

## Those with discretionary leave, and family

**(use this category only if the academic year you are paying fees for starts on or after 1 August 2024)**

The requirements for this category were different in academic years that started before 1 August 2024. So if you started before 1 August 2024, it is important you also look at the category titled 'Those with discretionary leave, and family (use this category only if the academic year you are paying fees for starts before 1 August 2024)'.

In order to qualify for 'home' fees under this category, you must meet both criteria (a) and (b):

**(a) you must be *ordinarily resident* in the *UK* on the day on which the first term of the first academic year actually begins** (note this is a different date from the *first day of the first academic year of the course*)

**Note:** Usually you do not count as 'ordinarily resident' in a place unless your residence there is lawful. However, the regulations make a special adjustment to that for requirement (a) in this category. They say that if you (or your parent, spouse or civil partner) becomes a 'person with leave to enter or remain on the grounds of discretionary leave' after the day on which the first term of the first academic year actually began, you get special treatment. The special treatment means you are treated as though your residence was lawful, even if it was unlawful. The residence can therefore count as 'ordinary residence' for the purpose of requirement (a).

**(b) on the *first day of the academic year* you are paying fees for (unless you are being assessed for the first academic year of your course, in which case use instead the day on which the first term of the first academic year actually begins), you must be:**

1. a "person with leave to enter or remain on the grounds of discretionary leave", which means a person:

- who has either:
  - applied for refugee status, but been informed by the Home Office that, although he/she is considered not to qualify for recognition as a refugee, it is thought right to allow him/her to enter or remain in the UK on the grounds of discretionary leave; or
  - not applied for refugee status, and been informed by the Home Office that it is thought right to allow him/her to enter or remain in the UK on the grounds of discretionary leave; and
- who has been granted leave to enter or leave to remain accordingly; and
- whose period of leave to enter or remain has not expired, or has been renewed and the period for which it was renewed has not expired, or in respect of whose leave to enter or remain an appeal is pending; and
- who has been ordinarily resident in the [UK and Islands](#) throughout the period since he/she was granted leave to enter or remain

or

2. the [spouse](#) or [civil partner](#) of a "person with leave to enter or remain on the grounds of discretionary leave" (as above), and:

- you must have been the spouse or civil partner of that person on the date on which they made the application that resulted in their discretionary leave; and
- you must have been ordinarily resident in the [UK and Islands](#) throughout the period since you were granted your own leave to enter or remain

or

3. the [child](#) of a "person with leave to enter or remain on the grounds of discretionary leave" (as above), or a child of that person's spouse or civil partner, and:

- at the time the "person with leave to enter or remain on the grounds of discretionary leave" made the application that resulted in their discretionary leave, you must have been:
  - under 18 years old, and
  - the child of that person or of someone who was the spouse or civil partner of that person on that date; and
- you must have been ordinarily resident in the [UK and Islands](#) throughout the period since you were granted your own leave to enter or remain

**Note:** Once you have qualified for this category for one year of your course, requirement (b) is less strict for later years of your course. So for later years of your course, it is acceptable if the "person with leave to enter or remain on the grounds of discretionary leave" loses their discretionary leave, as long as they have some kind of leave to remain (or British or Irish citizenship) on the first day of whatever academic year you are paying fees for. This is a special

adjustment to requirement (b) that the regulations make. It is available for academic years that start on or after 1 August 2024.

## **Expiry date for discretionary leave**

The discretionary leave might have an expiry date. If the person makes an application to extend or change their leave before it expires, and that application is not decided before the expiry date, then immigration law dictates that they carry on being treated as a person with discretionary leave while they wait for a decision to be made (and if their application is refused, then also while they wait for an appeal or administrative review of the decision). They count as a 'person with discretionary leave' for fee assessment purposes during all of that time.

## **Becoming eligible**

If you are, or if your parent or spouse or civil partner is, granted discretionary leave after the start of the course, you will be entitled to 'home' fees from the start of the next academic year if you meet the requirements above.