want permission to contact the refugee directly, or ask them to provide confirmation as above that a further application has been made.</p> <p>As long as the family member is included on an in-time application, status is retained.</p>

<p>Resettled refugee Someone who has been granted protection outside the UK and has then been resettled to the UK through a specific scheme.</p>	<p>If given refugee status: as above. If given Humanitarian Protection: see below.</p>	<p>If given refugee status: as above. If given Humanitarian Protection: see below.</p>	<p>Ask student to confirm type of leave granted by showing BRP or letter of grant of status from Home Office, or international agency arranging resettlement programme (IOM or UNHCR). Then follow appropriate steps.</p>
<p>Humanitarian Protection (HP): Humanitarian protection can be given to those who need protection but for a range of reasons, do not meet the Refugee Convention.</p>	<p>Someone who is given HP will usually be eligible for Home Fees if:</p> <ol style="list-style-type: none"> 1. Ordinarily resident on first day of first academic year. 2. Recognised as in need of HP by the first day of an academic year. 3. Have not ceased to be ordinarily resident since being given HP status. <p>http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status#layer-5635</p>	<p>Will only be eligible for student finance where:</p> <ol style="list-style-type: none"> 1. Ordinarily resident on first day of first academic year. 2. Have HP leave and have been ordinarily resident since being granted HP leave. 3. Have been ordinarily resident in the UK for 3 years prior to the first day of the first academic year of the course. <p>http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/Government-Student-Support#layer-3942</p>	<p>Humanitarian Protection lasts for 5 years. May ask for:</p> <ul style="list-style-type: none"> - BRP card; or - Home Office letter confirming refugee status <p>Note the expiry or end date and ask student to update on further applications near this date, for example:</p> <ul style="list-style-type: none"> - Solicitor's letter confirming application - Home Office acknowledgement of application - Proof application sent <p>Status is retained while a further in-time application is made.</p>
<p>Spouse, civil partner or child of someone with HP If relationship existed at time of application for asylum then treated the</p>	<p>As above</p>	<p>As above</p>	<p>Will usually be granted "leave in line" (outside the UK at time of application or leave as a humanitarian protection (in-country) dependent and will have:</p> <ul style="list-style-type: none"> - BRP; or - Home Office letter confirming grant of leave.

<p>same as person with HP.</p>			<p>Note that this will have an expiry date that is the same as the person with refugee status. Further applications will depend on them, so you may want permission to contact the refugee directly, or ask them to provide confirmation as above that a further application has been made.</p> <p>As long as the family member is included on an in-time application, status is retained.</p>
<p>Post-flight family members Civil partners, spouses or children who did not have a relationship with the refugee or person with humanitarian protection at the time of application.</p>	<p>These family members are usually required to pay international fees.</p>	<p>Will not normally be eligible for a student loan, unless meets one of the other criteria – can look at access to student finance here:</p> <p>http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/Government-Student-Support#layer-3942</p>	<p>Will usually be given leave for 30 months. Note the expiry or end date and ask student to update on further applications near this date, for example:</p> <ul style="list-style-type: none"> - Solicitor's letter confirming application - Home Office acknowledgement of application - Proof application sent <p>Status is retained while a further in-time application is made.</p>
<p>Indefinite Leave to Remain (ILR): Settled status in the UK entitling a foreign national to be treated on the same basis as a British national</p>	<p>Home</p>	<p>Someone who is settled in the England is eligible for a student loan where they are ordinarily resident on the first day of the first academic year.</p> <p>http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/Government-Student-Support#layer-3942</p>	<p>No monitoring necessary as categorised as a home student.</p>

		ion--Advice/Fees-and-Money/Government-Student-Support#layer-3942	
<p>Discretionary leave to remain (DL) Discretionary leave can be given in a wide range of circumstances</p>	<p>In England, someone with DL will need to pay international fees unless they are within any of the categories below: http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status</p>	<p>Someone with DL will not usually be eligible for student support unless they are able to meet any of the other categories below: http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/Government-Student-Support</p>	<p>Discretionary leave to remain can last for any period May ask for:</p> <ul style="list-style-type: none"> - BRP card; or - Home Office letter confirming refugee status <p>Note the expiry or end date and ask student to update on further applications near this date, for example:</p> <ul style="list-style-type: none"> - Solicitor's letter confirming application - Home Office acknowledgement of application - Proof application sent <p>Status is retained while a further in-time application is made.</p>
<p>Leave as an Unaccompanied Asylum Seeking Child (UASC leave) An asylum seeking child who arrived in the UK on their own. Not recognised as a refugee but granted leave to remain on the basis of no adequate reception arrangements for their return home. Grant of 2.5 years or until they reach 17.5 years of age (whichever is shorter). In</p>	<p>Someone with UASC leave will need to pay international fees unless they are within any of the categories below: http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/England-fee-status</p>	<p>Someone with UASC leave will not usually be eligible for student support unless they are able to meet any of the other categories below: http://www.ukcisa.org.uk/Information--Advice/Fees-and-Money/Government-Student-Support</p>	<p>Note the date that leave expires. No monitoring necessary until leave expires. Suggest that written confirmation is obtained where a further application is made or an appeal is pending: for example:</p> <ul style="list-style-type: none"> - Solicitor's letter confirming application - Home Office acknowledgement of application - Proof application sent <p>Letter from Local Authority responsible for care.</p>

the care of the Local Authority under Section 20. ¹			
Asylum Seeker (AS): <i>Submitted a claim for asylum, awaiting a decision from the Home Office. Is therefore lawfully present in the UK until such time as any appeal is finally resolved.</i>	International	No	<p>You can take a copy of the ARC card, and ask for a letter from the solicitor confirming:</p> <ul style="list-style-type: none"> - An asylum application has been made and is still outstanding. - The stage of the asylum application. <p>Asylum seeking students should be encouraged to sign an undertaking that they will inform the university of any change in their circumstances, and particularly that they will notify the university if they are refused at final appeal.</p> <p>An asylum seeker should not be asked about the content of their claim, and the university should not attempt to judge the merits of any asylum claim.</p>
Refused asylum seeker (ARE) - fresh claim submitted: <i>Where a fresh claim has been submitted and acknowledged and waiting for a decision as to (a) whether a fresh claim for asylum; and (b) whether granted status as a result of the fresh claim</i>	International	No	<p>Confirmation from Home Office or solicitor that a fresh claim has been sent and acknowledged.</p> <p>Undertaking to update the university if status changes, and if a fresh claim is refused.</p>

¹ For further information on UASC leave, please see Coram Children's Legal Centre, Limited leave for unaccompanied asylum seeking children, February 2016, available at <http://bit.ly/1GIDeJ5>

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The right to access higher education

The Human Rights Act 1998 incorporates the European Convention on Human Rights ('ECHR') into UK law. Protocol I, Article 2 of the ECHR contains a generic provision that 'no person shall be denied the right to education (...)'.² The Article exists to establish a right of access to education, and includes higher education, but it is a qualified right, with restrictions based on nationality, cost of education and immigration status. Any entitlement to study should be based only on whether a prospective student meets the admissions criteria of the university course to which they have applied.

Higher education and the asylum process

Anyone exercising their right to claim asylum, by submitting an application in person for asylum or appealing a negative decision on their claim within the timeframe given by the Home Office, is lawfully present in the UK.

A refusal to admit a student who applies to university while seeking asylum may amount to unlawful discrimination. A university is free to decide whether to waive tuition fees, or to provide a bursary, scholarship or other financial support. The laws and guidance on university fees suggest that the practice has been to allow asylum-seekers to study.³

However, from the table above, there are a number of different ways in which prospective students can come to the UK for protection, but are then unable to access home fees or student finance. This creates a significant barrier to effective access to education. Scholarships and bursaries offered by universities can remove the financial barriers to education for these groups of students, including those who are brought to the UK under resettlement schemes to continue their lives in safety.

The Home Office accepts that there are no restrictions on those who are in the UK with forms of limited leave to remain, and asylum-seekers accessing tertiary education where they are able to self-fund. Although these students may be paying international fees, they are not Tier 4 students and do not have to be monitored by the university although care should be taken to ensure that the university is satisfied they have current information and have satisfied any duty on them to support immigration control and act with integrity. Article 26 and Coram CLC have proposed various ways in which information can be held.

² See the Human Rights Act, Part I <http://bit.ly/1UNeEci>

³ http://www.ukcisa.org.uk/student/fees_student_support.php and Education (Fees and Awards) Act 1983; Education (Fees and Awards) (England) Regulations 2007

Where someone is an asylum-seeker, it is not appropriate to request detailed information regarding their protection claim, or the substance of their case. A decision on the merits of an asylum claim can only be made by the Home Office, and attempts by any other public institution to assess the merits of someone's immigration or asylum case are likely to be unlawful.

A number of asylum claims are refused at first instance and are subsequently granted on appeal to an independent judge, approximately 1/3 of those who appeal are successful.⁴ There is no basis to withdraw someone from their course prior to a determination of their appeal.

Undertakings

We have suggested that universities ask students to enter into undertakings to inform them of any change of circumstances. Care must be taken to ensure that these undertakings are not too onerous, and do not place too many obligations on the students. All students should be advised to seek independent legal advice before entering into an undertaking.

In some instances, the information required will include details of the student's spouse, partner or parents' case. This should be handled sensitively, and it would not be appropriate to require the third party to provide more than confirmation than set out above. An undertaking should not require a student to undertake actions that they may be unable to do: for example, to appeal a decision, or to make an application by a certain time.

Asylum-seekers who are appeal rights exhausted

A person does not become appeal rights exhausted until they have no further legal right to pursue an appeal against a negative decision from the Home Office. Someone who becomes appeal rights exhausted has no right to remain in the UK, and they are liable for removal. However, there are cases where someone has been refused asylum and exhausted all appeals but is submitting a fresh claim or where someone has been refused asylum without appeal rights but is able to pursue a judicial review. A solicitor should be asked to confirm the status of the case, and in particular whether there is a barrier to removal. Someone who has an active case cannot be removed from the UK, and therefore should not be withdrawn from their course without further consultation.

Tier 4 international students

⁴ See the Home Office statistics available at <http://bit.ly/1WWoAzk>

Someone who comes to the UK for the sole purpose of study will be on a Tier 4 visa. There is no clear statutory provision that a university's duties and responsibilities under Tier 4 extend beyond students in this category; in fact, the guidance to Tier 4 sponsors states that universities' responsibilities for Tier 4 end where they are in another immigration category. Therefore, Tier 4 restrictions are limited to those students who are Tier 4 students, and cannot be applied across the board to all foreign national students. There is no power for the Home Office to make additional demands of highly trusted sponsors than those which appear in the guidance.

General duties put on 'Highly Trusted Sponsors' in the guidance include a duty to:

*comply with all aspects of the Immigration Rules and sponsor guidance, and support immigration control, including by taking steps to ensure that every student at your institution has permission to study in the UK throughout the whole period of their study.*⁵

The guidance also states that compliance failings include:

*Operating in a manner that poses a risk to immigration control, such as failing to take steps to ensure non-EEA students have leave to remain in the UK.*⁶

In practice, universities should adopt a common-sense approach, have systems in place to monitor student's changing immigration status, and know about each individual and the progress of their case. If a university is in doubt about its obligations as a Tier 4 sponsor, it is recommended that they seek independent legal advice. Institutions that are members of UKCISA have access to the Tier 4 Compliance Helpline run by Penningtons Manchester LLP.

Students in the above categories do not require 'Permission to study'. They are in the UK lawfully and have the right to education whilst they are here. However, please note that if a student, who still has leave as a Tier 4 visa, makes a claim for asylum, the Home Office may or may not revoke the student visa. Universities can ask the student, or student's solicitor, for further information after the student has claimed asylum.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476985/Ttier_4_sponsor_guidance_document_2_sponsorship_duties_2015_11_final_v2.pdf

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/514315/Tier_4_Sponsor_Guidance_-_Document_3_-_Tier_4_Compliance_2016-04.pdf

Granting admission to university or retaining an asylum seeking student after a change in immigration status is at the discretion of the university and should be treated as such.

Managing changes in student circumstances

During appeal processes or extension or variation applications, original documents are likely to be with the Home Office. The student's solicitor should have a copy of the document which confirms the student's status and this, together with a letter from the solicitor confirming that a valid application has been submitted, constitutes evidence of status at a time when the original status document cannot be accessed.

Universities can check the progress of students' asylum claims and any developments on decisions, appeals and outcomes directly with the Home Office. We would advise that contact with the Home Office should not be made without seeking the consent of the student prior to each check. The immigration process can be very slow, and appeals may not be listed for many months, and may be cancelled or re-scheduled at the last minute, so there may be no progress made on someone's asylum claim or appeal for a long time, even years. Checks with the Home Office are not a government requirement and someone who does not agree to disclose details of their immigration or asylum case should not be refused access to education on this basis where the university is able to satisfy itself that they are entitled to study.

The Article 26 publication [Education for All](#) addresses the practical changes and changes in entitlements that happen as a result of a change in immigration status. For example when someone is granted a form of leave to remain or when someone's claim for asylum is refused. Chapter 4 provides an in-depth analysis of these changes and how universities can continue to support their students through this.

University compliance officers should be aware that:

Only relevant regulated legal practitioners and immigration advisers are legally entitled to give immigration advice.

Neither the Home Office, nor the university, can pre-determine the outcome of an appeal as this is a decision made by an independent immigration judge following an appeal hearing at the Immigration Tribunal.

Case studies

Hawat arrived in the UK in 2004 as an unaccompanied child aged 17. He claimed asylum upon arrival and was granted discretionary leave until the age of 18.⁷ Hawat applied for an extension of leave before his leave expired and he received a negative decision within four months, which he appealed. The appeal process was lengthy and further complicated by significant changes to legal aid during this time. Hawat was detained on three occasions and spent a month in detention each time.

After exhausting all appeal rights, Hawat submitted a fresh claim in 2011 which was refused and he was detained when reporting at an immigration centre. Following a successful judicial review application, he was released from detention. Hawat's immigration status remained unresolved throughout his undergraduate degree course at university and he complied with reporting instructions throughout this time.

In 2015 the Home Office withdrew their decision and granted Hawat two and a half years' limited leave to remain on the ten-year route to settlement. Hawat appealed this decision requesting to be placed on the five-year route to settlement.

Hawat graduated in with a 2.2 Bsc Sports Science in 2014. He is currently undertaking a Postgraduate Diploma in Psychology and hopes to do an Msc in Sports Psychology.

Abbas arrived in the UK in February 2007 and was detained immediately upon arrival. Whilst in detention he claimed and was refused asylum, yet after 11 months he was released on bail and sought to pursue his claim for asylum. Abbas first received legal advice after leaving detention and subsequently submitted a fresh claim for asylum in 2011. The Home Office confirmed in March 2016 that his case has still not yet been dealt with.

In 2012, Abbas commenced a four-year degree programme. He is due to graduate in June 2016 with a first class honors degree in Physics. Throughout his degree programme Abbas has reported to the Home Office on a weekly basis and every six months his university contacts him to advise that they are going to contact the Home Office for an update on his claim.

Flow chart

⁷ Please note that children now receive 'limited leave as an asylum-seeking child' (UASC leave) until the age of 17 and a half.

One issue frequently raised by universities is confusion about the asylum system and the different stages of the asylum process. To address this we have developed a flow chart which aims to illustrate the basic processes of the asylum system. It is difficult to put a timeframe around the asylum system as there are a number of variables affecting how long this process can take. Many of the students who have been supported by Article 26 completed their degrees before having an outcome on their asylum claim. There are certain timeframes around decisions on initial claims and appeal deadlines which are highlighted in the flowchart.

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