

Subject:

FURTHER EDUCATION RESIDENCE REQUIREMENTS

Circular Number:
FE 06/07

Date of Issue:
29th June 2007

Target Audience:

- Directors/Principals of Further Education Colleges
- Chairs of FE College Governing Bodies
- FE College Finance Officers
- ANIC

Summary of Contents:

- This Circular clarifies the student eligibility and residence requirements for drawing down funds, under the Department's funding formula.

Enquiries:

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Status of Contents:
Information

Related Documents:
None

Superseded Documents:
Circular FE 15/01
Circular FE 14/04

Expiry Date:
N/A

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FURTHER EDUCATION RESIDENCE REQUIREMENTS

Introduction

1. This Circular is being issued to provide clarification on the residence requirements for the Department's Further Education (FE) recurrent funding formula, and how these requirements will impact on FE Colleges' ability to recruit students who are eligible for this funding.
2. These requirements relate only to access to further education provision, and are entirely separate from any residence requirements that may be in place for maintenance funding, such as the Department's discretionary *Support Funds*.
3. Departmental recurrent funds shall be subject to such conditions and requirements, including those in this circular, as the Department may from time to time prescribe. Colleges shall ensure that any funds are used only in accordance with such terms and conditions. Failure to comply with the terms and conditions could result in funds being withheld from the College concerned.
4. These residence requirements will take effect from 1st September 2007.

Eligible Students

5. Article 4 of the Further Education (NI) Order 1997 gives the Department the power "to do all that is necessary or expedient for the purposes of the exercise of its duty under Article 3 of the 1989 Order in so far as it relates to further education". These powers include making grants and other payments to Institutes of Further Education.
6. In fulfilment of this duty, the Department will fund FE Colleges in respect of any student who meets the eligibility criteria. For funding purposes, the eligibility of the student must be established at the start of his or her course. There are, however, a number of categories of students who can *become* eligible during the course of an academic year:
 - those who become an EU national or the relevant family member of an EU national (provided the student satisfies the 3-year residence test at the start of their course);
 - those who become an EEA/Swiss migrant worker or the relevant family member of such a worker (provided the student satisfies the 3-year residence test at the start of their course);
 - those who become the child of a Swiss national or of a Turkish worker (provided the student satisfies the 3-year residence test at the start of their course); and

- those who get refugee status, humanitarian protection or discretionary leave or the relevant family member of such a person.
7. The following students will be eligible for Colleges to draw down funding under the Department's recurrent funding formula:
- (a) a student on the first day of the course who is "settled" in the UK, and who has been ordinarily resident in the UK and Islands (that is, including the Channel Islands and the Isle of Man) for the three years preceding the first day of the first academic year. "Settled" means having either indefinite leave to enter or remain or having the Right of Abode in the UK. British citizens and certain other people have the Right of Abode in the UK:
 - those with European Community –United Kingdom of Great Britain and Northern Ireland passports;
 - British Dependent Territory Citizens (now known as British Overseas Territory Citizens);
 - those whose passports have been endorsed to show they have Right of Abode in the UK; and
 - those who have a certificate of naturalisation or registration as a British Citizen.
 - (b) a national of any European Union (EU) country; or spouse or civil partner; a dependant parent/grandparent of an EU national or of the spouse/civil partner of an EU national; or the child of an EU national, who has been ordinarily resident in the European Economic Area (EEA) and/or Switzerland for the three years preceding the first day of the course.
 - (c) an EEA migrant worker; or spouse or civil partner; a dependant parent/grandparent of an EEA migrant worker or of the spouse/civil partner of an EEA migrant worker; or the child of an EEA migrant worker, who has been ordinarily resident in the EEA and/or Switzerland for the three years preceding the first day of the course.
 - (d) a Swiss migrant worker or the spouse or civil partner or child of a Swiss migrant worker who has been ordinarily resident in the EEA and/or Switzerland for the three years preceding the first day of the course.
 - (e) the child of a Swiss national, if the student has been ordinarily resident in the EEA and/or Switzerland for the three years preceding the first day of the course.

- (f) anyone who is recognised as a refugee by the UK Government (granted Refugee Status) who has remained ordinarily resident in the UK and Islands since so recognised, or the spouse or civil partner or child of such a refugee.
 - (g) anyone refused refugee status but who has been granted leave to stay by the Secretary of State, granted Humanitarian Protection or Discretionary Leave, or was granted exceptional leave to enter or remain by the UK Government, and who has remained ordinarily resident in the UK and Islands since so recognised, or the spouse or civil partner or child of such a person.
 - (h) Students who are nationals of either of the 2 countries that joined the EU on 1st January 2007 (Bulgaria or Romania) will be eligible for funding from 1st January 2007, subject to the student meeting the normal three-year residence requirement in the new enlarged EEA, for courses that start on or after that date. Students already on a course of study will be accepted for funding from the next teaching year that starts after 1st January 2007.
8. In addition to considering the groups outlined above, the Department will also consider the following groups of students to be eligible:
- (a) persons who have been living in Northern Ireland for the 3 years immediately preceding the start of the programme, ignoring temporary absences (this does not include persons with time-limited leave to remain as a student whose leave to remain does not extend to the expected end date of the proposed course of study).
 - (b) persons with humanitarian protection, or discretionary leave, or exceptional leave to enter or remain, their spouses, civil partners and children.
 - (c) persons with recently settled status (this means those having been granted indefinite leave to enter or remain, Right of Abode or British Citizenship within the 3 years immediately preceding the start of the course).
 - (d) the spouse or civil partner of a person with settled status, who has been both married (or has undertaken a recognised civil partnership ceremony) and resident in the UK for one year.
9. The Department will also consider the following groups of students to be eligible for funding:

- (a) asylum seekers who have legally been in the UK pending consideration of their claim by the Home Office for longer than six months.
 - (b) asylum seekers refused asylum but eligible and granted support under Section 4 of the Immigration and Asylum Act 1999.
 - (c) all students accepted as eligible under this paragraph must be re-assessed for eligibility at the start of each and every programme they undertake.
 - (d) a person who is the child of a Turkish Worker and who has been ordinarily resident in the UK on the first day of the course and has been ordinarily resident in the territory comprising the EEA, Switzerland and Turkey throughout the 3 year period preceding the first day of the course.
10. Students who have “no recourse to public funds” included in their passport stamp would not be in breach of their immigration conditions if they had access to education in the UK. “Public funds” are defined in the Immigration Rules, and the benefits and services listed do not include education or any education funding.
 11. Those with British National (overseas) passports or similar and Hong Kong Nationals are ineligible until they have been resident in the UK for 3 years, or unless they fit into one of the provisions above.
 12. Overseas students are not eligible for funding, and the College may wish to charge full-cost fees.
 13. Colleges should ensure that they have at least one member of staff who is familiar with, and able to advise the College staff on, the funding of students from abroad. Where a student is eligible for funding, the appropriate level of fees should be charged. To avoid any inconsistency of approach, full-cost recovery fees cannot be charged to a student for whom funding is also being claimed from any other DEL-funded programme.
 14. Where, as part of the requirements of employment, a student who is ordinarily resident in Northern Ireland is required to work outside Northern Ireland for short periods, that student, his or her spouse or civil partner and dependants will be considered eligible for funding, provided the student continues to pay taxation in Northern Ireland.
 15. The Department recognises that students who are eligible for funding as ordinary residents and are undertaking a substantial DEL-funded course of study in Northern Ireland may, as part of this course of study, spend a short period of time outside Northern Ireland. The Department will consider such provision eligible for funding where this provides a

minor but essential part of a qualification, which cannot be provided in Northern Ireland. Colleges seeking to make such provision should seek advice from the Department before entering into arrangements.

Definitions

16. For funding purposes, the Department regards as “ordinarily resident” in a given country or region, any student who habitually, normally and lawfully resides from choice and for a settled purpose in that country. Temporary absences from the relevant area should be ignored. A student who has not been ordinarily resident because he or she or the student’s parents or spouse or civil partner was working temporarily abroad will be treated as though the student had been ordinarily resident in the relevant area.
17. For these funding purposes, the EEA is defined as all members of the EU and Iceland, Liechtenstein, Switzerland and Norway.

Allocation of Funds

18. Colleges are responsible for ensuring that all student information is recorded within the NICIS system.
19. The Department’s Further Education funds should not be used to fund provision made outside Northern Ireland.
20. The above residence requirements apply in the case of Colleges’ recurrent budget allocations and Colleges should ensure that their MIS, which provide the data for determining the funding allocations, clearly identify those students who do not meet this requirement. Colleges should also ensure that such students are identified in Colleges’ enrolment data.
21. The residence requirements do not prevent Colleges from providing education and training to other non-eligible students, on a full cost recovery basis.

Accountability

22. The Principal/Director of each College shall:
 - ensure that for the purposes of administering funds, the College maintains and operates an adequate system of record keeping, financial management and internal controls, including safeguards against fraud, and shall require the College’s external auditors, as part of their audit, to report on the adequacy or otherwise of that system;
 - ensure that the College uses the funding provided in a manner consistent with the purposes for which the grant was given by the Department and complies with any terms and conditions attaching to it; and

- provide such returns as may be required by the Department and Colleges are reminded that full student records should be maintained for Departmental audit/inspection at any time.