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EU RESIDENCE GUIDE – TUITION FEE STATUS OF STUDENTS STARTING STUDIES IN 2021-22

Disclaimer: *The information in this guide offers general guidance only and is not legally binding, nor does it constitute any right of eligibility for, or entitlement to, funding. Each application will be assessed in accordance with the Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021.*

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Section 1 – Introduction

1.1 Who is this guide for?

This guide is aimed at staff in colleges and universities with responsibility for determining the fee status of students. **The guide replaces any earlier versions.** This guide sets out residency conditions for EU, EEA and Swiss nationals and their family members, and UK nationals living in the EU, who are studying courses of further and higher education in Scotland from the start of the academic year 2021-22. This is in light of the announcement on 9th July 2020 that, as a result of the UK's departure from the EU at the end of 2020, EU, EEA and Swiss nationals starting a course from 2021-22 will no longer be automatically entitled to home fee status in Scotland.

Separate guidance will be published on the financial support which students are entitled to (i.e. grants or loans for tuition fees and living cost support) and further information is available at www.saas.gov.uk/need-to-know/brexit. **Please advise students to contact SAAS if they require confirmation of what support they are eligible for.**

1.2 The legislation and guidance

This guide explains the changes to the current student support residency categories, as set out in The Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021. These [Regulations](#) were laid in the Scottish Parliament on the 21st January 2021 and are due to come into force on 1st August 2021.

The Regulations amend the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006, the Education Authority Bursaries (Scotland) Regulations 2007, the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, the Students' Allowances (Scotland) Regulations 2007, the Education (Student Loans) (Scotland) Regulations 2007, the Education Maintenance Allowances (Scotland) Regulations 2007 and the Education (Fees) (Scotland) Regulations 2011.

For the purposes of this guidance on tuition fee status, only the changes to the Education (Fees) (Scotland) Regulations 2011 are relevant.

Section 2 – Residency

2.1 EU Settlement Scheme (EUSS)

EU, EEA and Swiss nationals and their respective family members who are living in the UK by the end of the transition period (31 December 2020) and continue to live here after that date have **citizens' rights** under the EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement ("the Withdrawal Agreements"). Those who meet the conditions of the Withdrawal Agreements can continue to legally reside in the UK and enjoy associated rights. The rights of those who move to the UK after the end of the transition period (unless they have citizens' rights as a family member of a person already in the UK) will be subject to new Home Office visa arrangements.

Those who have citizens' rights can apply for settled status via the Home Office's EU Settlement Scheme (EUSS). They will be awarded:

- **settled status** (i.e. indefinite leave to remain) if they have the requisite minimum of five years of continuous lawful residence in the UK, or
- **pre-settled status** (i.e. limited leave to remain) if they have a shorter period of UK residence (any period of residence of less than five continuous years). After five years of continuous lawful residence in UK they can apply to change this status to settled status and should do so before their pre-settled status expires.

Note – Those who have a family member that is an eligible person of Northern Ireland can also apply to the EUSS (regardless of whether the family member is an EU, EEA or Swiss citizen). To be eligible, the person of Northern Ireland must:

- be a UK, Irish or dual UK/Irish national;
- have been born in Northern Ireland;
- at the time of their birth, have at least one parent who held British, Irish or dual nationality (or was without any restriction on their period of residence);
- be living in the UK by 31 December 2020.

2.1a EU Settlement Scheme (EUSS) – Late Applications

For most applicants, the EU Settlement Scheme (EUSS) deadline was 30th June 2021. After this date, EU, other EEA and Swiss nationals applying for courses starting in academic year 2021-22 will be assessed by SAAS for home fee support if they have been granted Settled or Pre-settled status under the EUSS.

However, there may be applicants for the 2021-22 academic year and beyond, who have reasonable grounds for making a late application to the EUSS. There may also be some applicants who have made an in-time EUSS application but are still waiting a final decision on their status from the Home Office, including those that have lodged an appeal. Once a valid application has been made to the EUSS (evidenced by receipt of a Certificate of Application (COA)), the applicant will have temporary protection, pending the outcome of that application. This is required by the Citizens Rights' Agreements.

For those who have made a late application to the EUSS, and for those who are still awaiting an EUSS decision or the outcome of an appeal, SAAS will continue to process applications for support in the same way for all students who apply to the EUSS (as set out in this guide previously, and as advised at the training sessions undertaken with colleges and universities

in February 2021). This will involve SAAS making an initial assessment against eligibility criteria (set out in The Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021), and thereafter contact will be made with students at a later date to seek confirmation of the EUSS application outcome. If evidence is provided that the student has later been granted Pre-settled or Settled status, SAAS will continue to provide support to the student or, if the EUSS application has been unsuccessful, the support will be withdrawn.

For completeness, where an applicant living in the UK before the end of the transition period has failed to apply to the EUSS by 30th June 2021 deadline, but does so at a later date, any period of residence in the UK and Islands from 1st July 2021 to the date a valid late application is made is to be treated as lawful residence for the purpose of considering the three-year ordinary residence requirement.

General information on late applications to the EUSS can be found at – [EU Settlement Scheme: information for late applicants - GOV.UK \(www.gov.uk\)](https://www.gov.uk/eu-settlement-scheme-information-for-late-applicants)

Joining Family Members of EEA and Swiss nationals

In terms of the Withdrawal Agreement, family members of EEA or Swiss nationals arriving in the UK after 1st April 2021 have three months to apply to the EUSS from the date they arrive in the UK. They will have temporary protection and will therefore be treated as having citizens' rights for the purposes of eligibility for home fee status and student support during those three months, and pending the outcome of any EUSS application made during that period (and the period of time during any appeal). The joining family member must have lived in the UK, Gibraltar, EEA and Switzerland for at least the last three years before the course starts.

SAAS will assess students in this category for home fee support in line with any student who has made a late applicants to the EUSS as set out above. SAAS will also require additional information to evidence the relationship with the family member.

A family member may also apply to the EUSS after the 3 month deadline if they have reasonable grounds for making a late application (as set out above). If the family member's application to the EUSS has not been finally determined before the start of the academic year, they will continue be afforded temporary protection and awarded student support as appropriate.

The Scottish Government would expect institutions to apply a similar approach when assessing home fee status for students who make late applications to the EUSS, and also any joining family members, in light of their protected rights under the Withdrawal Agreement.

2.2 Fee Status Table

This table provides a summary of the fees applicable to different categories of students. The 'home' fee rate is the rate currently applied to Scottish domiciled students (£1,820). The 'rUK' rate is the fee rate applied to students from elsewhere in the UK (currently capped at £9,250) and the 'international' fee rate is the fee rate each institution currently charges to international students from out-with the EU.

In the table below, references to ‘residency conditions’ are to the student’s **place of ordinary residence**¹.

Please note that the arrangements below will extend to those students living in the UK before the end of 2020 who are still awaiting final confirmation of their settled/pre-settled status.

	HOME	rUK	INTERNATIONAL
EU/EEA/SWISS NATIONALS AND FAMILY MEMBERS LIVING IN THE UK BY END OF 2020			
EU nationals and their family members ² living in the UK before the end of 2020 who have SETTLED or PRE-SETTLED status and meet the residency conditions of 3 years in the UK ³ , EEA or Switzerland ⁴ . They must be ordinarily resident in the UK on the relevant date ⁵ and applied/applying to the EU Settlement Scheme.	✓		
Non-EU EEA and Swiss nationals and their family members living in the UK before the end of 2020 who have SETTLED status, or are qualifying frontier workers ⁶ who meet the existing migrant / frontier worker or self-employed conditions ⁷ and have PRE-SETTLED status. They must also have resided in the UK, EEA or Switzerland for 3 years prior to the relevant date.	✓		
The children of former migrant workers ⁸ where the child has SETTLED or PRE-SETTLED status and who have lived in the UK, EEA or Switzerland for 3 years prior to the relevant date. They must be	✓		

¹ Ordinary residence means a person’s place of residence which they have adopted voluntarily and for settled purposes, whether of short or long duration. The current rules on assessing ordinary residence for student support purposes (including an exclusion for residence for the primary purpose of education) will apply.

² Family members is defined by Article 9 of the EU Withdrawal Agreement, Article 8 of the EFTA Separation Agreement and Article 9 of the Swiss Citizens’ Rights Agreement. Some family members joining an EU national in the UK after 30 June 2021 will still be eligible to apply to the EUSS.

³ References to residence in the UK within this guidance also include residence in the Channel Islands or Isle of Man.

⁴ References to residence in the EEA or Switzerland within this guidance also include residence in Gibraltar.

⁵ For autumn start courses this is 1 August.

⁶ A qualifying frontier worker is defined in regulation 3 of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020. The person must have a right of admission to the UK under regulation 6 of those Regulations. In practice, this means having a frontier worker permit.

⁷ The status of workers and self-employed persons is as set out in Article 7 of Directive 2004/38/EC.

⁸ This means children of a national of a Member State who would have been entitled to support by virtue of Article 10 of Regulation (EU) No. 492/2011.

ordinarily resident in Scotland on the relevant date.			
Non-EU EEA and Swiss nationals living in the UK before the end of 2020 who have PRE-SETTLED status but do not meeting existing migrant worker / frontier worker conditions.			✓
EU/EEA AND SWISS NATIONALS MOVING TO THE UK FROM 2021			
EU, EEA and Swiss nationals moving to live in the UK after 31 December 2020 without any form of settled immigration status. This includes the EU Overseas Territories.			✓
FAMILY MEMBERS OF RELEVANT PERSONS OF NORTHERN IRELAND			
Family members of a relevant person of Northern Ireland ⁹ living in the UK by the end of the transition period who meet the residency conditions of 3 years in the UK, EEA and Switzerland.	✓		
IRISH NATIONALS			
Irish nationals and their family members living in the UK before the end of 2020, who meet the residency conditions of 3 years in the UK, EEA, or Switzerland. Note: The Irish national does not require to apply for settled or pre-settled status (although they can apply) but the family member of an Irish National does have to apply to the EUSS.	✓		
Irish nationals who move to the UK after the end of the transition period (31 December 2020), who meet the residency conditions of 3 years in the UK or ROI and are ordinarily resident in Scotland on the relevant date.	✓		
Irish nationals who move to the UK after the end of the transition period (31 December 2020), who meet the residency conditions of 3 years in the		✓	

⁹ A family member of a relevant person of Northern Ireland is defined as a person who would have leave to enter or remain in the UK by virtue of residence scheme immigration rules and would be regarded as being a person with protected rights if their parent was a person within the personal scope of Article 10 of the EU Withdrawal Agreement.

UK or ROI, and are ordinarily resident in rUK on the relevant date.			
Dual UK/Irish nationals living in Northern Ireland who exercised their EU residence rights ¹⁰ before the end of 2020. They must have been ordinarily resident in the UK, EEA or Switzerland for 3 years prior to the relevant date and be ordinarily resident in the UK on the relevant date.	✓		
Irish nationals who are ordinarily resident in the Republic of Ireland on the relevant date, who meet the 3 year residency conditions of residing within the Common Travel Area of the UK and ROI prior to the relevant date.		✓	
Irish nationals living elsewhere in the EU (not ROI) moving to Scotland to study.			✓
UK NATIONALS LIVING IN THE EU/EEA OR SWITZERLAND			
UK nationals and their family members living in the EEA or Switzerland on 31 December 2020 (or living in the UK immediately following a period of residence in the EEA or Switzerland), who lived in Scotland for at least 3 years before moving to the EEA/Switzerland, and who have lived in the UK, EEA or Switzerland for 3 years prior to the relevant date. This only applies to courses starting before 31 July 2028. Note that family members of UK nationals who are not themselves UK nationals will also fall into this category if they are accompanying or joining their UK returner family member in the UK.	✓		
UK nationals and their family members living in the EEA or Switzerland on 31 December 2020 (or living in the UK immediately following a period of residence in the EEA or Switzerland), who lived in another part of the UK		✓	

¹⁰ A UK national has exercised EU residence rights if that person has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Switzerland Agreement in a state other than the UK. They will also be deemed to have exercised EU residence rights if they resided in a state in the EEA/Switzerland which they were a national of, but in circumstances where had they not been a national of that state they would have had to rely on EU law to reside there.

before moving there, and who have lived in the EEA or Switzerland for the 3 years prior to the relevant date. They must be ordinarily resident in Scotland on the relevant date. This only applies to courses starting before 31 July 2028.			
UK nationals living in the EEA or Switzerland for at least 3 years prior to the relevant date and who lived there between 31 December 2020 and the relevant date, but who did not live in the UK before moving there. They must be ordinarily resident in Scotland on the relevant date. This only applies to courses starting before 31 July 2028.		✓	
Non-UK national family members of UK nationals living in the EEA or Switzerland for at least 3 years prior to the relevant date, whether or not they lived in the UK before moving there. They must be ordinarily resident in Scotland on the relevant date. This only applies to courses starting before 31 July 2028.		✓	
UK/EU NATIONALS LIVING IN GIBRALTAR			
UK nationals or EU nationals with a right of residence under the Withdrawal Agreement, ordinarily resident in Gibraltar on the relevant date and who have lived in the UK, EEA or Switzerland for at least 3 years prior to the relevant date. This only applies to courses starting before 31 July 2028.		✓	
DUAL UK/EU NATIONALS			
Dual UK/EU nationals resident elsewhere in the UK who did not exercise their EU residence rights to live in another EU member state before 31 December 2020.		✓	
Dual UK/EU nationals (within the personal scope of Article 10 of the EU Withdrawal Agreement) ¹¹ who are resident elsewhere in the UK who did exercise their EU residence rights	✓		

¹¹ The EU Withdrawal Agreement provides that dual nationals of the EU and the UK, whether by birth or naturalisation, are covered if they have exercised free movement rights by the end of the transition period. Dual nationals who have never exercised their free movement rights are not covered by the full scope of the Withdrawal Agreement.

before 31 December 2020 and lived in another EU member state. They must have been ordinarily resident in the UK, EEA or Switzerland for 3 years prior to the relevant date.			
CHILDREN OF TURKISH WORKERS			
Both the child and the worker must have been ordinarily resident in the UK before the end of 2020. The child must be ordinarily resident in Scotland on the relevant date and have lived in the UK, EEA, Switzerland or Turkey for 3 years prior to the relevant date.	✓		
CHILDREN OF SWISS NATIONALS			
Children of Swiss where the Swiss national was living in the UK before the end of 2020 and has been granted pre-settled or settled status. The child must have lived in the UK, Gibraltar, EEA or Switzerland for at least the last 3 years prior to the relevant date. The child must also have settled or pre-settled status but can join the parent(s) after 31 December 2020.	✓		

Section 3– Intercalation, articulation, repeats, course changes and breaks in study

3.1 Intercalated students

Eligible EU nationals who began their degree in 2020-21 or earlier, who commence an intercalated year end-on to their degree, before recommencing their degree the following year will remain eligible for home fees for both their intercalated year and the remainder of their degree.

Similarly, those who commence their degree in 2021-22 or later and are eligible for home tuition fees, will retain home fees for the intercalated year and the remainder of their degree.

3.2 Articulating students

Students who began a course in academic year 2020-21 or earlier, who then articulate end-on to another related qualification will continue to be entitled to home tuition fee funding (providing there is no gap in between study).

Articulating means:

- HNC to HND year 2
- HNC to degree year 2
- HND to degree year 2 or 3

3.3 Repeat year students

Students who began a course in academic year 2020-21 or earlier and have to repeat a year of their course will remain eligible for home tuition fees for that course where the break in study is no longer than one year.

Where the break in study is longer than a year, exceptions should be considered, depending on the circumstances of the student.

This also applies to students who are eligible for home tuition fees who commence in 2021-22 and have to repeat a year later on.

3.4 Deferrals

Students who were due to commence a course in 2020-21 but deferred their place until 2021-22 or later will be assessed for tuition fees according to the regulations in place for the 2021-22 academic year.

Universities and colleges should give consideration to the level of tuition fees being charged where the institution has delayed the running of a course until 2021-22 (i.e. if the student had no option but to defer their course start date).

3.5 Course change students – Who do NOT have settled or pre-settled status

Students who started a course in 2020-21 or earlier and then decide to change course in 2021-22 or later will fall under the new regulations unless it is one of the approved articulation pathways. Most EU students in this position will be unaffected by this as they are likely to have pre-settled or settled status if they were in the UK before the end of 2020,

For example, students who progress to postgraduate level will be assessed under the new arrangements at the point they change course. HEI's will need to be satisfied that such students comply with the new regulations in order to continue with the same tuition fee status they were given for their original course.

Section 4 – Case Studies

4.1 EU nationals and family members

EU nationals in the UK - Eligible for home fee status

CASE STUDY A - Ben is an Italian national. He moved with his family to the UK in 2016 and is ordinarily resident in Scotland with his family on 1 August 2021. He has settled status in the UK. Ben meets our normal residence conditions and is eligible for home tuition fee status.

EU nationals in the UK – Eligible for home fee status

CASE STUDY B – Monika is a Swedish national. She moved to Scotland in July 2017 from Sweden and has been ordinarily resident in Scotland since. She has pre-settled status in the UK and is due to start her course in 2021-22. Monika meets our conditions to be assessed for home fees.

EU nationals in the UK - Eligible for home fee status

CASE STUDY C - *Tom is a Maltese national. He moved with his family to the UK from Malta in November 2019 and has been ordinarily resident in Scotland since. He has pre-settled status in the UK and is due to start a course in 2021-22. Tom meets our conditions to be assessed for home tuition fee status.*

EU nationals in the UK – Eligible for home fee status

CASE STUDY D - *Petra is a Hungarian national who moved to England in June 2020 and has been ordinarily resident there since. She has pre-settled status and will be studying in Scotland from 2021-22. Petra meets our residence conditions for home tuition fee status.*

Family member of EU national in the UK - Eligible for home fee status

CASE STUDY E - *Laura is a Chinese national who is married to a German national. Laura has lived in the UK for 5 years and is ordinarily resident in Scotland with her spouse on 1 August 2021. Laura has settled status in the UK. Laura meets our conditions to be assessed for home tuition fee status.*

Family member of EU national in the UK - Eligible for home fee status

CASE STUDY F - *Yasmin is an Australian national who is married to a Lithuanian national. She has been living with her spouse in Scotland for over 3 years and has pre-settled status. Yasmin meets our conditions to be assessed for home tuition fee status.*

EU nationals in the EU – Eligible for international fees

CASE STUDY G - *Nora is a Belgian national living in Belgium. She moves to Scotland in March 2021 and falls under the new immigration arrangements. She does not have settled or pre-settled status. Nora is not eligible for any funding from SAAS and will be charged international fees by her HEI.*

4.2 – UK nationals

UK nationals in the EU – Eligible for rUK fee status

CASE STUDY H – *Rebecca is a UK national living in Italy. She has been brought up in Italy all her life and has her UK nationality via her parents. She is planning to study in Scotland from 2021-22. She is eligible for rUK fee status if she is ordinarily resident in Scotland on the relevant date.*

UK Returner (prior residence in Scotland) - Eligible for home fee status

CASE STUDY I - *Craig is a UK national who was born in Scotland to UK national parents and lived there before moving to Spain at the age of 7. He lived with his parents in Scotland for more than 3 years immediately before they exercised their EU residence rights and moved to Spain. Craig returned and is ordinarily resident in the UK on the relevant date. Craig accepts an offer to study at a Scottish university from 2021-22. As he lived in Scotland for 3 years before moving to the EU and is now ordinarily resident in the UK on the relevant date, he is considered a UK returner and is eligible for home tuition fee status.*

UK Returner (prior residence in rUK) – Eligible for rUK fee status

CASE STUDY J - *Amy is a UK national who was born in Wales to UK national parents and lived with them in Wales until they moved to France when she was 12. She decides to accept a place to study in Scotland on a course starting in August 2021. As she lived in Wales for the 3 years immediately prior to the family exercising their EU residence rights, she is considered a UK returner with Welsh residency for the purposes of student support. She is therefore eligible to pay the rUK fee rate to study in Scotland. She must be ordinarily resident in Scotland on the relevant date.*

4.3 – Irish nationals from the Republic of Ireland (RoI)

Irish national coming from RoI to study in Scotland – eligible for rUK fee status

CASE STUDY K – *Colin is an Irish national born in Cork and has lived his entire life in Ireland. He wishes to study a course at a Scottish university commencing August 2021. As Colin is not ordinarily resident in Scotland but has been ordinarily resident in ROI for the previous three years, he will be afforded the rUK fee rate.*

Irish national living in Scotland for less than 3 years – eligible for home fee status

CASE STUDY L – *Martha is an Irish national who came to live in Scotland on 5th January 2020 having previously lived in London for two years and before that had lived in Ireland since birth. As she has lived in the UK and Ireland for the last three years and is ordinarily resident here on the relevant date, she will be eligible for home fee status.*

Irish national ordinarily resident in England who comes to Scotland to study – eligible for home fee status

CASE STUDY M – *Rhys is an Irish national who wishes to come to Scotland to study in August 2021, having previously lived in Manchester since July 2015. He plans to start an undergraduate course in September 2021. He will be eligible for home fee status as he meets our residency conditions.*

4.4 - Non-EU EEA or Swiss nationals

Non-EU EEA or Swiss nationals in the UK - Eligible for home fee status

CASE STUDY N - *Lexi is an Icelandic national who moved to the UK in 2016 and is ordinarily resident in Scotland on 1 August 2021. She has settled status in the UK. Lexi meets our normal residence conditions and is eligible for home tuition fee status.*

Non-EU EEA or Swiss nationals in the UK - Eligible for home fee status

CASE STUDY O - *Kristin is a Norwegian national who lived in Norway prior to moving to Scotland in 2019 with her parents, both of whom work in Scotland. Margaret has pre-settled status in the UK and meets the family member of a migrant worker conditions and is eligible for home tuition fee status.*

Non-EU EEA or Swiss nationals in the UK - Eligible for home fee status

CASE STUDY P - *Harry is a Swiss national who moved from Switzerland to Scotland in 2020. He has worked in Scotland in a role that is linked to the course he is planning to study in 2021. Harry has pre-settled status in the UK and meets the migrant worker conditions and is eligible for home tuition fee status.*

Non-EU EEA or Swiss nationals in the UK- Eligible for international fee status

CASE STUDY Q - *Beth is a Norwegian national who moved to Scotland in 2020 from Norway. Beth has pre-settled status in the UK. Beth is not a migrant worker or family member of such. Beth is eligible for international fee status.*

4.5 – Dual EU/UK nationals

Dual UK/EU national who has exercised their EU residence rights by residing elsewhere in the EU before 31 December 2020 – Eligible for home fee status

CASE STUDY R – *Jon is a dual UK/Spanish national living in England, starting a course in Scotland in August 2021. He has previously lived in Spain between 2014 and 2017. As he has exercised his EU residence rights by living in another EU country before 31 December 2020 (other than the UK) he meets the eligibility criteria for the home tuition fee rate.*

Dual UK/EU national who has NOT exercised their EU residence rights by residing elsewhere in the EU before 31 December 2020 – Eligible for rUK fee status

CASE STUDY S – *Mary is a UK/Dutch national born in the UK and living in England, starting a course in Scotland in August 2021. She has never lived in another EU member state. As she has NOT exercised her EU residence rights by living in another EU country before 31 December 2020 (other than the UK) she meets the eligibility criteria for rUK fee status*

Dual UK/EU national who has exercised their EU residence rights by residing elsewhere in the EU before 31 December 2020 – Eligible for home fees status

CASE STUDY T – *Steve is a UK/Irish national living in Northern Ireland, starting a course in Scotland in August 2021. He lived in ROI for 6 months in 2016. As he has exercised his EU treaty rights by living in another EU country before 31 December 2020 (other than the UK) he meets the eligibility criteria for the home tuition fee rate.*

4.6 – Family member of relevant person of Northern Ireland

Family member of a relevant person of Northern Ireland– Eligible for home fees status

CASE STUDY U – *Karen is a Chinese national who has spent most of her life in China but has been living in the UK for 4 years. Her mother is a relevant person of Northern Ireland as she was born in Northern Ireland and can select to be British / Irish / both British and Irish. Karen qualifies for home fee status as she is the family member of a relevant person of Northern Ireland and has been resident in the UK/EEA/Switzerland for 3 years.*