

Assessing Eligibility Guidance

Higher Education Student Finance in Wales 2012/13 Academic Year

TO LOCAL AUTHORITIES (For the attention of the Student Support Manager)

March 2012

Dear Colleague,

HIGHER EDUCATION STUDENT SUPPORT IN WALES IN 2012/13: ASSESSING ELIGIBILITY

Attached is the consolidated '*Guidance for Local Authorities and the SLC on the administration of Student Support 2012/13*'. The chapter contains guidance on assessing eligibility for support for students in 2012/13.

References to the Regulations have been updated to refer to The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011, which came into force in April 2011, as amended by The Education (Student Fees, Awards and Support) (Wales) Regulations 2011 and The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) (Amendment) Regulations 2012. [The Regulations will be further amended by The Assembly Learning Grants and Loans \(Higher Education\) \(Wales\) \(No.2\) \(Amendment\) \(No.2\) Regulations 2012 and these are expected to come into force around May 2012. This guidance document makes note of some changes, which are subject to that legislation. Please refer to SFWIN 01/2012 for more information.](#)

[Text referring to new or amended provisions for 2012/13 is set in blue type.](#)

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This guidance does not cover every aspect of student support. The full details are contained in The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended which are the legal basis of the student support arrangements for the academic year 2012/13. Nothing in this guidance can replace the Regulations and if there is any difference between this guidance and the Regulations, the Regulations prevail. This guidance is based on the Regulations as they stand at the time of publication and may change in future.

Please note this guidance is for Welsh domiciled students only. Contact details for English, Scottish and Northern Ireland Authorities can be found at Annex 6.

['2012 cohort students' in academic year 2012/13](#)

[The Regulations introduce a new sub-category of new system eligible student: '2012 cohort' students'. A '2012 cohort student' is defined in regulation 2\(1\) as an](#)

eligible student who begins the present course on or after 1st September 2012, other than –

- an eligible student whose present course is an end-on course following immediately from a previous course which began before 1st September 2012; or
- an eligible student who has transferred to the present course under the Regulations from a previous course which began before 1st September 2012.

To Note: Please refer to Annex 8 for an explanation of each Welsh cohort and general support available.

Table of Contents

Introduction	5
Gap year students.....	7
Policy	9
General exclusions.....	9
NHS bursaries.....	10
Applicants who breach any obligation to repay any previous student loan or who have reached the age of 18 and have not ratified a previous student loan made after they have been assessed under the age of 18.....	10
Applicants who breach any obligations to repay any previous student loan after they have been assessed	11
1998/99 starters (exceptionally few remain in the system).....	11
Ineligibility on grounds of unfitness to receive support	11
Devolution of student support to Wales	12
Personal eligibility	12
Students attending more than one course.....	13
Time limit for applying for student support.....	13
Documentation requirements.....	13
Residence and other eligibility conditions.....	14
Definitions: Regulation 2 – Interpretation.....	15
Ordinary Residence	16
Students who move to Wales from elsewhere in the UK and Islands in order to attend a course	16
Workers, employed persons, self-employed persons and their family members (Paragraph 6 of Part 2 of Schedule 1 to the Regulations).....	29
Students who cease work before starting the course	31
Remuneration for work.....	32
Effective and genuine / marginal and ancillary employment	32
Family members of EEA migrant workers, EEA frontier workers, EEA frontier self-employed persons, EEA self-employed and Swiss employed persons, Swiss frontier employed persons, Swiss frontier self-employed persons or Swiss self-employed persons	33
Children of EEA migrant workers.....	33
Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere (Paragraph 8 of Part 2 of Schedule 1)	34
EC nationals and their family members (Paragraph 9 of Part 2 of Schedule 1)	36
Children of Turkish Workers (Paragraph 12 of Part 2 of Schedule 1 to the Regulations).....	37
EC Member States.....	38
Eligibility for fee and living costs support and determination of entitlement	38
Definition of a ‘previous course’	43
Years of previous study	44
‘Old system’ students who are continuing students.....	44
1 Year stand alone (‘top-up’) course:.....	49
Students transferring courses	49
Eligibility for support for living costs	50
General	50
Students aged 60 and over.....	50
Designated courses	51
General criteria for automatic designation of courses	52
Schedule 2 courses.....	52
Interpretation of provisions on automatically designated courses	53
Courses in Schedule 2	53
PGDE Courses in Scotland Only	55
Flexible PGCE Courses (New System Students who started their courses before 1 st September 2010)	56
Further Education ITE/ITT courses.....	58

Courses falling under Paragraphs 7 & 8 of Schedule 2.....	59
Definition of full-time course.....	59
Distance learning courses.....	60
Learning in the workplace	63
Sandwich courses	63
Architecture courses	65
Intercalated study.....	66
Foundation years as part of an extended course	67
Free standing foundation and conversion courses	67
Access courses	68
Twin-track access courses.....	68
Franchising arrangements	68
Part-time courses.....	68
60 credit courses.....	69
Specific designation	69
Specific designation of postgraduate courses for the purpose of Disabled Students' Allowances	69
Foundation degrees	69
Students on a course in Scotland lasting four years or more	70
Annex 1.....	71
STUDENTS ELIGIBLE TO APPLY FOR AN NHS BURSARY	71
NHS Secondees.....	74
Annex 2.....	75
MEMBER STATES OF THE EC AND THEIR DATES OF ACCESSION	75
Annex 3.....	77
EXTRACT FROM LORD SCARMAN'S JUDGEMENT	77
Annex 4.....	79
REGULAR MILITARY AND AIR FORCES AND ROYAL NAVY FORCES .	79
Annex 5.....	80
HOME OFFICE IMMIGRATION PASSPORT STAMPS	80
Annex 6.....	81
ORGANISATION CONTACT DETAILS	81
Annex 7.....	82
MIGRANT WORKERS / CHILDREN OF MIGRANT WORKERS AIDE- MEMOIR	82
Annex 8.....	83
WELSH STUDENT COHORTS – FINANCIAL SUPPORT GENERALLY AVAILABLE	83

Introduction

1. This chapter looks at the eligibility requirements each applicant will need to satisfy in order to be considered eligible for support in connection with a course of higher education. It gives detailed guidance on The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended. However, it is not exhaustive and is not intended to be a substitute for reading the Regulations. Please note this guidance chapter focuses mainly on full-time courses.
2. The Regulations referred to throughout this chapter are the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended by the Education (Student Fees, Awards and Support) (Wales) Regulations 2011, the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) (Amendment) Regulations 2012 and the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) (Amendment) (No.2) Regulations 2012. These Regulations govern the support available for academic year 2012/13. The latter set of amending regulations have not been formally made at the time of writing this guidance (March 2012), but some of the changes contained within them are included for references purposes. Please refer to SFWIN 01/2012 for more information.,
3. In 2012/13, a student will be defined as either, an 'old system' student, 'new system student who is neither 2010, 2011 nor 2012 cohort', '2010 cohort' student, '2011 cohort' student or '2012 cohort' student. In addition, a '2010 gap year' student is a student who is eligible for the same package of support as a 'new system student who is neither 2010, 2011 nor 2012 cohort', and a '2011 gap year' student is eligible for the same package of support as a '2010 cohort' student. Note that there is no gap year protection for students starting a course in AY 2012/13, therefore there is no '2012 gap year' category of student. Further information on the different support arrangements are set out in the chapter on 'Assessing Financial Entitlement'.

An 'old system' student is an eligible student who:

- started their current course before 1st September 2006 and is continuing on that course after 31st August 2012;
- is a gap year student (as defined in the 2006/07 Regulations, and now defined in Regulation 2(2) – (5) of the 2011 (No.2) Regulations);
- started an end-on course on or after 1st September 2006 from a course they started prior to 1st September 2006 (or in the case of a gap year student, a course that started prior to 1st September 2007); or
- started their current course on or after 1st September 2006 after transferring from a course which they started prior to 1st September 2006 (or, in the case of a gap year student, a course which they started prior to 1st September 2007).

A 'new system student who is neither 2010, 2011 nor 2012 cohort' student is an eligible student who:

- is not an old system student and

- started their current course on or after 1st September 2006 and before 1st September 2010 and who is continuing on that course after 31st August 2012 or
- started their current course on or after 1st September 2010 after transferring from a course which they started on or after 1st September 2006 and before 1st September 2010.

A '2010 cohort' student is a new system student who:

- is an eligible student and who started their present course on or after 1st September 2010 [and before 1st September 2011](#), other than:

1) a '2010 gap year' student;

2) an eligible student who started the present course on or after 1st September 2010 [and before 1st September 2011](#) where that course is an end-on course following on from a course that

- started before 1st September 2010; or
- started before 1st September 2011 and in relation to which the student is a '2010 gap year' student; or

3) an eligible student who started the present course on or after 1st September 2010 having had their status as an eligible student transferred to that course as a result of one or more transfers of that status by the Welsh Ministers pursuant to Regulations made under section 22 of the Act from a designated course which the student began —

- before 1st September 2010; or
- before 1st September 2011 and in relation to which the student is a '2010 gap year' student;
- Eligibility for support will be similar to 'new system students who are neither 2010, 2011 [nor 2012 cohort](#)' as detailed throughout this guidance chapter with some exceptions. '2010 cohort' students [are not](#) entitled to tuition fee grant (regulation 19(6)) but may be entitled to the Assembly Learning Grant of £5,000 (regulation 40), depending on individual circumstances. For '2010 cohort' ITT students, see pages 57-58 of this guidance for changes to support (regulations 2 and 4).

A '2011 cohort' student is a new system student who:

- is an eligible student and who begins their present course on or after 1st September 2011 [and before 1st September 2012](#), other than:

1) a '2011 gap year' student;

2) an eligible student who started the present course on or after 1st September 2011 where that course is an end-on course following on from a course that

- started before 1st September 2011; or

- started before 1st September 2012 and in relation to which the student is a '2011 gap year' student; or

3) an eligible student who started the present course on or after 1st September 2011 having had their status as an eligible student transferred to that course as a result of one or more transfers of that status by the Welsh Ministers pursuant to Regulations made under section 22 of the Act from a designated course which he or she began—

- before 1st September 2011; or
- before 1st September 2012 and in relation to which the student is a '2011 gap year' student;
- Eligibility for support will be similar to 'new system students who are neither 2010, 2011, nor 2012 cohort', as detailed throughout this guidance chapter with some exceptions. '2011 cohort' students will not be entitled to tuition fee grant (regulation 19(6)) but might be entitled to the higher Assembly Learning Grant of £5,600 (regulation 41), depending on individual circumstances.

A '2012 cohort' student is a new system student who:

- is an eligible student and who begins their present course on or after 1st September 2012 other than:

1) an eligible student who started the present course on or after 1st September 2012 where that course is an end-on course following on from a course that started before 1st September 2012

2) an eligible student who started the present course on or after 1st September 2012 having had their status as an eligible student transferred to that course as a result of one or more transfers of that status by the Welsh Ministers pursuant to Regulations made under section 22 of the Act from a designated course which the student began before 1st September 2012.

- '2012 cohort' students may be eligible for the New Fee Grant (regulation 20) and accompanying fee loan (regulation 23), subject to completing the relevant application form. (Note that '2012 cohort' students studying on courses which are wholly provided by private institutions would not be eligible for any New Fee Grant; instead, eligible students could apply for fee loan only up to £6,000.) '2012 cohort' students may also be entitled to the Assembly Learning Grant of £5,000 (regulation 40), depending on individual circumstances.

Please refer to Annex 8 for a breakdown of each Welsh cohort group.

Gap year students

4. The definition of a '2010 gap year' student is set out in regulation 2(12) – (15). Generally, there are two categories of '2010 gap year' student:
 - Those who received an offer of a deferred place for 2010/11 on or before 1st August 2009 (regulation 2(13)). NB In order to qualify as a '2010 gap year' student, a student must have taken up their deferred place in 2010/11 on the course for which they received the offer unless the exceptions in paragraphs 7-11 below apply; and

- Those who received an offer of a deferred place for 2010/11 after having successfully appealed against their A-level results (regulation 2(15))
5. The definition of a '2011 gap year' student is set out in regulation 2(16) – (21). Generally, there are two categories of '2011 gap year' student:
- Those who received an offer of a deferred place for 2011/12 on or before 1st August 2010 (regulation 2(17)). NB: In order to qualify as a '2011 gap year' student, a student must have taken up their deferred place in 2011/12 on the course for which they received the offer unless the exceptions in paragraphs 7-11 below apply; and
 - Those who received an offer of a deferred place for 2011/12 after having successfully appealed against their A-level results (regulation 2(19))
6. The definition of a 2006/07 gap year student is set out in regulation 2(2). Generally, there are two categories of 2006/07 gap year student:
- Those who received an offer of a deferred place for 2006/07 on or before 1st August 2005 (regulation 2(3)). NB In order to qualify as a 2006/07 gap year student, a student must have taken up their deferred place in 2006/07 on the course for which they received the offer unless the exceptions covered in paragraphs 7-11 below apply; and
 - Those who received an offer of a deferred place for 2006/07 after having successfully appealed against their A-level results (regulation 2(5)).

Exceptions

7. A student could be considered a 2006/07, 2010, or 2011 gap year student if they take up their deferred place on another course from the one for which they received the offer, but only if that course was at the same institution and the institution considered the subject matter of the course to be similar either in whole or in part to the course for which the student had received the offer.
8. If the institution is no longer offering the course that the student received their original offer for, then the student could still be considered a gap year student if they have to undertake that course (or a similar course) at another institution.
9. In determining whether a student qualifies as a gap year student, LAs must be satisfied that the student meets the criteria in the Regulations. As the student would have had confirmation of their deferred place from their institution, this could have formed part of the evidence they were required to provide. Where a student received an offer of a deferred place after 1st August 2005 (2006/07 gap year), after 1st August 2009 (2010 gap year) or after 1st August 2010 (2011 gap year), the student should have provided evidence that this had been a result of an A-level appeal. These rules apply irrespective of where the student is studying in the UK.
10. Where a student does not meet the criteria for being a 2006/07 gap year student they will be a new system student and eligible for the new system

package of support. This is the case irrespective of whether the institution decides to charge them fees of up to £1,380 rather than up to £3,465. Where a student does not meet the criteria for being a 2010 gap year student, they will be a '2010 cohort' student (provided they meet the relevant criteria), and eligible for the '2010 cohort' support package. Where a student does not meet the criteria for being a 2011 gap year student, they will be a '2011 cohort' student (provided they meet the relevant criteria), and eligible for the '2011 cohort' support package.

11. Eligibility can be broken down into four main headings:

- Personal eligibility
- Eligibility for fee support
- Eligibility for support for living costs
- Designated courses

Policy

General exclusions

- 12.** Paragraph (3) of Regulation 4 provides that students are excluded from *any support* under The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended if they:
- Hold a mandatory award under the old arrangements (i.e. those students who started their course in 1997/98 or earlier and those 1998/99 entrants who are exceptionally treated as though they had started in the 1997/98 academic year);
 - Are eligible for a loan in relation to an academic year of the course under the Education (Student Loans) Act 1990 or the Education (Student Loans)(Northern Ireland) Order 1990 (this means students eligible for a mortgage style loan under the previous arrangements);
 - Are eligible to apply for a non-means tested "healthcare bursary", (as defined in Regulation 2(1)) or other allowance referred to in Regulation 4(3). [This exclusion does not apply to those students who are eligible for a universal healthcare bursary \(as defined in Regulation 2\(12\)\). - see paragraphs 14 & 15 below for further explanation on the meaning and effect of the universal healthcare bursary,](#)
 - Are in breach of any obligation to repay any student loan;
 - Have reached the age of 18 and have not ratified any student loan agreement made with them when they were under the age of 18; or
 - Have shown themselves by their conduct to be unfitted to receive support.

NB Where a person qualified as an eligible student for the previous academic year, it will not usually be necessary for the LA to go through all the steps again for the next AY to determine personal eligibility (see Regulations 4(7)-(10)).

- 13.** Students who have spent any time in prison (whether on remand or otherwise) within the AY will not be entitled to any maintenance support whilst they are in prison. Maintenance support should be calculated on a pro-rata daily basis excluding the time in prison.

In exceptional circumstances, LAs will have the discretion to determine whether to pay full or partial support, or none at all whilst a student is in prison in an academic year. LAs should only use their discretion where stopping or recovering payments will cause financial hardship to students and prevent them from continuing with their course. In order to determine if a student should receive grants and loans for living costs for periods spent in prison during the AY, LAs need to consider factors such as a student's ability to pay rent and other living expenses to enable them to continue with their course. It is expected that exercising the discretion would be appropriate when a student spends a very short time in prison.

A full-time '2012 cohort' student who is an eligible prisoner (as defined in regulation 2(1) of the Regulations) will be eligible for tuition fee support only for those periods when they are imprisoned. This will amount to a combination of the New Fee Grant and accompanying fee loan where the course is provided by a publicly funded HEI, or a privately funded HEI on behalf of a publicly funded HEI. Where the course is wholly provided by a privately funded HEI, fee support will be tuition fee loan only. However, prisoner students will not be eligible for a grant for disabled students living costs. A prisoner who studies a full-time course which started prior to 1st September 2012 will be eligible for tuition fee loan only (and tuition fee grant if the student is eligible under the pre 2006 arrangements or new system (non cohort) arrangements). Such students will also be eligible for a grant for disabled students living costs for those periods when they are imprisoned. For more information see the 'Change of Circumstances' guidance chapter.

NHS bursaries

14. From 1st September 2012, the support available to students studying healthcare related subjects will change. Students continuing on NHS funded courses such as nursing, midwifery and operating department practice will still receive support for fees and non-means tested bursaries via the NHS Bursary scheme. They are not eligible for any support under The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended. The new support arrangements will only apply to students who commence healthcare related courses after 1st September 2012.
15. Eligible students starting healthcare related courses on or after 1st September 2012 will all have access to the **same package of NHS support**. This package will be a mixture of means and non-means tested bursaries and will include the universal healthcare bursary as defined in regulation 2(1) of the Regulations. The universal healthcare bursary is an award of £1,000 paid to students starting healthcare related courses after 1st September 2012. From September 2012, such students will also be eligible to access limited support under the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 (as amended) in addition to the support available from the NHS. See Section I of Annex F of the 2012/13 Assessing Financial Entitlement guidance chapter for full details. Further information about NHS bursaries is provided at Annex 1 to this chapter.

Applicants who breach any obligation to repay any previous student loan or who have reached the age of 18 and have not ratified a previous student loan made after they have been assessed under the age of 18

16. The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended provide that a person shall not be eligible for support if that person is in breach of any obligation to repay any

loan (as defined in regulation 4(3) or the person has reached the age of 18 and has not ratified any agreement for a loan made with them when they were under the age of 18 (as defined in regulation 4 (3)).

17. The applicant is not eligible for support whether or not they have declared any such breach or non-ratification on their application form (see paragraph (3)(d) and (e) of regulation 4). LAs do not have any discretion in determining an applicant's eligibility in these circumstances. The only possible exception to this will be 1998/99 starters (see paragraph 20 for further guidance).
18. The single system has a record of students who are in breach and this is discovered when the assessment is sent for approval. The single system will trigger a letter at that point advising the student they are ineligible whilst remaining in default.
19. Once an applicant is no longer in breach, the SLC should advise the relevant LA to reassess their eligibility for the academic year in question. Any such reassessment is for the whole academic year, not from the date on which they ceased to be in breach of any such obligation or ratified any such agreement.

Applicants who breach any obligations to repay any previous student loan after they have been assessed

20. If an applicant has received a support notification letter but subsequently breaches any obligation to repay any previous student loan, they will remain eligible for support in the academic year to which the notification applies. If the relevant LA becomes aware of this they should notify the SLC accordingly following the guidance in the 'General, Eligibility and Financial Assessment Administration' chapter.

1998/99 starters (exceptionally few remain in the system)

21. When assessing whether 1998/99 starters are eligible for support, the LA should have regard to regulations 3 (14) and (15).
22. For more detailed information on the administration process, please refer to guidance in the 'General, Eligibility and Financial Assessment Administration' chapter.

Ineligibility on grounds of unfitness to receive support

23. A student does not qualify as an eligible student if, in the LA's opinion, the student has shown himself by their conduct to be unfitted to receive support (see regulation 4(3)(f)). The power may be used at any stage in the process of assessing a student's eligibility for support but once a student has been notified that they are eligible this power may not be used. However, an LA may terminate eligibility for similar reasons under paragraph (5) of regulation 6.
24. One example of when a local authority might decide that a student is unfitted to receive support might be where it comes to light that the student has committed a fraud in applying for support; for example if they are discovered to have made applications to and received support from more than one authority, or presented fraudulent information in their applications in order to receive more support than they are entitled to. In such cases an LA should consider exercising the power to refuse the application (or terminate eligibility, depending on when the fraud comes to light), on the grounds that the students have shown themselves unfit by their fraudulent

conduct to be considered for support. LAs may find *Student Finance Wales Audit Guidelines for the Administration of Student Finance Payments* helpful.

25. Other examples might include involvement in fraud against other government funds, such as Jobseeker's Allowance, Income Support or Housing Benefit. The committing of a serious criminal offence might also be grounds for refusal in some circumstances, but LAs will need to consider such cases carefully, especially where the applicant is pursuing higher education as a means towards rehabilitation. A student may argue that they have already been punished adequately by their sentence, but an LA should consider whether it is appropriate to support a student whose conviction casts doubt on their suitability for an intended career. (An obvious example is an offence against a child by someone who is, or may be, preparing for a career working with children.) It is important to bear in mind that the decision as to whether a student is suitable for or should be allowed to take a course rests with the institution; the decision as to whether the student is eligible for funds rests with the LA.
26. There might be other instances where the LA would wish to consult the institution before exercising the power to refuse or terminate eligibility, where the institution's evidence might put the student's fitness to receive support into question. For example, the institution might provide evidence of attempted fraud against it which has not actually led to the student being expelled but which might lead the LA to consider whether the student, though being allowed to continue with the course, should continue to receive support for it.
27. The fact that a student is, or has in the past been, in dispute with the LA over a student support issue should not of itself be a reason for refusing or terminating support, even if the dispute was acrimonious. It may be a different matter however if the student has behaved criminally in pursuing a grievance, though the case should be considered on its own merits.
28. It is important to remember that the purpose of these provisions is to safeguard public funds, and to ensure that they are spent properly. An LA should always ensure that a decision to refuse or terminate support will stand up to examination in the event of a formal appeal or a court challenge. It may be a sensible precaution to seek advice from the authority's legal staff.

Devolution of student support to Wales

29. Following devolution of student support to the National Assembly for Wales (and then to the Welsh Ministers), LAs will need to determine whether students who were ordinarily resident in England and Wales under the 2006/07 Regulations remain eligible for support under The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended.
30. Information on cross border issues is dealt with in the 'General, Eligibility and Financial Assessment Administration' guidance chapter.

Personal eligibility

31. The personal eligibility criteria for receiving support to attend a designated course are set out in regulation 4 and Schedule 1. Provisions on designated courses are in regulation 5 and Schedule 2 and are covered later in this chapter.

Students attending more than one course

32. A student can be eligible for support for only one course at any one time. This is not intended to prevent students from moving between courses during an academic year, but to prevent students from being eligible for support for more than one course where the student takes two (or more) courses concurrently. This applies to students who claim support for two courses from 2000/2001 onwards.

Time limit for applying for student support

33. Students must make their application to their LA within nine months of
- The first day of the academic year; or
 - The date on which the course was designated, if that happens after the first day of the academic year; or
 - The date on which the student or their spouse/civil partner, parent or step-parent is recognised as a refugee, if that happens after the first day of the academic year; or
 - The date on which the student or their spouse/civil partner, parent or step-parent has been granted leave to enter or remain, if that happens after the first day of the academic year; or
 - The date on which the country of which they are a national gains accession to the European Community, if that happens after the first day of the academic year.
 - From 2012/13, applications for part-time study can be made within 9 months of the first day of the academic year, rather than 6.

(NB Please note that the above list is not exhaustive – see regulation 10)

34. LAs have the discretion to extend the deadline where they consider it is appropriate to do so (regulation 10(2)(e)).

Documentation requirements

35. For all loans paid in AY 2012/13, the Welsh Ministers may make it a condition of entitlement to payment of any loan, that a student provides them with a UK national insurance number (NINO) (regulation 66(1)). The Department of Work and Pensions (DWP) will issue NINOs to borrowers applying for student support (if they do not have one) and so in most circumstances, there will no longer be a valid reason for not providing a NINO and loan payments should not be released without a NINO being provided. In exceptional circumstances where a student has not provided a NINO the Welsh Ministers will be able to release loan instalments (regulation 66(3)). This will avoid hardship in the event that there are delays for students obtaining a NINO which are outside their control. It will also enable the Welsh Ministers to make payments to students who qualify for a loan but to whom DWP will not issue a NINO – but this is only expected to apply in a very small number of cases. Ideally students will provide a NINO in their application form; however, if they do not provide one, LAs should process the application without it. The system will not hold up the application. The SLC will ask DWP to provide the NINO or liaise directly with the student to obtain their number and instruct them further as appropriate.
36. Regulation 68(2) states that the Welsh Ministers may request sight of a student's valid national ID card, their valid passport issued by the state of

which the student is a national or their birth certificate. Regulation 9(1) states that the applicant should provide such documentation as the Welsh Ministers may require with their application form. Regulation 9(2) states that the Welsh Ministers can make such enquiries as necessary to determine eligibility and this function has been transferred (or delegated) to the relevant bodies. See also Schedule 3 to the 2011 (No.2) Regulations.

37. Relevant documents are listed in the notes for completion of each application. LAs may accept certified true copies of documents on an exception only basis where they consider it unreasonable to insist on originals; however, every endeavour should be made to have sight of original identity documents, preferably a passport or identity card. A certified true copy is a photocopy of an original document which must have been stamped and signed as being a true copy of the original by an official such as a minister of religion, doctor, lawyer, civil servant, teacher/lecturer or police officer. The person certifying the copy must provide their name, address and contact number. The certifying person must not be a relative.
38. If a student chooses to submit their birth certificate then this must be accompanied by a fully completed Identity Declaration Form.
39. LAs should not require students to produce birth certificates where they are unwilling to do so, nor should they require students to provide reasons for not wanting to do so. In such cases, other forms of evidence such as a valid passport should be accepted. In exceptional cases a student may be unable to provide either a birth certificate or passport with valid reason, for example the Home Office is holding the passport and the student is not in possession of their birth certificate. LAs must not in these circumstances continue to request these items, but may accept other forms of evidence from external organisations such as the Home Office or the student's solicitor to ensure that they can satisfy themselves of the applicant's identity. Please note that in such cases LAs may suppress the system generated letters until the letter requesting eligibility evidence, including reference to a birth certificate or passport had been requested and not sent, then and instead issue a manual letter excluding reference to these items. In exceptional cases, LAs may process the application on the basis of the student being able to supply alternative evidence, such as a letter from a GP or a bank statement. LAs also have the discretion to process applications where a student has supplied a deed poll letter. LAs need to ensure that the level of evidence obtained reflects the risk involved. Any decision made by the LA must be fully documented with information explaining any variance from the usual procedures.

Residence and other eligibility conditions

40. From 2007/08, to qualify as an eligible student on the basis of being the child or step-child of a refugee or the child or step-child of a person with leave to enter or remain (as defined in the Regulations), a person must have been under 18 years old on the date of the parent's (or step-parent's) application for asylum to the Home Office. The person must also have been the child or step-child of the refugee or the person with leave to enter or remain on the date the parent (or step-parent) applied for asylum. Where a person seeks to qualify as an eligible student on the basis that they are the spouse or civil partner of a refugee or a person with leave to remain, they must have been that person's spouse or civil partner on the date that that person applied for asylum. If the student is a family member of a refugee, they must have been ordinarily resident in the UK and Islands and not ceased to have been so since given leave to enter or remain in the UK.

41. The amendment to regulation 4 (paragraphs (9)-(11)) was made to take into account the Home Office's procedure to award refugee status, Humanitarian Protection and Discretionary Leave for a limited period. The change to the Regulations applies only to new students who commenced a course on or after 1st September 2007 (see regulation 4(11)). LAs will need to be aware of the expiry date, if applicable, of the relevant immigration status. Where a person has been determined to be an eligible student because they are a refugee or related to a refugee and, while they are still taking a course, the refugee status expires, they may cease to be an eligible student. See regulation 4 for more detail. If LAs have difficulties confirming the situation they should send an email to studentfinancedivision@wales.gsi.gov.uk. LAs should not refuse support on the basis that the relevant immigration status expires within the lifetime of the course.
42. Students who are eligible to exercise the right of residency under Schedule 1 paragraph 8 'Persons who are settled in the United Kingdom and have exercised the right of residence elsewhere' must satisfy the following
- Are settled in the UK;
 - Was ordinarily resident in Wales and settled in the UK immediately before leaving the UK to exercise a right of residence;
 - Is ordinarily resident in the UK on the day on which the first term of the first academic year begins;
 - Has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three year period preceding the first day of the first academic year of the course; and

where the three years residence referred to above (4th bullet point) was wholly for the purposes of receiving full-time education, the applicant must have been ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before that period of residence.

43. LAs should consider the facts of each case before reaching a decision with regard to an individual's immigration status and whether that individual meets the residence conditions in Schedule 1 to the Regulations.
44. The information contained in this guidance on nationality, immigration and asylum etc represents the Welsh Government's understanding of the situation, but LAs should satisfy themselves that they have understood the applicable law and practice in making their assessments.

Definitions: Regulation 2 – Interpretation

45. The full definition of a "person with leave to enter or remain" can be found in Regulation 2. In summary, it is someone who has been informed by a person under the authority of the Secretary of State for the Home Department that, although they are considered not to qualify for recognition as a refugee, it is thought right for them to enter or remain in the United Kingdom. They have therefore been granted leave to enter or to remain accordingly and have been ordinarily resident in the United Kingdom and Islands throughout the period since being granted leave to enter or remain and whose period of leave to enter or remain has not expired.

- 46. The residence requirements of such a person are set out in Paragraph 5 of Part 2 of Schedule 1. The student must be either a person with leave to enter or the spouse, civil partner, child or step-child of a person with leave to enter or remain. The student must have been ordinarily resident throughout the three year period proceeding the first day of the first academic year of the course in the United Kingdom and Islands.
- 47. The definition of a “**refugee**” is contained in regulation 2 for the purposes of the Regulations.
- 48. A definition of parent is included in Paragraph 1(2) of Schedule 1 Part 1 for the purposes of the Schedule.
- 49. Further definitions can be found in Schedule 1 Part 1.

Ordinary Residence

- 50. Although not defined in the Regulations, ‘Ordinary residence’ has been interpreted by the courts as habitual and normal residence from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences. Extracts from the judgment (Lord Scarman’s) in the case of *Shah v Barnet London Borough Council* can be found in Annex 3. The ruling did not define what might constitute a temporary or occasional absence, but did indicate that it might be possible for an individual to establish ordinary residence in two countries simultaneously.

Residence wholly or mainly for the purpose of receiving full-time education

- 51. In order to be eligible for support, persons who are settled in the UK for the purpose of Paragraph 2 of Part 2 of Schedule 1 must not have been resident in the United Kingdom and Islands during the relevant three-year period wholly or mainly for the purposes of receiving full-time education. LAs should determine on a case by case basis whether an applicant has been resident here ‘wholly or mainly’ for education purposes.
- 52. The Welsh Government is of the view that a student is not prevented from qualifying for support simply because he or she has been receiving full-time education during some or all of the three year prescribed period. For example, the child or spouse/civil partner of a foreign businessman or diplomat ordinarily resident in the UK and Islands may be receiving full-time education, but may be here mainly to be with their parent or spouse/civil partner and so be entitled to support if the time requirements are met; a child whose parents are temporarily employed abroad may be receiving full-time education here, but their residence here may be mainly for the purpose of remaining in the UK with relatives rather than mainly for the purpose of attending school in the UK.

Students who move to Wales from elsewhere in the UK and Islands in order to attend a course

- 53. Paragraph 1(3) of Part 1 of Schedule 1 provides that a student who has been ordinarily resident in either Scotland, Northern Ireland, England, the Channel Islands, or the Isle of Man who moves to Wales specifically for the purpose of undertaking the current course or a course which the student was undertaking immediately before the current course should be regarded as being ordinarily resident in the place from which the student has moved.
- 54. Such a student should contact the responsible authority in the area they have moved from.

Temporary or occasional absences

55. When considering whether an applicant for support has been ordinarily resident throughout the prescribed three-year period preceding the start of the first academic year of a course, temporary or occasional absences may have to be considered. LAs should make decisions on whether an absence affects a person's ordinary residence on a case by case basis. However, the Welsh Government is of the view that each absence should be considered in the context of the person's period of residence, rather than simply on the basis of the duration of the absence itself. Place of birth or nationality should play no part in this consideration. *The Welsh Government is of the view that rules of thumb or specified periods of time should not be applied* in order to determine what constitutes a temporary or occasional absence. In making a decision, each LA will wish to consider whether it would be confident that their decision would be upheld if it were challenged in Court.

Gap years

56. The Welsh Government is of the view that a student taking a gap year before starting a higher education course does not break their ordinary residence in the UK and Islands (or the EEA and Switzerland).
57. The Welsh Government is also of the view that such a student can potentially be considered to meet the requirement to be ordinarily resident in Wales (or EEA and Switzerland as appropriate) on the first day of the first academic year of the course, or on the day on which the first day of the first term of the first academic year actually begins (Paragraph 8 of Part 2 of schedule 1)) even if they are still abroad. LAs will need to satisfy themselves that the student has maintained a residence in the UK and Islands (or EEA or Switzerland as appropriate) during the relevant period and will return to Wales (EEA and Switzerland as appropriate) other than solely for the purpose of completing the relevant course.

Temporary employment outside of the United Kingdom and Islands

58. Paragraph 1(4) of Part 1 of Schedule 1 makes provision for students or their family members who have been temporarily employed outside of England or the United Kingdom and Islands (or the EEA, Switzerland and Turkey as appropriate).
59. Paragraph 1(4) provides that a person may be treated as being or having been ordinarily resident in Wales or the United Kingdom and Islands (or the EEA, Switzerland and Turkey as appropriate) if they would have been so resident but for the fact that the student, their spouse, civil partner or parent, or in the case of a dependent relative, child or child's spouse or civil partner was temporarily employed outside of Wales or the United Kingdom and Islands (or the EEA and Switzerland) during the three year period.
60. Under Paragraph 1(5) of Part 1 of Schedule 1 members of the regular naval, military or air forces of the Crown of another EEA State or of Switzerland on service outside the United Kingdom and Islands or the EEA, Switzerland or Turkey as appropriate, are considered to be temporarily employed overseas for any such period. The effect of this is that a person may be treated as being or having been ordinarily resident in Wales, the United Kingdom and Islands or the territory comprising the EEA, Switzerland and Turkey if they would have been so resident but for the fact that the student, their spouse, civil partner or parent, or, in the case of a dependent relative, child or child's spouse or civil partner was serving

overseas. This group of people are in a special situation because of the unique nature of their employment, namely that they are bound by military law to accept overseas postings. The provision is only intended for armed forces personnel families who follow them on postings: students who had been living overseas but not with the parent on active service would not be able to take advantage of this provision. In Annex 4 there is a certificate that can be used by LAs if they want verification of the applicant's status from the Ministry of Defence.

Emigrants

61. An absence from the United Kingdom because of emigration should generally not be considered to be a temporary absence but each case should be considered on its facts. Absences due to temporary employment overseas are discussed at paragraphs 57 - 59.

Children living in the UK (or EEA and Switzerland as appropriate) whose parents are temporarily employed abroad

62. Children whose parents are temporarily employed outside the UK (or EEA, Switzerland and Turkey) but who remain in the UK (or EEA, Switzerland and Turkey) will normally retain the relevant connection with the UK (or EEA, Switzerland and Turkey), and therefore be eligible for support. The Welsh Government is of the view that the relevant period of their residence should not be regarded as being 'wholly or mainly for the purposes of receiving full-time education' simply because they are still here and receiving education while their parents are temporarily employed abroad. Paragraph 2(2) of Schedule 1 states that the three years' residence in the UK and Islands was not wholly or mainly for the purpose of receiving full-time education does not apply to a person who is treated as ordinarily resident in the UK and Islands in accordance with paragraph 1(4) of Schedule 1.
63. A person who has entered the country on a student visa may initially be ordinarily resident here primarily for educational purposes, but the purpose of residence may subsequently change. However, as always, LAs should make a decision in such cases based on the particular facts.

Possible considerations when establishing temporary absence

64. In reaching a judgement, LAs will wish to satisfy themselves that the period abroad arises from employment; judge whether or not the absence is temporary; and decide whether, but for the employment of the applicant (or parents or spouse/civil partners etc.), the student would have been ordinarily resident in the relevant place. In making their decision, LAs may wish to consider among other things, the nature of the posting; the terms of any contract or employer's letter; the period of time spent abroad; the time spent in this country; and whether a residence has been maintained in the UK (or as the case may be EEA, Switzerland and Turkey).
65. The onus is on the applicant to satisfy the authority that: their absence was due to employment abroad; and this employment was temporary; and were it not for temporary employment abroad they would be ordinarily resident in Wales or the United Kingdom and Islands (or the EEA, Switzerland and Turkey as appropriate).

66. In determining whether the absence was for purposes of employment but the applicant was not in employment immediately after moving overseas the LA may wish to consider:

- Whether the applicant had applied for jobs prior to his or her departure;
- The length of the time spent overseas before obtaining work;
- Whether the applicant resided in the same overseas country before and after obtaining a job;
- What the applicant was doing prior to obtaining a job, or between jobs.
- In determining whether the employment was temporary or permanent, the LA should consider:

The nature of the contract:

- Does the contract include liability for UK (or EEA, Switzerland and Turkey) tax on earnings?
- Is the posting for a specified period? If it is for an unspecified period, what is the reason for this?
- How long is the contractual period?
- Is the contract renewable? Would it be normal or unusual for the contract to be renewed on its completion? Has the contract already been renewed or is it one of a succession of contracts abroad?
- Does the contract convey automatic rights of return to this country from time to time?
- If there is no contractual period, how long has the employee already been resident abroad?

The nature of the work:

- Is it normal for the nature of the trade or profession to be mobile?
- Is mobility a condition of service?

A right of return:

- Does the applicant (or parent, spouse/civil partner etc.) have an automatic right of return to work in his or her organisation (or a related one) on completion of the duty abroad?

Periods between overseas postings:

- Have such periods been spent in this country, i.e. in the employer's HQ or UK (or EEA, Switzerland and Turkey) offices?

Previous contracts:

- Is the present contract a first overseas posting of its type, or is it a continuation of previous similar contracts? Authorities may wish to bear in mind domestic employment case law; industrial tribunals have ruled that a succession of similar temporary contracts can be

construed as permanent employment. A series of short contracts may be the result of a genuinely temporary posting, which is kept under review or may indicate a long-term posting with the contract being renewed as a matter of formality rather than a real review.

67. The list above is not exhaustive. Nor will all of the questions apply in every case. It emphasises however that each case must be dealt with individually and that decisions on whether employment abroad is permanent or temporary must not be decided solely on the length of period spent abroad, but in conjunction with the nature of the work and the employment pattern of the applicant. Again, the LA will wish to consider whether it would be confident that its decision would be upheld if it were challenged in Court.

Determining whether an applicant would have been ordinarily resident but for their temporary employment abroad

68. The applicant should be able to demonstrate that, other than for the temporary employment abroad, the applicant would have been ordinarily resident here during the prescribed period. In some cases, an authority may judge that a statement of intention will provide sufficient evidence:
- Ownership of property – although in many cases, this will provide sufficient evidence that an applicant would otherwise have been ordinarily resident here, in some cases it will not. For example, a property may simply be an investment or be intended for occupation only on retirement following a considerable period abroad. Non-ownership of property in the UK and Islands, (or EEA, Switzerland and Turkey as appropriate), should not be taken to exclude an applicant;
 - Holidays - LAs may wish to consider where an applicant spent any long periods of holiday or study leave; other business interests - does the applicant have other business interests, which could lead a LA to conclude that he or she would be likely to return here on completion of his or her overseas tour.

Schedule 1 Part 2 - Categories

Part 2 of Schedule 1 to the Regulations sets out the various categories of student, the residency requirements and other conditions that they must satisfy in order to be an eligible student. Satisfying the requirements of one of the paragraphs in Part 2 of Schedule 1 does not automatically mean that a person is an eligible student. For example, a person may be prevented from being an eligible student by regulation 4(3).

Persons who are settled in the UK (Paragraphs 2 and 3 of Part 2 of Schedule 1 to the Regulations)

Persons who are settled in the UK but not by virtue of having acquired a permanent right of residence in the UK (as defined in the Regulations) (Paragraph 2 of Part 2 of Schedule 1 to the Regulations)

69. To fall within paragraph 2 of Schedule 1, the student must be able to satisfy three requirements relating to their residence and immigration status on the *first* day of the *first* academic year of the course (for example, for a course starting in the autumn this date is 1 September). On that date the student must:

- Have been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding that date other than wholly or mainly for the purpose of receiving full-time education;
- Be ordinarily resident in Wales;
- Be settled in the United Kingdom within the meaning of section 33(2A) of the Immigration Act 1971, in other words ordinarily resident here without being subject to any restriction on the period for which they may remain.

The requirement that any part of the student's residence in the UK & Islands is not wholly or mainly for the purpose of receiving full-time education does not apply to those students covered by paragraph 2(2), i.e. the student's residence in the UK is not regarded as being wholly or mainly for educational purposes as a result of temporary employment outside the UK and Islands.

70. Paragraph 2(2) of Schedule 1 states that the requirement that the three years' residence in the UK and Islands should not contain any period which was wholly or mainly for the purpose of receiving full-time education does not apply to a person who is treated as ordinarily resident in the UK and Islands in accordance with paragraph 1(4) of Schedule 1. Paragraph 1(4) of Schedule 1 states that:

- A person is to be treated as ordinarily resident in Wales, the United Kingdom and Islands or in the territory comprising the EEA and Switzerland or the territory comprising the EEA, Switzerland and Turkey if the person would have been so resident but for the fact that
- the person; or
- the person's spouse or civil partner; or
- parent; or
- in the case of a dependent direct relative in the ascending line, the person's child or child's spouse or civil partner

is or was temporarily employed outside Wales, the United Kingdom and Islands or, as the case may be, outside the area in question.

Settled status

71. A person is free from any restriction on the period for which they may remain in the UK if:

- the person is a British citizen. British citizens are not subject to any restriction on their length of stay in the UK. Evidence of British citizenship may be established by a British Passport; or
- the person has been granted indefinite leave to enter/remain (ILR/ILE). The immigration status of such applicants may be established or verified by reference to the stamp(s) in their passports or travelling documents; or
- the person has the right of abode. The right of abode means that you are entirely free from United Kingdom immigration control. Holders of

this status should have a 'certificate of entitlement to the right of abode' confirming this.

British Overseas Territories

72. The British Overseas Territories Act 2002 made the previously known "dependent" territories as British Overseas Territories. A further change took place on 21st May 2002. If a person was a British Overseas Territories citizen (except by virtue of a connection **only** with the Sovereign Base Areas of Akrotiri and Dhekelia), immediately before 21st May 2002, they automatically became a British citizen on that date. They may also be a British citizen if they were born on or after 21st May 2002 in a British Overseas Territory or born outside a British Overseas Territory to a parent who is a British citizen.

The list of overseas territories is:

- Anguilla,
Bermuda,
British Antarctic Territory,
British Indian Ocean Territory,
Cayman Islands,
Falkland Islands,
Gibraltar,
Montserrat,
Pitcairn, Henderson, Ducie and Oeno Islands,
St. Helena and Dependencies,
South Georgia and the South Sandwich Islands,
The Sovereign Base Areas of Akrotiri and Dhekelia (British citizenship cannot be obtained by virtue of a connection only with these bases),
Turks and Caicos Islands,
British Virgin Islands.
- Therefore, anyone now entering the UK from the above countries (provided they have not chosen to renounce their British Citizenship, or have not naturalised in an overseas territory after 21st May 2002) will be doing so as a British Citizen and will not be subject to immigration control. They also have the same rights as any other EEA national.
- Holders of BDTC*/BOTC passports were allowed to present their BDTC*/BOTC documents as evidence of right of abode in the UK prior to obtaining full British Citizen passports until 21 May 2003. * British Dependant Territories Citizens.
- These students still have to meet the ordinary residence criteria.
- From 2007 students from BOTs are eligible for home fee status only. This is under The Fees and Awards (Amendment) Regulations 2007. They will not be eligible for student support unless they meet the eligibility criteria within the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2009. The BOTs provision has also been extended to the overseas territories of other EU Member states. Note that residents of Gibraltar may be eligible as EU students and may therefore be eligible for fee support.

The list of overseas territories of other EU Member states is:

- Greenland & Faeroe Isles (Denmark)

- Netherlands Antilles (Bonaire, Curacao, Saba, St Eustatius and St Marten) and Aruba (Netherlands)
- French possessions:- New Caledonia, French Polynesia, Wallis and Futuna, Mayotte, St Pierre et Miquelon
- French Southern and Antarctic Territories

Persons who have a right of permanent residence in the UK (as defined in the Regulations) (Paragraph 3 of Part 2 of Schedule 1 to the Regulations)

73. To fall within paragraph 3 of Part 2 of Schedule 1, the student must be able to satisfy four requirements. The person must:

- Be ordinarily resident in Wales on the first day of the first academic year of the course;
- Be settled in the United Kingdom by virtue of having acquired the permanent right of residence;
- Have been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course; and
- Where the three years' residence referred to above was wholly or mainly for the purpose of receiving full-time education, have been ordinarily resident in the territory comprising the EEA and Switzerland immediately prior to the start of that period of residence.

74. Whilst a student who has been awarded the right of permanent residence before the start of a course will be eligible for support for the whole of that course providing the other criteria are satisfied, a student who is awarded the right of permanent residence after their course starts will potentially be eligible for:

- loans for living costs, Adult Dependants' Grant and Parents' Learning Allowance in any subsequent years of the course (and in the quarters following the award in the year of the award, except the quarter in which the longest vacation falls);
- Other grants for dependants, such as Childcare Grant, for the whole year of the course in which the award is made and subsequent years of the course. See the 'Grants for Dependants and Travel Grants' guidance chapter – regarding the support available to students who become eligible during the course.
- Tuition fee support in any subsequent years of the course (and in the academic year the status was acquired, if the status was acquired within three months of the first day of the academic year).

NB The amount of support available in individual cases is determined by the relevant sections of the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended. Family members of EC nationals can apply for tuition fee loan support under Paragraph 9 of Part 2 of Schedule 1.

75. As far as the student support Regulations are concerned only EU nationals and their family members who have acquired the right of permanent residence in the UK may become eligible students by virtue of coming within paragraph 3 of Part 2 of Schedule 1. Norwegian, Icelandic and

Liechtenstein nationals cannot become eligible for support simply because they possess a permanent residence card from the Home Office. They would also need to be an EU national or their family member (Schedule 1, Part 2, Paragraph 3), or have acquired settled status.

Asylum seekers who have been granted Refugee status under the 1951 United Nations Convention, their spouses, civil partners, children or step-children (Paragraph 4 of Part 2 of Schedule 1 to the Regulations)

76. Those refugees and their family members claiming student support under this category must satisfy these criteria in order to potentially be eligible for support. The student must be:
- A refugee in their own right, ordinarily resident in the United Kingdom and Islands who has not ceased to be so resident since they were recognised as a refugee; and
 - Ordinarily resident in Wales on the first day of the first academic year of the course.

Or the student must be:

- The spouse or civil partner of a refugee and who was the spouse or civil partner of the refugee on the date on which the refugee made his/her application for asylum to the Home Office, ordinarily resident in the UK and Islands and has not ceased to be resident since the “leave to remain” status was awarded, and
- Ordinarily resident in Wales on the first day of the first academic year of the course.

In cases where the spouse or civil partner separately arrived after the date refugee status was awarded, then the spouse/civil partner’s residence in the UK and Islands must not have ceased since their award of leave to enter or remain

Or the student must be:

- the child or step-child of a refugee who was his or her child or step-child and under the age of 18 years old on the date on which the refugee made their application for asylum to the Home Office. The child has not ceased to be resident in the UK and Islands since given leave to enter or remain in the UK, and
- is ordinarily resident in Wales on the first day of the first academic year of the course.

In cases where the child arrived after the date refugee status was awarded, then the child’s residence in the UK and Islands must not have ceased since their award of leave to enter or remain.

77. LAs must satisfy themselves that all of the relevant Home Office documentation is valid.
78. Regulation 2(1) defines “refugee” as a person who is recognised by Her Majesty’s Government as a refugee under the 1951 United Nations Convention relating to the status of refugees. A refugee is defined, in the Convention, as someone who is outside their own country of origin owing to a well founded fear of returning there because they may be persecuted for reasons of race, religion, nationality, membership of a particular social

group or political opinion and who is unable, or owing to such fear unwilling, to avail himself of the protection of that country.

79. A person who has been successful in their application for refugee status will have been given a letter or Immigration Status Document from the Home Office stating that they have been granted this status.
80. Prior to 30th August 2005 recognised refugees were awarded indefinite leave to enter or remain (ILE/R) in the UK. However, since this date those recognised as refugees have been awarded 5 years limited leave to enter or remain in the UK (apart from those entering the UK under a resettlement scheme such as the Gateway Programme). At the end of the five year qualifying period, people with refugee status will be entitled to apply for ILR. For student support purposes the important question is whether the applicant is a recognised refugee under the 1951 United Nations Convention relating to the status of refugees or is the spouse, civil partner, child or step-child of such a person granted refugee status. Documentation from the Home Office will provide evidence of this fact.
81. For new students commencing their studies in 2012/13, application PN1 requires students to enter the date of expiry of their or their family member's immigration status, if applicable. Before allowing student support to continue in the next academic year, LAs will be required to check whether the student is still entitled to student support. LAs should request revised documentary evidence of the student's or family member's immigration status from the Home Office.
82. If the student's (or family member's) case is still under review by the Home Office, or the Home Office are considering an appeal, student support should not be withdrawn. LAs will require evidence from the Home Office that this is the case before processing the student support application. If LAs have difficulty confirming the situation they should email: studentfinancedivision@wales.gsi.gov.uk.
83. Before allowing support to continue in the academic year following the expiry of the relevant immigration status, LAs will need evidence that the status, or a different qualifying immigration status has been confirmed by the Home Office, or that the Home Office is considering awarding an appropriate immigration status, or an appeal is pending. It is also possible that the student may qualify under another category, for example, as the child of the refugee.
84. Refugees arriving under the Gateway Programme, the Mandate Refugee Scheme and the Ten or More Plan are granted immediate indefinite leave to enter.
85. The actual amount of support payable to the student will depend on the date the student (or family member) is granted refugee status. Whilst a person who was awarded refugee status before the start of a course, (or the family member of such a person) will potentially be eligible for support for the whole of that course, a person who is awarded refugee status after the first day of the academic year (or the family member of a person) will be eligible for:
 - Loans for living costs, Adult Dependents' Grant and Parents' Learning Allowance in any subsequent years of the course (and in the quarters following the award in the year of the award, except the quarter in which the longest vacation falls);

- Other grants for dependants and travel grants, such as Childcare Grant, for the whole year of the course in which the award is made and subsequent years of the course. See the 'Grants for Dependants and Travel Grants' guidance chapter – regarding the support available to students who become eligible during the course.
- Tuition fee support in any subsequent years of the course (and in the academic year of the award of refugee status, if the award is made within three months of the first day of the academic year).

Persons who have been informed by the Home Office that they have been granted leave to enter or remain (in the UK), [whether or not as a result of a failed asylum application](#), their spouse, civil partner, children or step-children (Paragraph 5 of Part 2 of Schedule 1 to the Regulations)

86. Regulation 2 as amended by the Education (Student Fees, Awards and Support) (Wales) Regulations 2011 – Interpretation provides a definition of a “person with leave to enter or remain” for the purposes of the Regulations.
87. Prior to 1 April 2003 the Home Office granted ‘exceptional leave to enter or remain’ (ELE/ELR). From 1 April 2003 the Home Office replaced the granting of ELE/ELR with Humanitarian Protection (HP) or Discretionary Leave (DL). Persons awarded either of these statuses are nevertheless in genuine need of international protection or have other truly compelling reasons for not being removed from the UK. Paragraph 5 of Part 2 of Schedule 1 is *only* concerned with students;
- who have been informed by the Home Office that they do not qualify for asylum but have been awarded ELE/ELR, HP or DL or ILR in certain circumstances; or **who have been awarded Discretionary Leave (DL) under any circumstance.**
 - they were the spouse/civil partner, child or step-child of such a person at the time of the application to the Home Office, and in the case of the child or step child, who were under 18 years old at the time of the application to the Home Office.
 - the student has been ordinarily resident in the UK and Islands throughout the three year period preceding the first day of the first academic year of the course and is ordinarily resident on the first day of the first academic year of the course.
 - and whose leave to enter or remain has not expired. Please refer to Regulation 2 [as amended \(see paragraph 85 above\)](#) for a full definition of a person with leave to enter or remain.
88. ELE/ELR, HP or DL are not the same as asylum and do not constitute recognition as a refugee within the meaning of the United Nations Convention.
89. ELE/ELR, HP or DL are not the same as indefinite leave to remain. They are normally granted to set calendar dates which can vary depending on which status has been granted. The applicant should have been sent a letter or Immigration Status Document by the Home Office confirming which status has been granted.

HP and DL terms and conditions

90. Since 30 August 2005, people qualifying for leave on grounds of Humanitarian Protection have been granted leave to enter or remain, as appropriate, for 5 years in the first instance with the possibility of ILR thereafter. Previously the initial period granted was 3 years. Humanitarian Protection status is not granted to people who qualify for asylum or to EC nationals exercising treaty rights.
91. Discretionary Leave is not granted where a person qualifies for asylum or Humanitarian Protection, or where there is a category within the Immigration Rules under which they qualify. It is not granted to EC nationals who are exercising treaty rights.
92. At the end of the five year qualifying period people with refugee and Humanitarian Protection status will be entitled to apply for ILR, together with people who have completed six years' Discretionary Leave or four years under the old exceptional leave policies.
93. Form PN1 and the online application facility require students to enter the date of expiry of their or their family member's immigration status if applicable. Before allowing student support to continue in the next academic year, LAs will be required to check whether the student is still entitled to student support. LAs should request revised documentary evidence of their immigration status from the Home Office.
94. If the student's (or family member's) case is still under review by the Home Office, or the Home Office is considering an appeal, student support should not be withdrawn. LAs will require evidence from the Home Office that this is the case before processing the student support application. If LAs have difficulty confirming the situation they should email: studentfinancedivision@wales.gsi.gov.uk.
95. Before allowing support to continue in the academic year following the expiry of the relevant immigration status, LAs will need evidence that the status, or a different qualifying immigration status has been confirmed by the Home Office or that the Home Office is considering awarding an appropriate immigration status, or an appeal is pending. Consideration should also be given as to whether the student may qualify under another category.
96. Students with ELE/ELR, HP or DL (or who are the family members of persons who have ELE/ELR, HP or DL) are not required to have been granted that leave by the first day of the first academic year of the course (or in the case of family members, the spouse, civil partner or parent does not have to have been granted ELE/ELR, HP or DL on the first day of the first academic year of the course). Consequently, provided that they meet the relevant criteria, these students can become eligible for support during the course of an academic year.
97. The Home Office has issued guidance about the immigration position of persons whose current leave to enter or remain has expired or is about to expire. This guidance would cover persons who have been granted limited leave to enter or remain in the United Kingdom and who have to demonstrate that they have current leave to enter or remain in order to be eligible for student support.
98. It is our understanding that if a person with limited leave to enter or remain applies for a further period of leave before the first period of leave has expired, the applicant's leave may be extended by section 3C of the Immigration Act 1971. It is our understanding that, provided the application for further leave has not been withdrawn or the applicant does not leave

the United Kingdom, the first period of leave is extended for the period it takes the Secretary of State to make a decision on the renewal application.

99. Section 3C of the 1971 Act enables a person's limited leave to be extended where;

- (a) an application has been made to the Secretary of State to vary the limited leave to enter or remain,
- (b) the application was made before the leave to enter or remain expired,
- (c) the leave expires before the application for variation is decided.

Section 3C also sets out the circumstances in which leave can be further extended and the circumstances in which such extended leave will come to an end.

100. In our view a person whose leave to enter or remain has been extended under section 3C of the 1971 Act could still, potentially, satisfy the definition of a "person with leave to enter or remain" as set out in Schedule 1 of the 2011 (No.2) Regulations. Whether such a person is an eligible student or qualifies for any particular type of support available for the 2012/13 academic year will of course need to be determined in accordance with the provisions of those Regulations, as will the amount of support, if any, payable to that person.

101. The actual amount of support payable to the student will depend on the date the student is granted HP or DL. Whilst a person who was awarded ELE/ELR, HP or DL before the start of a course (or the family member of such a person) will potentially be eligible for support for the whole of that course, a person who is awarded HP or DL after the course starts (or the family member of a person) will be eligible for:

- Loans for living costs, Adult Dependants' Grant and Parents' Learning Allowance in any subsequent years of the course (and in the quarters following the award in the year of the award, except the quarter in which the longest vacation falls);
- Other grants for dependants (Childcare Grant, Adult Dependants' Grant and Parents' Learning Allowance) for the whole year of the course in which the award is made and subsequent years of the course. See the 'Grants for Dependants and Travel Grants' guidance chapter – regarding the support available to students who become eligible during the course.
- Tuition fee support in any subsequent years of the course (and in the academic year of the award, if the award is made within three months of the first day of the academic year).

102. The Home Office have advised that LAs may send their requests to their Evidence and Enquiries (E&E) unit by fax. LAs need to be registered with the unit. Their telephone enquiry unit can also be contacted. If they are unable to deal with the enquiry, LAs would then need to contact the Immigration and National Enquiry Bureau. Fax and telephone numbers for these units can be obtained by email at ssin_queries@slc.co.uk – Please note this is for LA staff only.

Workers, employed persons, self-employed persons and their family members (Paragraph 6 of Part 2 of Schedule 1 to the Regulations)

- 103.** Directive 2004/38/EC covers the right of citizens of the European Union and their family members to move and reside freely within the territory of the member states.
- 104.** The definition of 'family member' is dependent on the category of person to whom we are referring. The table below explains this further:

Category of person	Definition of family member
an EEA migrant worker, EEA frontier worker, EEA frontier self-employed person or an EEA self-employed person	Spouse or civil partner, direct descendants or the direct descendants of the spouse or civil partner (see note 1 below) or dependent (see note 2 below) direct relatives in ascending line (see note 3 below) or that of spouse or civil partner
Swiss employed person, Swiss frontier employed person, Swiss frontier self-employed person or a Swiss self-employed person	Spouse or civil partner and children or children of spouse or civil partner

Note 1 – direct descendants of the person or of the person's spouse or civil partner who are-

- under the age of 21; or
- dependants of the person or the person's spouse or civil partner

Note 2 – "dependent" may mean financially dependent, but dependency for reasons of health or other reasons should also be considered.

Note 3 – Direct relatives in his ascending line means parents, including adoptive or step-parents.

- 105.** A student with "worker status" or their family member i.e. a person who satisfies the requirements to be treated as a person in the above table can become eligible for tuition fee and maintenance loans and grants during an academic year. In these circumstances the student is eligible for;
- Loans for living costs, Adult Dependants' Grant and Parents' Learning Allowance for any remaining quarters following the acquisition of worker status, except the quarter in which the longest vacation falls;
 - Childcare Grant, Travel Grant and DSA for the whole year of the course in which the acquisition of "worker status" is awarded and subsequent years of the course. See the 'Grants for Dependants and Travel Grants' guidance chapter – regarding the support available to students who become eligible during the course.
 - Tuition fee support, HE Grant, Maintenance Grant and Special Support Grant for the academic year in which worker status is acquired if this is achieved within three months of the first day of the academic year.
- 106.** The residence criteria that must be met by those who come within paragraph 6(1)(a) is as follows;

- Ordinarily resident in Wales on the first day of the first academic year of the course; and
- Has been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

Note that being ordinarily resident in Wales on the first day of the first academic year of the course is not required when the person applying for support is applying as;

- a) An EEA frontier worker or an EEA frontier self-employed person;
- b) A Swiss frontier employed person or a Swiss frontier self-employed person; or
- c) A family member of a person mentioned in a) or b)

107. In order to decide whether an EEA national can be classed as a migrant/frontier worker or a Swiss national employed in the UK, LAs/SLC should take into account the case law of the European Court of Justice. Matters to consider include;

- Will or did the student cease work in order to start studying or will or have they continue(d) to work whilst studying?
- Is the person in an employment relationship in which they perform services in return for remuneration or self-employed?
- Are they pursuing an activity which is effective and genuine?
- Is this activity on such a small scale as to be regarded as purely marginal and ancillary?

108. There are circumstances in which 'worker status' can be retained by a former worker or their family member. These are set out in Article 7, paragraph 3 of EC Directive 2004/38. (And may also be referred to as the '*Lair*' conditions.)

109. If prior to the start of the course a person lost their migrant worker status or employed person status because:

- They left work voluntarily without good reason or
- They left work to begin a course of study which had no link to their previous employment;

They would not be eligible for support under this category.

110. Where the status of worker/employed person is acquired before the start of the academic year, the student will be eligible to be assessed for support for the entire year. However, this is subject to the student remaining in employment throughout the academic year or, if the employment ends before the end of the academic year, the student being able to retain the status of worker by virtue of the provisions of Article 7, paragraph 3 of directive 2004/38. However, where the relevant status is acquired in-year the level of support for that year is set out in the relevant sections of the main body of the Regulations.

111. The regulations do not require that migrant worker status is met on the first day of the first academic year of the course, only that the student was ordinarily resident in Wales on that day.

112. Applications for support must be made no later than nine months after the first day of the first academic year for which support is being applied for (regulation 10), or within nine months of an event listed in regulation 15 occurring, where the event occurs after the first day of the academic year. Obtaining eligibility under paragraph 6(1) of Schedule 1 is an event listed in regulation 15.
113. If an application for support is received within the initial nine month period and the student subsequently wishes to apply for a new or additional amount of loan then the loan application must be received no later than one month before the end of the academic year to which the application relates (regulation 10(2)(b) and 10 (2)(c)).
114. Applications for maintenance grant should be processed if received within the 9 month timeframe set out in regulation 10. (An exception applies for disabled students' living costs.)
115. Where the relevant status is acquired in-year the level of support for that year will be as is set out in the relevant sections of the main body of the regulations.
116. In some cases the LA assessment of whether a potential worker, employed person, or self employed person is a migrant worker may need to be carried out once the course has started. This will apply in cases where the student becomes a migrant worker during their course; continues to work once their course has started, students have given up work to study, and therefore need to show a link between their studies and their previous employment. Given that students do not always attend the course for which they originally applied (for example because their exam grades are better, or worse, than expected), it will not be possible to establish with certainty whether there is the necessary link until the LA knows which course is actually being attended.
117. In deciding whether an EEA national can be determined to be a worker or Swiss national can be determined to be an employed person, the LA should look closely at the EC law meaning.
118. In the *Lair* case the ECJ stated that 'where objective factors enable it to be established that a worker is entering a member state solely for the purpose of benefiting in that country, after a very brief period of employment, from the system of student grants, such abuses are not covered by the Community provisions at issue'. In the Welsh Minister's view, this means that where it appears to an LA, having regard to all the circumstances, that a person has taken up employment in the UK solely for the purpose of becoming eligible for student support it will be under no duty to bestow such support on him.

Students who cease work before starting the course

119. Students who voluntarily cease work before starting their course will retain their status as migrant workers if there is a link between their work and their studies. There has been little guidance from the European Court of Justice (ECJ) on what constitutes a sufficient 'link' between the course of study and the previous employment for these purposes. In the cases of *Lair* and *Bernini* the ECJ indicated that what was important was the relationship between the purpose or subject matter of the studies and the previous employment.
120. Article 7, Paragraph 3 of Directive 2004/38, sets out the circumstances in which an EEA or Swiss national who is no longer a worker or self-

employed person, retains their status as a worker or as a self-employed person. The Directive explains that the above principle does not apply where a person has been employed in the UK but has subsequently 'become involuntarily unemployed and is obliged as a result of the situation of the labour market to transfer to another employment sector'.

- 121.** LAs should note that the Welsh Ministers have received advice that an EEA or Swiss national is not entitled to be classified as a Migrant worker for student support purposes, where they have arrived in the UK without work, are actively seeking employment but have not yet worked here.

Remuneration for work

- 122.** EEA or Swiss nationals who came to the UK to work but have received or receive something less than a market rate salary for their work, may still fall within the definition of a migrant worker.

In the case of *Brown* the ECJ set out a definition of a migrant worker:

'any person who pursues an activity which is effective and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, is to be treated as a worker. The essential characteristic of the employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.'

The ECJ has said that 'remuneration' means consideration for the services in question, and therefore if someone works in exchange for, for example free food, free accommodation or an allowance, they may still be considered to be a worker.

Effective and genuine / marginal and ancillary employment

- 123.** In trying to decide whether a person's employment is effective and genuine and not purely marginal and ancillary, it may be relevant to consider, amongst other things, the following factors:
- *Whether the work is seasonal or temporary.* In the case of *Raulin* the Court found that in assessing the effective and genuine nature of the activity in question account should be had to the irregular nature and limited duration of the services actually performed under a contract for occasional employment.
 - *Whether, but for being accepted on the course of studies, the work would be undertaken at all.* In the case of *Brown* the Court concluded that where the status of worker derived exclusively as a result of being accepted for admission to a course of study then the worker status is merely ancillary and the applicant would not be eligible for support. However, it is not the intention of the person concerned that is important but objective factors related to the employment.
 - *Whether the sum paid is a market rate.* For example, if a person is employed full-time at a market rate this would be an indication that their employment was not ancillary to their studies. This does not mean that a person must be employed full-time at a market rate in order to be a worker, but employment at less than market rate, or where the employer is a family member or friend for example, may be an indicator of whether the employment is genuine.

- *The number of hours worked/whether the work is the predominant activity.* Whilst a worker can be employed on either a full-time or part-time basis and still be classed as a worker in cases where only a limited number of hours are worked this may be an indication that the employment activities are purely marginal and ancillary. In the opinion of the Advocate General in the case of Grzelczyk:

“...the holding of occasional ‘student jobs’ will scarcely satisfy those criteria. It is indeed conceivable that a degree of alternation between study and occupational activity might be taken into account in assessing the criteria ‘marginal and ancillary’. In those circumstances, the criterion against which the occupational activity would have to be measured might be whether the vocational training was predominant.”

- 124.** The Welsh Ministers are of the view that employment which is unlawful is unlikely to be able to satisfy the test of being affective and genuine employment. For example, A8 nationals (i.e. Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) who have not registered their employment in accordance with the Workers Registration Scheme will not be considered to be genuine and effective employment and thus will not be eligible for maintenance support for any period during which their employment has not been properly registered. (Please note that the A8 Worker Registration Scheme will be discontinued from 1st May 2011. By that time the A8 countries have been in the E.U. for over seven years and their nationals will enjoy the same rights as those of established E.U. member states. An end date for the A2 Worker Registration Scheme has not been confirmed at the time of writing (December 2011))

Family members of EEA migrant workers, EEA frontier workers, EEA frontier self-employed persons, EEA self-employed and Swiss employed persons, Swiss frontier employed persons, Swiss frontier self-employed persons or Swiss self-employed persons

- 125.** The family members of an EEA or Swiss migrant worker (as defined in Schedule 1) are eligible for support on the same basis as the migrant worker himself or herself. The nationality of the family member is not relevant.

Children of EEA migrant workers

- 126.** Children of EEA migrant workers are defined in Paragraph 1 of Part 1 of Schedule 1 as direct descendants of the person or of the person's spouse or civil partner who are under the age of 21 or dependants of the person or the person's spouse or civil partner. They are provided for in Paragraph 6, Schedule 1. 'Parent' is defined as including a guardian, any other person having parental responsibility for a child and any person having care of a child - this includes a step-parent. The parent must have established migrant worker status in this country and the child must meet the residence conditions set out in Paragraph 6 of Schedule 1.

Persons who are entitled to support by virtue of Article 12 of Council Regulation 1612/68 on the freedom of movement as workers as extended by the EEA Agreement (Paragraph 7 of Part 2 of Schedule 1 of the Regulations)

- 127.** Article 12 states that “The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational

training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions”.

- 128.** The Welsh Government advises that this provision may apply to the children of EEA workers in the UK where that worker is no longer a worker here. To be eligible under this paragraph there is no requirement that the child be under the age of 21 or a dependant of the former EEA worker parent or their spouse or civil partner.

Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere (Paragraph 8 of Part 2 of Schedule 1)

- 129.** Specific provision is made for persons who are settled in the UK and who once left Wales to exercise a right of residence after having been settled in the UK.

Paragraph 8(2) sets out when a person has exercised a right of residence for the purpose of paragraph 8(1)(b).

The following are some examples of situations where a person has exercised a right of residence for the purpose of paragraph 8(1)(b):

- a UK national exercises a right under Article 7 of Directive 2004/38 in another Member State (e.g. a UK national goes to work in France)
- a UK national exercises a right under the EEA Agreement or the Swiss Agreement that is equivalent to a right under Article 7 of the Directive (e.g. a UK national goes to work in Iceland)
- a family member of a UK national exercises a right under Article 7 of Directive 2004/38 in another Member State (N.B. family member has the meaning in Article 7 of Directive 2004/38) (e.g. the American wife of a UK national accompanies him when he goes to work in Germany)
- a family member of a UK national exercises a right under the EEA Agreement or the Swiss Agreement that is equivalent to a right under Article 7 of the Directive (N.B. family member has the meaning given in relation to the right being exercised under the EEA Agreement or Swiss Agreement) (e.g. the Chinese husband of a UK national accompanies her when she goes to work in Norway)
- a person who has acquired the right of permanent residence in the UK (as defined in the Regulations) exercises a right under Article 7 of Directive 2004/38 in a Member State other than the UK (e.g. the Moroccan civil partner of a Spanish national who has been working in the UK acquires the right of permanent residence in the UK and then goes to the Netherlands with his/her Spanish national civil partner who is taking up a job there);
- a person who has acquired the right of permanent residence in the UK (as defined in the Regulations) exercises a right under the EEA Agreement or the Swiss Agreement that is equivalent to a right under Article 7 of the Directive;
- a person who has acquired the right of permanent residence in the UK (as defined in the Regulations) goes to the state within the territory comprising the EEA and Switzerland of which

he/she is a national or of which the person in relation to whom he/she is a family member is a national (e.g. the Moroccan national and his/her Spanish national civil partner from the example above go to Spain instead of the Netherlands. They would not be exercising rights under Article 7 of the Directive but paragraph 8 of Schedule 1 does allow a return to the student's own Member State or that of the person in relation to whom the student is a family member to count as an exercise of the right of residence)

The other requirements that need to be satisfied are as follows. The applicant must:

- be ordinarily resident in the UK on the day on which the first term of the academic year actually begins;
- have been ordinarily resident in the territory comprising the EEA and Switzerland for the three-year period preceding the first day of the first academic year of the course; and
- where the three-year residence period referred to above was wholly or mainly for the purpose of receiving full-time education, have been ordinarily resident in the EEA and Switzerland immediately before that period of residence.

<i>Category of person</i>	<i>Definition of family member</i>
A national of the UK who has exercised a right under Article 7 of the Directive as a worker, self-employed person or as a self-sufficient person (i.e. has sufficient resources to maintain themselves in the host Member State) or as a student	"Family member" is defined in article 2 of the Directive as (again in very general terms): (i) spouse/civil partner; (ii) direct descendants of the national or their spouse/civil partner who are under 21; (iii) direct descendants of the national or their spouse/civil partner who are dependent on the national/their spouse or civil partner; and (iv) dependent direct relatives in the ascending line of the national or their spouse or civil partner. NB Article 7(4) makes clear that the article 7 right of residence does not extend to the dependent direct relatives in the ascending line of students or to their non-dependent children.

- 130.** An example of when paragraph 8 of Schedule 1 might be relevant is where a family of UK nationals who are ordinarily resident in the UK then leave Wales to move to Spain with the parents going as workers and the children accompanying them. If their daughter returns to the UK aged 18 to enter HE, she may be eligible for support under paragraph 8 of Schedule 1 if she satisfies the relevant provisions.
- 131.** From September 2008 new students who are settled in the UK and exercise a right of residence anywhere in the EEA or Switzerland for a period in excess of 3 months then return to the UK and apply for support within 3 years of their return, should apply to the territory that they were resident in before they left the UK, regardless of the territory they are resident in once returned to the UK.

EC nationals and their family members (Paragraph 9 of Part 2 of Schedule 1)

132. EC nationals and their family members must satisfy the residence conditions in Paragraph 9 of Part 2 of Schedule 1 in order to potentially be eligible for support. However, this category of student may only qualify for tuition fee support.

133. The relevant family members of EC nationals are set out in the table below:

EC national who falls within Article 7(1)(c) of Directive 2004/38 (Not self-sufficient)	The national's spouse/civil partner and direct descendants of the national or the national's spouse/civil partner who are under the age of 21 or dependents of the national or the national's spouse/civil partner
EC national who falls within Article 7(1)(b) of Directive 2004/38 is self-sufficient	The national's spouse/civil partner, direct descendants of the national or the national's spouse or civil partner who are under the age of 21 or dependants of the national or the national's spouse/civil partner or dependent direct relatives in the national's ascending line that of the national's spouse/civil partner

134. The table above refers to 'self-sufficient' (although this is not a term used in the Regulations). The Regulations refer to article 7(1)(b) of Directive 2004/38. This provides that a person has a right to reside in a host Member State if :

- [he/she has] sufficient resources for [himself/herself] and [his/her] family members not to become a burden on the social assistance system of the host Member State during their period of residence and [has] comprehensive sickness insurance cover in the host Member State.

135. In other words, it is not appropriate to say that someone does not have sufficient resources if their resources are higher than the level at which social security benefits or the social security pension is paid. A means test is not necessary to establish self-sufficiency, and LAs must remain flexible in their assessment.

136. Students who become EC nationals within three months of the start of the academic year, because their State joins the EU, may be eligible for fee support for that academic year. They may also be eligible for fee support for any subsequent year (regulations 13 - 15).

137. Under Paragraph 9(3) of Part 2 of Schedule 1 where a state accedes to the EC after the first day of the first academic year of the course and a person is a national of that state, the requirement that the person is an EC National on the first day of the first academic year of the course or a family member of such a person would be treated as being satisfied. Where a person is claiming under paragraph 9, on the basis that the person is the family member of an EC national and the state of which the person's relative/spouse/civil partner is a national accedes to the EC after the first day of the first academic year of the course, the relative/spouse/civil partner is treated as having been an EC national on the first day of the first academic year of the course.

138. Students who fall within Paragraph 9 of Part 2 of Schedule 1 will not be required to have settled status in the UK or to be ordinarily resident in

Wales on the first day of the first academic year of the course but as with EEA migrant workers, they should have been resident in the EEA and Switzerland for the three years preceding that day. The SLC European Team in Darlington will carry out the administration of all EU students and their family members falling under Paragraph 9 of Part 2 of Schedule 1. Their telephone number is 0141 243 3570.

EC Nationals with a “genuine link” with the UK under Paragraph 10 of Part 2 of Schedule 1 to the Regulations

139. EC Nationals (other than UK nationals) with a “genuine link” with the UK may now be eligible for tuition fee support and loans for living costs and grants for living and other costs if on the first day of the first academic year of the course if:

- They have been ordinarily resident in the UK and Islands throughout the three year period immediately prior to this date;
- They are ordinarily resident in Wales;
- Where the period of ordinary residence above was wholly or mainly for the purpose of receiving full-time education, they were resident in the EEA and/or Switzerland prior to the three year period above.

To be eligible under paragraph 10, a person must be an EC national on the first day of the first academic year of the course. Where the person's state joins the EC after that date, the person is treated as if they were an EC national on the first day of the first academic year of the course.

Children of Swiss Nationals (Paragraph 11 of Part 2 of Schedule 1 to the Regulations)

140. A person is potentially able to qualify for support where the person:

- Is the child of a Swiss national entitled to support in the UK under the Swiss Agreement;
- Is ordinarily resident in Wales on the first day of the first academic year of the course;
- Has been ordinarily resident in the EEA and Switzerland throughout the three year period preceding this date;
- Where the person's residence in the EEA and Switzerland (above) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the EEA or Switzerland immediately prior to this period.

There is no requirement for the Swiss national parent to be or have been economically active in the UK.

Children of Turkish Workers (Paragraph 12 of Part 2 of Schedule 1 to the Regulations)

141. A person is potentially able to qualify for support where the person:

- Is the child of a Turkish worker – a Turkish worker is defined in Regulation 2 of the Regulations. Such a worker is a Turkish national who is ordinarily resident in the United Kingdom and

Islands, and is, or has been lawfully employed in the United Kingdom

- Is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- Has been ordinarily resident in the EEA, Switzerland and Turkey throughout the three year period proceeding the first day of the first academic year of the course.

EC Member States

142. The following countries are EC Member States:

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom

143. From the date of accession, a state that has joined the EC or the EEA is considered to have always been part of the EEA (Paragraph 1(6) of Part 1 of Schedule 1). This will mean that students, who have lived within that state for 3 years or more (or a combination of that state and existing EEA countries or Switzerland), prior to the commencement of their course, may be able to satisfy the EEA/Switzerland residence requirement. The amount of support and the period in respect of which support may be payable is determined in accordance with the main body of the Regulations.

144. Regulation 14 provides that a student may qualify for fee support during the course of the academic year in which the state of which they are a national or one of their family members (as defined in Part 1 of Schedule 1) is a national accedes to the EC. A student will only qualify for fee support for the academic year in which that event occurs if it occurs within the first three months of the start of the academic year. For example a country joins the EC on 1st January 2011. Students who are nationals of that country or family members of nationals of that country and whose academic start date was 1 September 2010 would not qualify for fee support for the 2010/11 academic year. They may, however, qualify for fee support for the 2011/12 academic year onwards.

Eligibility for fee and living costs support and determination of entitlement

(Note the eligibility changes for '2010 cohort', '2011 cohort' and '2012 cohort' students and changes from 2010/11 to definitions of ITT courses attracting full-time and part-time support on pages 1,2,5,6, 7 and 54).

145. The personal eligibility requirements covered earlier in this guidance at paragraph 3 (regulation 4) apply both to support for fees and support for living costs for all cohorts of students. Additional eligibility requirements are described in this section for grants for fees and fee contribution loans for old system students (regulations 16 & 21) and fee loans for new system students (regulations 22-23 cover the general criteria which determine the availability of fee support for current system students). Regulation 39 covers entitlement to the Assembly Learning Grant for continuing *new system* students (non cohort), regulation 40 for '2010 cohort' and '2012 cohort' students, and regulation 41 for '2011 cohort' students.

146. The term 'fees', for this purpose, has the meaning given in section 28(1) of the Teaching and Higher Education Act 1998. Section 28(1) provides that

fees means fees in respect of, or otherwise in connection with, undertaking the course including admission, registration, tuition and graduation fees other than:

- fees payable to an institution for awarding or accrediting any qualification where the institution does not provide the whole or part of the course and it is not a publicly funded institution (within the meaning of section 28 of the 1998 Act);
- fees payable for board or lodging;
- fees payable for field trips (including any tuition element of such fees);
- fees payable for attending any graduation or other ceremony;
- such other fees as are prescribed by Regulations made by the Welsh Government (in relation to Wales) or the Secretary of State (in relation to England).

- 147.** Eligibility requirements are set out separately for grants for living and other costs under Part 5 of the Regulations and for loans for living costs under Part 6. Provided that students meet those eligibility requirements and the general eligibility requirements in Part 2 of the Regulations, they will be eligible for grants and loans for living costs in respect of attendance on the course.
- 148.** Broadly speaking, a student who started their course before 1st September 2006 may be eligible for an old system tuition fee grant, fee contribution loan, loan for living costs, disabled students' allowances, childcare grant, parents' learning allowance, travel grant and higher education grant (eligibility for HE grant includes criteria that they would not have started the course prior to 1st September 2004); while a student who started their course on or after 1st September 2006 may be eligible for a tuition fee loan, tuition fee grant (for students who commenced study before 1st September 2010), [a new fee grant \(for students who commenced study on or after 1st September 2012\)](#), [a new private institution fee loan \(for students starting designated courses at private institutions on or after 1st September 2012\)](#), [an accelerated graduate entry fee loan \(for students starting graduate entry medical and dental courses after 1st September 2012\)](#), a loan for living costs, disabled students' allowance, grants for dependants, grant for travel and either the Assembly Learning Grant (maintenance) or the Special Support Grant. There are exceptions to these principles. In order to qualify for this support all applicants must complete the appropriate application form.
- 149.** Generally, a new system student will not qualify for fee support in an academic year which is a bursary year (defined in regulation 2(1)), an ERASMUS year (defined in regulation 2(1)) or when the student is on an old flexible postgraduate ITT course (defined in regulation 2(1)). Also students are not eligible for grants for dependants and travel grants for any academic year which is a bursary year (as defined in regulation 2(1)).
- 150.** A new system student (all cohort groups) and certain old system students (i.e. old system students who are on end-on courses or are 2006/07 gap year students) who have previously gained an honours degree from a UK institution will not generally be eligible for *support for fees* for a further course. Regulation 21 and regulations 7 and 6 provide exceptions to this general rule.
- 151.** Where a student is ruled out of tuition fee support due to their previous study (see paragraphs 149 - 152 & 161-168) or already holding a UK

honours degree, they will not qualify for some grants for living and other costs. This affects the Assembly Learning Grant (Maintenance) (regulations 38-41)), Special Support Grant (regulations 42-45) and the Higher Education Grant (regulation 37).

- 152.** The loan for living costs is available to eligible students who do not have an honours degree from a UK institution (even though they may have previous study). Where a student holds an honours degree from a UK institution they will not qualify for the loan for living costs unless one of the exceptions in regulations 7 or 46 (old and new system students) applies.
- 153.** All students will continue to have access to *supplementary grants* (e.g. *Disabled Students Allowances*, *Childcare Grant*) provided that they meet the other eligibility criteria applicable.

General principles for determining entitlement to student support

References are to provisions of the Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011, as amended by the legislation cited in paragraph 2 of this guidance (See pages 1,2,5,6, 7 and 54 of this document for '2010 cohort' students, '2011 cohort', '[2012 cohort](#)' students and ITT changes).

154. (A) New system students:

Relevant provisions of The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011:

- Regulation 19 – tuition fee grant ('2010 cohort' and '2011 cohort' students do not qualify)
- [Regulation 20 – new fee grant \('2012 cohort' students only\)](#)
- Regulations 23 & 24 – general availability of fee loans to new system students ('2010 cohort' and '2011 cohort' students do not qualify for fee loans under regulation 23)
- Regulation 24A – new private institution fee loan (only available to 2012 cohort students who study on courses wholly provided by private institutions)
- Regulation 24B – accelerated graduate entry fee loan (only available to students starting accelerated graduate entry medical or dental courses after 1st September 2012)
- Regulation 6(8) – the entitlement of new system students who have not studied on a previous course
- Regulation 6(9) – the entitlement of new system students who have studied on a previous course
- Regulation 6(13) – the entitlement of new system students who have transferred from or otherwise studied on a previous course
- Regulation 6(10)(a) – the entitlement of new system students on end-on courses and certain degree courses.
- Regulation 6(20)-(24) and regulation 7 – definition of previous course

155. (B) Old system students

Relevant provisions of The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011:

- Regulation 16 – general availability of grants for continuing old system students.
- Regulation 21 – general availability of loans for continuing old system students.

- Regulation 6 (13) – transferring old system students.
- Regulation 6 (10) (d) – old system students. on end-on courses
- Regulation 6 (12) – availability of loans and grants to old system students. for years of repeat study
- Regulation 6 (20) – definition of previous course

Previous study: general principles

- 156.** The general principle surrounding previous study is that students will be eligible for support for the standard length of the HE course plus an additional year if needed. The number of years support available will however be reduced by the number of years of previously supported higher education.
- 157.** The previous study rules apply to fee loans (and fee grant where applicable) and the Assembly Learning Grant / Special Support Grant for all new system students, and to the £1,000 Higher Education grant, the old system fee remission grant, and any fee loan taken out to cover the balance of the fee contribution for old system students. The rules do not apply to supplementary grants such as the Disabled Students' Allowances or Childcare Grants.
- 158.** A new system student (and certain old system students, i.e. old system students on end-on courses and old system students who are 2006/07 gap year students) who has previously gained an honours degree from a UK institution will not generally be eligible for *support for fees* for a further course (but see also para 144 and 2010/11 ITT changes on page 55).
- 159.** Students who intend to take a full-time course of initial teacher training (ITT) of not more than two years (or a part-time course the duration of which is not more than two years full-time and which began before 1 September 2010) are exempt from the previous study rules unless they have already gained Qualified Teacher Status (QTS) (Regulation 7(3)). See pages 1, 2 and 54 regarding changes to ITT for students who commenced their courses on or after 1st September 2010.

Sub-degrees and “top up” courses

- 160.** Prior to the 2006/07 academic year where a student completed a sub-degree or non-honours degree course they would need to continue on to their ‘top up’ course the following year without a break (i.e. ‘end-on’) in order to qualify for student support for their second course. This provision no longer applies and even though ‘top up’ courses are still referred to as ‘end-on’ courses or are undertaken end-on to another course, they can now be undertaken at any time.
- 161.** The following basic principles will apply for AY 2012/13:
- To note: there are very few *continuing* old system students in the system.
- (a) a student who started a full-time HND/HNC or Dip HE course before 1st September 2006 (or 1st September 2007 if they are a 2006/07 gap-year student in relation to that course) and goes ‘end-on’ to a full-time first degree course (other than an ITT course) whether before or after 1st September 2006 will be eligible for the *old package* of fee support [(refer to the Assessing Financial Entitlement section of this guidance for details of the ‘old’ and ‘new’, ‘2010 cohort’, ‘2011 cohort’ and ‘2012 cohort’ packages)];

- (b) a student who started a full-time foundation degree course before 1st September 2006 (or 1st September 2007 if they are a gap year student in relation to that course) and goes end-on to an Honours degree course on or after 1st September 2006 will be eligible for the *old package* of fee support;
- (c) a student who started a first degree course before 1st September 2006 and goes end-on to an ITT course before 1st September 2006 will be eligible for the *old package* of fee support;
- (d) a student who started a first degree course before 1st September 2006 and goes end-on to an ITT course on or after 1st September 2006 will be eligible for the *new package* of fee support;
- (e) a student who is currently an old system student and goes on to top-up but not end-on (i.e. not immediately after ceasing the first course - so, for example, a student who completed their foundation degree in 2007/08 and started an Honours degree course in 2009/10) will be treated as a *new* system student and thus be eligible for the *new package* of fee support; and
- (f) a student who starts a top up course (not end-on) or new course on or after 1st September 2012, will be eligible for the new 2012 package of fee support.
- (g) a student who starts an end-on course on or after 1st September 2012 will be eligible for the package of fee support that they were eligible for on the lower level course (i.e. as per a continuing student)

NB With reference to the circumstances described in (a) and (b) above: where a student goes end-on and is entitled to the old package of fee support (i.e. transitionally protected), if they subsequently transfer to another degree course they may lose this entitlement.

Bursary Years

- 162.** Regulation 16(3) (a), excludes eligible old system students from receiving a grant for fees for a bursary year (defined in regulation 2(1)); that is any year in relation to which they are eligible to apply for either:
- An income assessed “healthcare bursary” (such students will have their tuition fee paid in full by the Department of Health) (see definition of “healthcare bursary” in Regulation 2); or
 - An income assessed Scottish Healthcare Allowance (Scottish Healthcare Allowance is defined in Regulation 2).
- 163.** If an old system student is excluded from a fee grant for the reasons above they will not be eligible for a fee contribution loan.
- 164.** Regulation 19(2) excludes eligible ‘new system students who are neither 2010, 2011 or 2012 cohort students from receiving a tuition fee grant, for any year in relation to which they are eligible to apply for either:
- An income assessed “healthcare bursary” (such students will have their tuition fee paid in full by the Department of Health) (see definition of “healthcare bursary” in Regulation 2). [See Section I of Annex F of the 2012/13 Assessing Financial Entitlement guidance chapter for full 2012 details](#); or

- An income-assessed Scottish Healthcare Allowance (Scottish Healthcare Allowance is defined in Regulation 2).
- 165.** Regulation 21(2) excludes an eligible student from receiving a fee loan for any year in relation to which they are eligible to apply for either:
- An income assessed “healthcare bursary” (such students will have their tuition fee paid in full by the Department of Health) (see definition of “healthcare bursary” in Regulation 2). [See Section I of Annex F of the 2012/13 Assessing Financial Entitlement guidance chapter for full 2012 details](#); or
 - An income-assessed Scottish Healthcare Allowance (Scottish Healthcare Allowance is defined in Regulation 2).
- 166.** Continuing students eligible to apply for non-income assessed healthcare bursaries are disqualified entirely from receiving any support under Regulation 4(3)(c). For further information on NHS bursaries see Annex 1.
- 167.** [A universal healthcare bursary of £1,000 \(non means tested\) will be paid to students starting healthcare related courses after 1st September 2012, where the academic year is a bursary year. 2012 accelerated graduate entry students \(medical and dental courses\) and other healthcare students will be paid the universal healthcare bursary, but will still be eligible to apply for support under the Assembly Learning Grants and Loans \(Higher Education\) \(Wales\) \(No.2\) Regulations as amended. This is a limited departure from the restrictions explained in paragraphs 162 to 166.](#)

ERASMUS Years

- 168.** There are special arrangements for fee support where a student spends the entire year on an ERASMUS exchange. In that case both old and new system students will not be eligible for any fee support (see regulations 16(3), 19(2)(a), 20(2)(a) and 21(2)(a)). Instead, HEFCW will fund the institution directly, as an incentive for students to take part in ERASMUS. Students undertaking a period of study abroad under the ERASMUS scheme are assessed in the usual way for living cost support, in that they qualify for overseas rates of loan for living costs and extra weeks loan, and if eligible, grants for living and other costs. For detailed information on ERASMUS students please refer to the 2012/13 ‘ERASMUS’ guidance chapter.

Definition of a ‘previous course’

- 169.** Regulations 6(20) - 6(24) set out what is a previous course for the purposes of Part 4 of the Regulations. Generally a course is a “previous course” (for ‘new system students who are neither 2010 nor 2011 cohort’, ‘2010 cohort’ students, ‘2011 cohort’ students [and ‘2012 cohort’ students](#)) if:
- (a) it was a full-time course of higher education or a part-time initial teacher training course which the student began to attend or, in the case of a compressed degree course, undertook before the current course; and
 - (b) either: (i) it was provided by an institution in the United Kingdom, which was maintained or assisted by recurrent grants out of public funds for some or all of the years during which the student was on the course; or (ii) in respect of the student’s attendance on the course support from public funds or attributable to public funds was

provided to defray the cost of fees. This support could have been in the form of a scholarship, exhibition, bursary, grant, allowance, or award of any description;

and

(c) none of the following apply:

(i) the current course is an ITT course lasting not more than 2 years (the duration of a part-time course which began before 1st September 2010 being expressed as its full-time equivalent) and the student is not a qualified teacher (regulations 6(22) and 7(3)). For '2010 cohort', '2011 cohort' and '2012 cohort' students where study is less than 30 hours per week, refer to the part-time support guidance as the student will not qualify for full time support;

(ii) the course was a Cert Ed course and the student is now attending a BEd course (including a BEd honours course) which the student transferred to before completing the Cert Ed course or began on completion of the Cert Ed course (regulations 6(23) and 8);

(iii) the previous course was a BEd course other than a BEd (Hons) course and the student is now attending a BEd (Hons) course which he/she transferred to before completing the BEd course or began on completion of the BEd course (regulations 6(24) and 8).

Years of previous study

170. Once it has been determined that the student has been on a previous course, regulation 6 sets out which years of that previous course count as previous study.

The general rules are:

all academic years that the student completed on the previous course are included; and

an academic year that the student started but did not complete or began part way through the year is treated as one academic year (regulation 6(17)).

Examples of entitlement:

'Old system' students who are continuing students

171. Regulation 16 makes provision for an old system student who began a designated course before 1st September 2006 and is continuing on that course in the 2012/13 academic year.

172. The entitlement to fee support of a continuing student is the number of years remaining on his course after 31st August 2006 plus one, minus any academic years that begin after 31st August 2006 for which it was determined the student does not qualify for a grant for fees in the course of assessing an application for support in respect of an academic year of the designated course that began before 1st September 2006.

EXAMPLE 1: An existing student started a 6 year course in September 2006. (the student was a gap year 2006/07 student) He applies for support for the 2011/12 academic year which is the sixth year of his

course. The student's entitlement is 6 years' fee support (i.e. the number of academic years of the course remaining after 31st August 2006 + 1).

$$A + R + 1 - Y$$

'New System' Students (all *new system* cohort groups) who have not studied on a previous course nor a preliminary course

- 173.** Regulation 6(8) makes provision for students applying for student support in 2012/13 who have not studied on a previous course. Their entitlement is the ordinary duration of their course (ordinary duration is defined in regulation 2) plus one. For example, standard course length is 3 years:

$$OD + 1$$

Entitlement of new system students (all cohort groups) who have studied on a previous course

- 174.** The entitlement of a new system student returning to HE in September 2012 will be determined in accordance with regulation 6(9).
- 175.** The entitlement of a student falling within regulation 6(9) is the ordinary duration (OD) of the current course plus one, minus the number of years spent on previous courses (PC).

Example 2: Student A started a three year course in 2010/11 and is applying for support in 2012/13. The student has in the past completed a year of study on a previous course. The student's entitlement is 3 years (i.e. the ordinary duration of the current course plus 1 less the year spent on the previous course)

$$OD + 1 - PC = 3 \text{ years}$$

The following paragraphs and simple examples deal with the allocation of fee support from the entitlement to the remaining academic years of the course (see also paragraph 155 which includes some general principles for the allocation of fee support).

Compelling Personal Reasons (CPR) – New and Old System Students

- 176.** Regulations 6(8), 6(9), 6(16)(f) and 6(16)(g) make provision on the period of eligibility of applicants who have failed to complete academic years of current or previous courses because of compelling personal reasons. The term 'compelling personal reasons' is not defined in the Regulations, however, in the Welsh Government's opinion, academic performance alone would not normally be deemed a compelling personal reason but LAs should consider all cases carefully. Further guidance on determining the extent and nature of compelling personal reasons is set out in paragraph 178 below. Where an applicant has not attended a previous course and fails to complete a year on their present course because of compelling personal reasons an additional year of eligibility is added for each repeated year of study.
- 177.** Regulation 6(9) sets out the position in relation to applicants who have failed to complete a previous course because of compelling personal reasons. Firstly, all such applicants will be entitled to one additional year of eligibility. In addition, regulation 6(9) also provides a discretion to award one further year of entitlement if it is appropriate to do so having regard to

the circumstances of a particular case. Local authorities will need to consider the facts surrounding each individual application carefully and decide whether the compelling personal reasons warrant the additional year of entitlement. These provisions on additional entitlement apply to applicants who have failed to complete the most recent previous course because of compelling personal reasons. As long as the withdrawal related to the applicant's most recent previous course, it does not matter how long ago that withdrawal took place.

- 178.** As far as is reasonably practicable, evidence should be obtained from the student or elsewhere to support a claim that the withdrawal was for compelling personal reasons or the need to repeat a year is for compelling personal reasons. For instance, the student might be able to provide medical evidence from his GP; or perhaps an HEI's student support advisory service could (with the student's permission) attest to a personal or family crisis. Other possible sources might include social services or the clergy. (However, the Welsh Government would not reimburse any costs incurred by the student in obtaining such evidence.) This guidance is not exhaustive and LAs should look at all cases carefully.
- 179.** LAs will be able to identify potential cases of this kind from information provided on the application form

Example 3: Student B, who has not attended a previous course applies as a new student in September 2012. She starts a four year honours degree course. The entitlement is support for four years plus an additional year. The student fails the second year of the course which she successfully repeats using up the additional year and enters the third year of the course in September 2014. Support is available for years 3 and 4 of the course. She fails the third year due to compelling personal reasons. The LA awards the student an additional year's support which will allow support to repeat the third year. The additional year of CPR support is allocated to the repeat of year 3 not the final year.

**OD (4 years) + R (1 repeated year for CPR) + 1 = 6
years**

Self-funded Years – New system (all cohort groups) and old system students

- 180.** Where the number of academic years for which support is available is less than the number of academic years that make up the period ordinarily required for the completion of the present course, the years in which the student is eligible for the support, are the latest years of the present course (regulation 6 (15)).

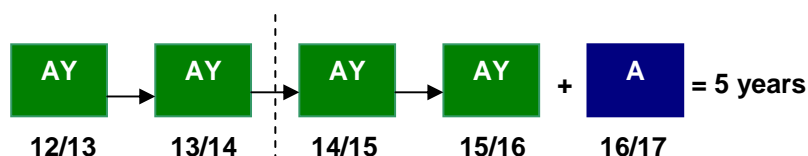
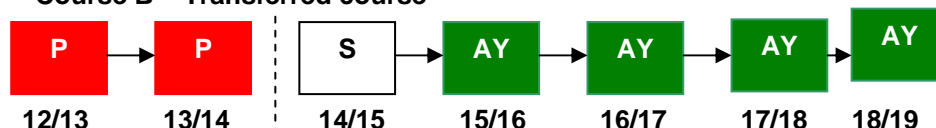
Example 4: Student C is a new system student who starts a four year degree course in September 2011 (the student has not attended a previous course). Student C is ordinarily entitled to four years support plus an additional year. Student C fails year one of the course for reasons other than CPR. The student is allocated fee support for the repeat year in accordance with regulation 6. Having successfully re-taken the first year the student enters year two of the degree which he fails for reasons other than CPR. Fee support cannot be allocated to this repeat year. Support from the student's entitlement is allocated to the later academic years of the course. The student will need to self-fund the repeat of year two of the course.

Transferring Students – New system students (all cohort groups) See SFWIN 01/2012 for 2012/13 changes

181. Where a student transfers courses, the basic principle still applies i.e. course length plus an additional year but less any years spent on previous courses (regulation 6). It is the length of the course that the student is transferring to which should be taken into account when determining the student's entitlement to fee support in respect of the second course.

Examples:

- a) Student F starts a four year degree course in 2012 (course A). Having completed the second year of the four year course the student transfers into year one of a five year degree course (course B). Both of the years spent on course A count as years spent on a previous course. Student F applies for support for the 2012/13 academic year. The student's entitlement is four years (i.e. five years plus one year minus two years on a previous course). Therefore entitlement is exhausted before fee support is allocated to the first year of course B. The student will need to self-fund her first year of course B but should then receive support to complete the remainder of the course.

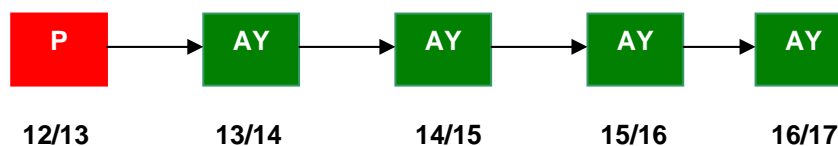
Course A – Original course**Course B – Transferred course**

- b) Student G starts a 3 year degree course in September 2012 (course A). The entitlement is three years support plus an additional year. Having passed the first year the student decides to transfer onto a 4 year course in September 2013 (course B). The year spent on course A counts as a year spent on a previous course. The entitlement for course B is 4 years – i.e. 4 years plus an additional year less the year spent on course A. Assuming there is no repeat study, there is sufficient support entitlement to complete the course with fee support allocated to each year.

Course A – original course

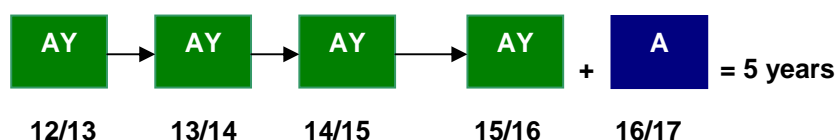
12/13 13/14 14/15 15/16

Course B – transferred course

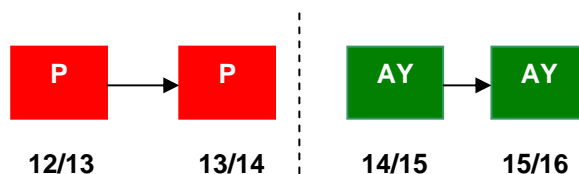


- c) Student H enrolled on a 4 year course in September 2012 (course A). Student's entitlement is 4 years support plus an additional year. Having completed 2 years of course A, the student transfers to the 2nd year of a 3 year course (course B). Both years on course A count as years spent on a previous course. Student H's entitlement for course B is ordinary course length (course B) plus an additional year less the 2 years spent on course A (i.e. $3+1-2 = 2$). Their entitlement therefore is 2 years support which, assuming no repeat study, is sufficient to complete the course.

Course A – Original course

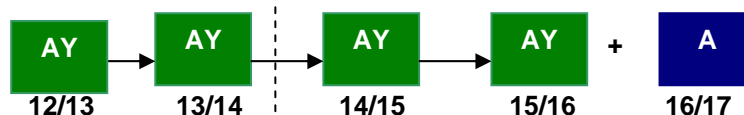


Course B - Transferred course

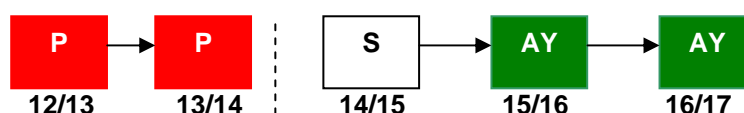


- d) Student J is also on a 4 year course which started in September 2011 (course A) and also completes the first two years but then transfers onto year 1 of a 3 year course (course B). Both years spent on course A count as years spent on a previous course. The student's entitlement for the course B will be 2 years (i.e. $3+1-2 = 2$). The student will need to self-fund the fees for the first year of the second course. Assuming no repeat study, fee support should be available for the remainder of the course.

Course A – Original course



Course B – Transferred course



‘Top-up’ courses

Examples:

A student completed a 2 year sub-degree course in August 2010. They went onto a 3 year course to top up to an honours degree – the honours degree course is an end-on course and regulation 6 applies. The student's entitlement is two years support. (i.e. $3 + 1 - 2 = 2$ years) so the student would need to self fund the first year of the top-up course. The student may receive further support if there are periods of repeat study of CPR.

1 Year stand alone ('top-up') course:

- 182.** Where a student has completed a 3 year sub-degree course (course A), intends to 'top up' their degree on a 1 year stand alone degree course, and Regulation 6 applies, the student's entitlement will be calculated as follows: $(3+2) - 3 = 2$, i.e. support for 1 year plus an additional year if needed (course B). (Regulation 6(10) and 6 (11))

Students transferring courses***Criteria for transferring eligibility***

- 183.** Regulation 8 sets out the circumstances in which students may have their status as an eligible student transferred to another course. LAs are required to transfer the student's status where:

- they receive a request from the eligible student to do so;
- they are satisfied that one or more of the grounds for transfer in Regulation 8(2) applies; and
- the period of eligibility has not terminated.

[See SFWIN 01/2012 for more information on changes to transfers between mode of study. .](#)

The grounds for transfer are -

- a) on the recommendation of the academic authority the eligible student ceases one course and starts to:
 - (i) attend another designated course at the same institution;
 - (ii) undertake another compressed degree course in the UK at the institution or
 - (iii) undertake a compressed degree course in the UK at the institution;
- b) the eligible student starts to -
 - (i) attend a designated course at another institution; or
 - (ii) undertake a compressed degree course in the UK with another institution;
- c) after commencing a course for the Certificate of Education the eligible student is, on or before completing that course, admitted to a designated course leading to a BEd (including a course leading to the BEd (Honours)), whether or not the course is at the same institution;
- d) having commenced a course leading to a non-honours BEd, the eligible student is admitted to a designated honours BEd course, whether or not the course is at the same institution; or

- e) having commenced a course for a first degree (other than an honours degree) the eligible student is, before the completion of that course, admitted to a designated course leading to an honours degree in the same subject(s) at the same institution.

Receiving institutions should notify course details to the LA so that the LA can check, and if necessary reassess support. The notification will be taken as the receiving institution's consent to the transfer. Where a course transfer takes place the 2010, 2011 and 2012 eligibility changes for support should be noted. The student would usually retain the same eligibility as they had at the start of their studies: therefore an eligible student who starts a course on or after 1st September 2010 having had their status transferred to that course under the Regulations from a course that they began before 1st September 2010 will not be a '2010 cohort' student (regulation 2(1)). Similarly, an eligible student who starts a course on or after 1st September 2011 having had their status transferred to that course under the Regulations from a course that they began before 1st September 2011 will not be a '2011 cohort' student and an eligible student who starts a course on or after 1st September 2012 having had their status transferred to that course under the Regulations from a course that they began before 1st September 2012 will not be a '2012 cohort' student. Where a student has their eligibility transferred from a previous course to the current course, but has switched their mode of study (e.g from PT to FT, FTDL to FT), and where the switch to mode has taken place on or after 1st September 2012, the student will become eligible for the package of support available to a new entrant in AY 2012/13 and not any previous package of support.

Eligibility for support for living costs

General

- 184. Support for living costs covers both loans and supplementary grants for dependants and travel grants (including the Assembly Learning Grant for maintenance). Details of the general additional eligibility criteria for these are set out below. For loans for living costs, general qualification conditions are set out in regulations 46 and 47. Amounts of loans for living costs for old system students and 'new system who are neither 2010, 2011, nor 2012 cohort' are set out in regulations 48 – 50. Amounts of loans for living costs for '2010 cohort' and '2012 cohort' students are set out in regulation 51, and amounts of loans for living costs for '2011 cohort' students are set out in regulation 52.

Students aged 60 and over

- 185. In order to qualify for a loan for living costs, eligible students will need to be (or have been) below the age of 60 on the relevant date. "Relevant date" is defined in regulation 60. In most cases it will be the first day of the first academic year of the current course. Please refer to the 'Assessing Financial Entitlement' Guidance Chapter for further details.
- 186. The age criterion does not apply to fee support for new or old system students, nor does it apply to dependants' grants, travel grants and DSA.

Other eligibility requirements

- 187. The following old and new system students will not be entitled to *grants for living and other costs* (regulation 25):
 - EU students who fall within Paragraph 9 of Part 2 of Schedule 1 to the Regulations and in no other paragraph of Part 2 will not be eligible for

any support towards living costs (regulation 25(2) and see also regulation 46(3) in relation to loans for living costs).

- Students who are eligible to apply for an income assessed “healthcare bursary” (see definition of ‘healthcare bursary’ in regulation 2 and paragraph 14 / Annex 1 of this Chapter);
- Students eligible to apply for an income assessed Scottish Healthcare Allowance (as defined in regulation 2);
- Students on part-time courses of initial teacher training (ITT) during which the periods of full-time attendance, including attendance for the purposes of teaching practice, are in aggregate less than 6 weeks, where the course began before 1st September 2010; except that they are eligible for Disabled Students’ Allowance (see the ‘DSA Guidance’ chapter);
- Students on part-time courses of initial teacher training (ITT) of any length, where the course begins on or after 1st September 2010 (these students should apply for the part-time support package – see the ‘Grants for Part-time Students’ guidance chapter)
- Students on sandwich years where the periods of full-time study are in aggregate less than 10 weeks, and the periods of work experience are not:
 - Unpaid service in a hospital or in a public health service laboratory or with a primary care trust in the UK;
 - Unpaid service with a local authority in the UK acting in the exercise of its functions relating to the care of children and young persons, health or welfare or with a voluntary organisation providing facilities or carrying out activities of a like nature in the UK;
 - Unpaid service in the prison or probation and aftercare service in the UK;
 - Unpaid research in an institution in the UK or, in the case of an eligible student attending an overseas institution as part of the eligible student’s course, in an overseas institution; or
 - Unpaid service with a Health Authority, a Strategic Health Authority or Special Health Authority or Local Health Board in England or Wales, or their Scottish or Northern Irish equivalents.

188. These groups of students will, however, be eligible for modified amounts of loans for living costs (with the exception of part-time ITT students whose course begins on or after 1st September 2010). Detailed guidance on these matters is provided in the ‘Assessing Financial Entitlement’ chapter of this guidance.

Designated courses

189. Only designated courses will attract support. Regulations 5 (full-time), 74 (distance learning), 91 (part-time) and Schedule 2 of the Regulations set out provisions in relation to the designation of courses for tuition fee support, living cost support and supplementary grants. Mixed mode courses are not supported, e.g. 3 year course with years 1 & 2 part-time and the final year full-time.

- 190.** A foundation year is treated as the first year of a course if it is an integral part of that course; that is if in enrolling for the foundation year the student was automatically enrolling for subsequent years. A student studying for a foundation degree is *not* undertaking a foundation year and the two should not be confused.

General criteria for automatic designation of courses

- 191.** A course will automatically be designated under regulation 5 if it is:

1. Of a type which is listed in Schedule 2 of the Regulations. This list is set under paragraph 190 below;
2. A full-time course, a part-time course of initial teacher training (ITT) which began before 1st September 2010 (including one leading to a first degree) or a sandwich course;
3. not a designated distance learning course;
4. (i) Of at least one academic year's duration or;
(ii) six weeks' duration in the case of a flexible postgraduate course for the initial training of teachers where the course began before 1st September 2010; and
5. Wholly provided by a publicly funded UK educational institution or institutions, or by such an institution in conjunction with an overseas institution.
6. Part-time courses (other than part-time courses of ITT which began before 1st September 2010 and are designated for full-time student support under regulation 5) are designated for part-time support under regulation 91 if they are at least one academic year's duration and do not exceed twice the period normally required to complete a full-time course leading to the same qualification and are wholly provided by a publicly funded UK educational institution or institutions, or by such an institution in conjunction with an overseas institution.
7. In relation to a postgraduate course (designated under regulation 117) (for Postgraduate Disabled Students' Allowance only) the course entry requirements are normally a first degree (or equivalent qualification) or higher. It must be at least one academic year's duration and in the case of a part-time course, should not exceed twice the period normally required to complete a full-time course leading to the same qualification. It must be wholly provided by a publicly funded UK educational institution or institutions, or by such an institution in conjunction with an overseas institution. Courses for the initial training of teachers or a course taken as part of an employment based teacher training scheme are not designated postgraduate courses.
8. Please also refer to regulation 5 (and Regulations 74 and 91) for exceptions.

Schedule 2 courses

- 192.** The following types of course are designated automatically providing they meet the other criteria set out above:
1. A first degree course (e.g. a BA or BSc).
 2. A course for the Diploma of Higher Education (DipHE).
 3. A course for the Higher National Diploma (HND) or Higher National Certificate (HNC) of:

- (a) The Business and Technician Education Council; or
 - (b) The Scottish Qualifications Authority
4. A course for the Certificate of Higher Education.
 5. A course of initial training for teachers.
 6. A course for the further training of youth and community workers.
 7. A course in preparation for a professional examination of a standard higher than that of:
 - (a) the examination at advanced level for the General Certificate of Education or the examination at the higher level for the Scottish Certificate of Education; or
 - (b) the examination for the National Certificate or the National Diploma of either of the bodies mentioned in paragraph 3,not being a course for entry to which a first degree (or equivalent qualification) is normally required.
 8. A course -:
 - (a) providing education (whether or not in preparation for an examination) the standard of which is higher than that of courses providing education in preparation for any of the examinations mentioned in 7(a) or (b) above but not higher than that of a first degree course; and
 - (b) for entry to which a first degree (or equivalent qualification) is not normally required (e.g. an NVQ level 4 where this is awarded along with a first degree, Dip HE or HND).

Interpretation of provisions on automatically designated courses

- 193.** The Welsh Government does not normally maintain any lists of courses which are automatically designated under regulations 5 (full-time) and 91 (part-time). All of these courses should appear on the SLC HEI database. However, not all of the courses which appear there will meet the criteria. It will be for LAs to decide which of them are eligible for support. LAs may find that the information they need to establish whether a course is within one of these paragraphs (for example, the entry qualification required, if any, and the qualification it leads to) should be relatively easy to obtain, for example from the student or from the institution. Institutions will in many cases be familiar with these qualifications and with the provisions in Paragraphs 6, 7 and 8 of Schedule 2 as they have certified eligibility for loans for students on these courses in the past and continue to do so for existing mandatory award students.

Courses in Schedule 2

- 194.** LAs will wish to note that the courses in Paragraph 5 of Schedule 2, will include courses on the School Centred Initial Teacher Training (SCITT) scheme. The list of approved SCITT courses (undertaken in England only) can be found on the Student Finance England website at <http://practitioners.slc.co.uk/policy-information/designated-courses.aspx>
- 195.** As a general principle, courses which may be designated under Paragraph 6 of Schedule 2 will lead to a specific qualification related to youth and community work. LAs will be able to identify these in many cases from the

course title and from the name of the qualification to which it leads. Previously this also referred to the further training of teachers

- 196.** Courses for the *further* training of teachers are not in the list of courses at Schedule 2. The **only** FE course attracting student support is at paragraph 212.

Compressed Degree Courses (courses in England only).

- 197.** Fast track degrees are supported by HEFCE as Flexible Learning Pathfinders. Welsh students who attend these pilot courses at designated English institutions will qualify for student support over the full period of study, regardless of requirement to attend.
- 198.** The number of students on these courses is small: less than 100 in 2006/07 at three HEIs; and an estimated 500 in 2007/08. Regulation 2(1) and (2) of The Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2011 defines a “compressed degree course” as a course meeting certain specific criteria that has been determined to be a compressed degree course by the Secretary of State.
- 199.** A list of courses which started in 2006/07 and are currently determined to be compressed degree courses for the purposes of The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 is shown below. The courses listed are undergraduate honours degree courses delivered over two long academic years (twenty four months) at HEIs funded by HEFCE.
- 200.** LAs will wish to note the criteria that a student must satisfy in order to be treated as a compressed degree student for the purposes of the Regulations. In particular, LAs should note that, unless the student is a disabled student who cannot attend the course for a reason connected to their disability, the student can only be treated as a compressed degree student for the 2011/12 academic year if they are required to be in attendance on the course for part of that year.
- 201.** Full details are given in SSIN 03/07 (available by contacting SSIN-queries@slc.co.uk).
- 202.** Courses determined to be compressed degree courses for the purposes of the 2006 and 2007 Regulations:

HEI	Course details (UCAS Code)	
University of Derby	Applied Earth Sciences (Accelerated F645)	2FT* Hon BSc
	Business Studies (Accelerated) (N102)	2FT Hon BA
	Combined Subject Programme (Accelerated) (Y000)	2FT Hon BA
	Combined Subject Programme (Accelerated) – (Adventure Tourism) (Y000)	2FT Hon BA
	Combined Subject Programme (Accelerated) – (Countryside Management) (Y000)	2FT Hon BA
	Combined Subject Programme (Accelerated) –	2FT Hon BA

	(Events Management) (Y000)	
	Combined Subject Programme (Accelerated) – (Hospitality) (Y000)	2FT Hon BA
	Combined Subject Programme (Accelerated) - (Outdoor Recreation) (Y000)	2FT Hon BA
	Combined Subject Programme (Accelerated) - (Public Relations) (Y000)	2FT Hon BA
	Combined Subject Programme (Accelerated) - (Public Services Management) (Y000)	2FT Hon BA
	Combined Subject Programme (Accelerated) - (Travel and Tourism) (Y000)	2FT Hon BA
Leeds Metropolitan University	Hospitality Business Management (N227) – 2 year full-time Degree	2FT Hon BA
	Sports Coaching (CX6D) – 2 year full-time Degree	2FT Hon BSc
	Tourism Management – 2 Year full-time Degree (N801)	2FT Hon BA
Staffordshire University	English Literature (2 year Fast Track) (Q320)	2FT Hon BA
	Geography - Two-year Accelerated Degree (FL8R)	2FT Hon BSc
	Geography – Two-year Accelerated Degree (LF7W)	2FT Hon BA
	LLB (2 year) (M101)	2FT Hon LLB

Further compressed degree courses starting in 2011/12 will be listed at:
<http://practitioners.slc.co.uk/policy-information/designated-courses/compressed-degrees.aspx>

*2FT means a full-time honours degree delivered over 2 academic years/24 months.

PGDE Courses in Scotland Only

- 203.** Teaching in Scotland has confirmed that the PGCE course run in Scottish universities has been renamed to PGDE (Professional Graduate Diploma in Education). This is an ITT course and therefore eligible for student support. This is not the same as the PGDE (Post Graduate Diploma in Education) in England which is not ITT and therefore not eligible for student support. Refer to paragraph 216, there is also a Professional Graduate Diploma in Education which is eligible for support. LAs should satisfy themselves that the PGDE course they are being asked to support is the Professional rather than the Postgraduate course. A full list of endorsed courses can be found at <http://www.standardsverificationuk.org/3196.htm>. The Professional

Graduate Diploma in Education (PGDE) course at Aberystwyth also attracts support as it leads to Qualified Teacher Status.

Flexible PGCE Courses (New System Students who started their courses before 1st September 2010)

- 204.** In 2007/08, the Training and Development Agency for Schools (TDA) paid the tuition fees directly to HEIs (England only) for all students on flexible PGCE courses which were recognised and funded as meeting the TDA's flexible modular criteria. Since 2007/08, the only provider of this provision in Wales is the Open University (OU). It is expected there will be around 25 participants at any one time. Refer to SFWIN 05/2008.
- 205.** Between 2008/09 and 2009/10, students starting flexible PGCE courses of at least one academic year in length have been eligible to receive tuition fee support in addition to living costs support. Students commencing flexible ITT courses of at least one year in length in academic year 2012/13 or continuing in 2012/13 on a course which commenced in 2010/11 or 2011/12 will only be eligible for the part-time support package (Part 12 of the Regulations).
- 206.** Students starting flexible PGCE courses in either 2008/09 or 2009/10 where the course lasts between six weeks and less than one academic year in length are eligible for tuition fee support products as these courses are designated under the Regulations. They remain ineligible for living cost support and regulations 25(3)(c) and 46(4) refer. (Students starting flexible PGCE courses of less than one year in length in 2012/13 or continuing in 2012/13 on a course which commenced in 2010/11 or 2011/12 are not eligible for any support under the Regulations as these courses are no longer designated).
- 207.** Flexible PGCE courses are designed for students who choose not to follow the traditional 1 year PGCE course (note that support may be available for a course which is less than one year in length provided that it started before 1st September 2010). At the start of the training there will be an initial assessment of the candidate's training needs. That assessment will last several weeks. It will be used to design a training programme to meet the individual's needs. In cases where candidates already have appropriate teaching experience, no further training may be necessary for the award of Qualified Teacher Status (QTS) for school teachers. Other candidates will be told how much longer they need to study to gain QTS.
- 208.** Most students on flexible PGCE courses will be employed, or be in receipt of a training salary, or both. It is likely, therefore, that few students, if any, will apply to LAs for support. However, such students on courses of at least one academic year in duration will be eligible for loans and grants for dependants and travel grants (subject to applicable means-testing provisions) should they apply for support. Generally, only those students who started their flexible PGCE course before 1st September 2010 will have access to loans.
- 209.** Returning applicants for student support are advised to complete the appropriate application form only when they know how long their flexible PGCE course will last. This could include on-line applications via the customer portal. Section 3 of the PR1 application form asks the student for details of course start date, expected finish date and length of course. Section 3(c) on the PR1 form asks the student to indicate which course they are on one of the options that can be chosen is 'flexible postgraduate initial teacher training (ITT)' course. If this box is ticked and the student is continuing on a course which commenced before 1st September 2010, the

student is then asked to 'give the number of weeks you will be studying full-time and the number of weeks you will be on full-time teaching practice in 2012/13'. The notes for guidance on the PN1 application form tell the student to provide a letter from the OU in Wales to confirm the number of weeks they will be on full-time study and full-time teaching practice. LAs should decide their own arrangements for confirming course details.

- 210.** Where the student is continuing on a course which commenced before 1st September 2010, the LA will also need to determine whether the periods of full-time attendance on the course (including periods of attendance for the purpose of teaching practice) are in aggregate less than 6 weeks. Old and continuing new system students (not 2010, 2011, or 2012 cohort) on ITT courses of less than 6 weeks will not qualify for grants for living and other costs (regulation 25(3)). They will only qualify for the reduced rate of loan for living costs (regulation 53(1)(b)) plus Disabled Students' Allowance where appropriate.

ITT courses for new students from 2010/11 onwards (Note that there are no specific changes to the Regulations in terms of defining 'full-time' and 'part-time' ITT students)

- 211.** Students commencing ITT courses on or after 1st September 2010 will be eligible for either the 'full-time' or 'part-time' student support package. They will no longer be defined in the Regulations according to the number of weeks of study plus teaching practice undertaken, and the definitions 'Type 1', 'Type 2' and 'Type 3' ITT students will not apply. Students continuing in 2012/13 on courses which commenced prior to 1st September 2010 or students transferring to ITT courses on or after 1st September 2010 from ITT courses which commenced prior to 1st September 2010 are not affected by this change and will be eligible for the package of support they received in 2009/10.
- 212.** Guidance on the definition of ITT courses starting on or after 1st September 2010 is as follows:

Full-time ITT courses

Full-time ITT courses that lead to a first degree are defined in the Regulations as per all full-time non-ITT courses that lead to a first degree (no change).

Full-time ITT courses that do not lead to a first degree (PGCE and equivalent courses) are courses of at least one academic year but no more than two academic years in length, where the periods of study in each academic year are at least 300 hours. A week of study can be considered as 30 hours.

Part-time ITT courses

ITT courses that are at least 1 year in length and do not meet the minimum hours criteria as set out above for full-time non-first degree courses are considered to be part-time ITT courses if the intensity of study is at least 50% of an equivalent full-time course over the duration of the part-time course. These courses attract the part-time support package only (Part 12 of the Regulations refers), regardless of whether or not the course leads to a first degree.

- 213.** All new students commencing full-time PGCE and equivalent ITT courses in 2012/13 (formerly known as 'Type 2' ITT students) will be eligible for a fully means-tested Assembly Learning Grant or Special Support Grant of

up to £5,000, as per new undergraduate full-time students in AY 2012/13. Eligible continuing '2011 cohort' full-time PGCE students may be entitled to a fully means tested Assembly Learning Grant or Special Support Grant of £5,600 in 2012/13. Eligible continuing '2010 cohort' PGCE students may be entitled to a fully means tested Assembly Learning Grant or Special Support Grant of £5,000 in 2012/13. Eligible continuing PGCE students who began their course prior to 1st September 2010 may be entitled to a fully means-tested Assembly Learning Grant or Special Support Grant of up to £2,906 in 2012/13.

Further Education ITE/ITT courses

214. PGCE (FE) Teacher Training Incentive Grant in Wales aims to attract good-quality candidates into teaching in further education. The training grant is available to graduates starting full-time postgraduate initial teacher training to teach at further education level with a higher education institution in Wales (currently Cardiff University, Glyndwr University and University of Wales Newport). No other forms of training provision apart from this specific scheme attracts support.
- The grants apply to graduate students on full-time pre-service courses of PGCE (FE) initial teacher training leading to a qualification to teach further education, starting between September and August. These courses do not confer Qualified Teacher Status (QTS), but attract student support in line with other full-time ITT courses.

England only courses

- Welsh domiciled students who choose to undertake the English ITE/ITT provision detailed in paragraphs 213 – 217 below, would also attract student support, depending on whether the course is full-time or part-time. Similar provision at Welsh institutions does **not** attract support.
215. England introduced Regulations (The Further Education Teachers' Qualifications (England) Regulations 2007) (Statutory Instrument 2007/2264) to reform the training and qualifications of all teachers, tutors, trainers, lecturers and instructors in the Further Education Sector from September 2007. The reformed ITT pathways will see all new Further Education teachers working towards either Associate Teacher Learning and Skills (ATLS) status or Qualified Teacher Learning and Skills (QTLS) status.
216. Qualified Teacher Learning and Skills (QTLS) in the Further Education Sector is the equivalent of Qualified Teacher Status (QTS) in schools (but does **not** lead to QTS).
217. When a prospective teacher enters the FE sector, the onus is on the employer to assess the role they will play and to specify the qualification needed. If the Welsh student needs to be trained, the Welsh Government would expect the employing colleges to ensure that contracts of employment cover their legal obligations within the Regulations.
218. Teachers will achieve ATLS status by studying a Certificate in Teaching in the Lifelong Sector (CTLTS) and QTLS by studying a Diploma in Teaching in the Lifelong Learning Sector (DTLLS). Courses may continue to be badged as CertEd or PGCE course or given new titles e.g. Professional Diploma in Education (PDE) and Professional Graduate Diploma in Education (PGDE) courses at Bolton University. ITT courses provided by higher education institutions can attract student support under the Regulations. However, since Academic Year 2008/09, courses validated

by awarding bodies can also be designated for student support. This means that students enrolling on such courses will be eligible to apply for fee and living costs support under the Regulations. LAs should ensure that courses meet the criteria set out in regulation 5.

- 219.** If a student was undertaking an ITT course at a privately funded institution, then they would not be eligible to apply for funding, unless the course was specifically designated. If a student is employed by a private institute and undertaking an ITT course at a publicly funded institution, then they can apply to the LA for funding.

Courses falling under Paragraphs 7 & 8 of Schedule 2

- 220.** Paragraph 7 specifies courses leading to professional examinations, i.e. above A-level/Scottish Higher/NC/ND and not higher than first degree and for which a first degree or equivalent qualification is not normally required.
- 221.** In establishing whether a course is within either of Paragraphs 7 and 8 of Schedule 2, LAs will, as well as determining the level of the qualification which the course leads to, need to establish the normal entry requirement. Courses are only within these paragraphs if a first degree or equivalent qualification is not a *normal* entry requirement. It will not be sufficient to establish that entry may be obtained without a first degree; the issue is whether entry without a first degree or equivalent qualification is the normal route. In the case of many courses leading to postgraduate qualifications, the likelihood is that they will not meet this criterion, as the normal entry route will be via a first degree or equivalent.
- 222.** NVQ level 4 courses may in some cases be below first degree or HND level and NVQ level 5 courses may not be post-graduate. If there are any doubts about a particular NVQ course consideration should be given to: the course entry requirements (if these are set at degree level or equivalent, the course is probably postgraduate; the fee payable for the course, and whether it is set at a level appropriate for a post-graduate course; guidance from the relevant professional or award making body, if the course is vocational; the view of other colleges running the same or similar courses; and how the course is generally regarded in the college).
- 223.** The provision under Paragraph 8 of Schedule 2 is a very general one. It has the effect of designating any course which meets the other requirements of regulation 5 and:
- Which is at a standard higher than GCE A levels, Scottish Highers, the National Certificate and National Diploma; but
 - Which is at a standard not higher than a first degree course; and
 - For which a first degree or equivalent qualification is not normally required.
- 224.** LAs will therefore find in many cases that they can establish whether a course falls under Paragraph 8 of Schedule 2 without having to establish whether it falls under either of Paragraphs 6 or 7.

Definition of full-time course

- 225.** Although 'full-time' is not defined in the Regulations, the following guidance may be used to decide whether a course is full-time. 'Full-time' courses should require that:

- Students are normally required to undertake the course for a period of a minimum of 24 weeks in each academic year, and for courses of two years or more, for a minimum of eight weeks in the final year;
 - That a whole year full-time fee is chargeable by the institution for the current year of the programme of study (exceptions to this will be made for students who are repeating part of a year);
 - Full-time means that students are required to undertake their course on most days of the week and for most weeks of the academic year for its duration, excluding weekends and the usual vacations (i.e. attendance on the course is the main call on the students' time during the working day).
 - Full-time ITT courses that do not lead to a first degree (PGCE courses) are courses of at least one academic year but no more than two academic years in length, where the periods of study in each academic year are at least 300 hours. A week of study can be considered as 30 hours (see paragraph 210).
- 226.** The LA will need to satisfy itself that the student's course is either full-time (see above), a sandwich course (see below) or a part-time course of ITT (see Regulation 5(1)(b)(iii)), before determining whether the student is eligible for support. This is of particular importance due to the 2010/11 changes to full-time and part-time ITT study (as described on see page 54).
- 227.** Study at premises outside the institution (for example at another institution) should be taken into account in determining whether it is a full-time course. Such study outside the institution need not necessarily be at another higher education institution or, indeed, at an institution in the United Kingdom. Therefore, a student who is required to attend the institution providing the course for 16 weeks in the academic year, and to attend another institution for a further eight weeks, would be considered to have been required by the institution to attend the course for 24 weeks.
- 228.** When determining whether the course is full-time, the weeks of attendance are those which the student would normally be required to attend, rather than those which the student actually attends.
- 229.** Additionally, such courses at publicly funded institutions which meet the criteria set out above would be subject to the tuition fee cap and should have an OFFA agreement (England only).

Distance learning courses

- 230.** Distance learning, sometimes called flexible or open learning, is a programme of study that allows students to study at home. Distance learning programmes have become increasingly popular over the last few years, as the Internet has developed into a reliable channel of tuition.
- 231.** Most colleges and universities offer some distance learning programmes now, from language courses to full undergraduate degrees, postgraduate programmes and MBAs. Some even offer courses or programmes entirely over the Internet, often called e-courses or online courses. They provide a mode of delivery for students who do not attend traditional on-campus courses, although there may be some short periods of attendance.
- 232.** For the purposes of this guidance, we are only concerned with undergraduate study.

- 233.** A distance learning course may be deemed full-time by the HEI because of the number of hours of study but only courses which meet all of the criteria below would in our view be a full-time course for the purposes of regulation 5(1) or 74(2) of the Regulations;
- Students are normally required to undertake the course for a period of a minimum of 24 weeks in each academic year, and for courses of two years or more, for a minimum of 8 weeks in the final year;
 - That a whole year full-time fee is chargeable by the institution for the current year of the programme of study (exceptions to this will be made for students who are repeating part of a year);
 - Full-time means that students are required to undertake their course on most days of the week and for most weeks of the year.
 - Additionally, from 1st September 2012 such courses at publicly funded institutions which meet the criteria set out above would be subject to the tuition fee set by the institution as agreed in their fee plans with HEFCW.
 - Please note that where the student starts a full-time distance learning course on or after 1st September 2012, the student will qualify for full-time fee support only in the same way as other full-time students. Such a student will qualify for no maintenance support. Where the student began the full-time distance learning course before 1st September 2012, the student will not, in the majority of cases, qualify for the full-time student support package. Instead they will qualify for limited means tested fee and maintenance support under Part 11 of the Regulations.
- 234.** Disabled students who are undertaking their course but not in attendance on it because they are unable to attend for a reason which relates to their disability. Such students are treated as if they were in attendance and should therefore complete the full-time (PN or PR) application form. **DSA** is also available to full-time disabled students who are undertaking but not treated as in attendance on their course.
- 235.** Students will complete the shorter part-time student support application form to apply for support in connection with a full-time distance learning course.
- 236.** Full-time distance learning courses which began before 1st September 2012 need to be specifically designated by the Welsh Ministers on an individual course basis under regulation 74. Students who begin distance learning courses prior to this date will only be able to claim support in respect of courses designated in this way. No support is available for courses which are not designated.
- 237.** Full-time distance learning courses which begin after 1st September 2012 will be automatically designated in the same way as other full-time courses.. As such, they will need to meet the requirements in regulation 5 and Schedule 2 to the Regulations..
- 238.** All students who are unable to attend an HEI for a reason related to their disability but who are able to undertake the course by distance learning will, however, remain eligible for the full-time student support package. This will be the case even if the course they are undertaking has been specifically designated under regulation 74(2). They will continue to apply for student support via the full-time student support application form.

- 239.** Students on full-time distance learning courses [that started before 1st September 2012](#) and who are not covered by the disability exemption above will receive funding under Part 11 provided that they meet the various eligibility and qualifying criteria. This group of students will include disabled students who have chosen to study by distance learning.
- 240.** The package of support offered to eligible distance learning students in connection with their undertaking designated distance learning courses [that started before 1st September 2012](#) is similar to that offered to eligible part-time students. Local Authorities, HEIs and students will, however, wish to be aware of the following key differences:
- (a) Regulation 72 sets out the criteria that a student must satisfy in order to be an eligible distance learning student [where the course starts prior to 1st September 2012](#). These criteria are not identical to those found in regulation 89 (eligible part-time students). The criteria in regulation 72 take into account that DSA will in future be payable to distance learning students (other than those who are treated as in attendance) under Part 11 of the Regulations and not Part 5 of the Regulations;
 - (b) Support is only payable to eligible distance learning students in connection with their undertaking designated distance learning courses. A 'designated distance learning course' is a full-time distance learning course which has been specifically designated by the Welsh Ministers under regulation 72 (2), [where the course began before 1st September 2012](#). If a full-time distance learning course is not specifically designated under regulation 72 then students on that course will not be eligible for the distance learning support package;
 - (c) The support payable to eligible distance learning students [who started a course before 1st September 2012](#) is set out in regulations 76 (covering fee grant and course grant) and 79 (covering disabled distance learning students' allowances);
 - (d) The maximum amount of fee grant payable to eligible distance learning students [who started a course before 1st September 2012](#) will be £1,025, which is the maximum payable to part-time students, and the maximum amount of course grant will be £1,155. Authorities do not need to calculate a student's intensity of study to determine the maximum fee grant payable to be a particular student. In all cases, this will be the lesser of; (a) the fees actually payable by the student; and (b) £1,025. The means test that applies to the fee and course grants is, however, identical to the part-time means test;
 - (e) All full-time distance learning [students who started a course before 1st September 2012](#) who are currently eligible for DSAs and are not treated as in attendance for the purposes of the Regulations will be paid DSA under regulation 79. DSAs are payable under regulation 79 at the full-time rates provided for in regulation 26 to reflect the position prior to 1st September 2007. Regulation 84 makes provision for the transfer of status of these students from eligible student to eligible distance learning student;
 - (f) Provision is also made for the transfer of status of students who were previously deemed to be eligible students but who did not qualify for support solely because they were not in attendance on a designated course (regulation 84).

Learning in the workplace

- 241.** For the purposes of determining whether a course is a full-time course, the period for which the student is required to undertake the course can include *learning in the workplace*, where that learning forms a compulsory part of the course. Such learning is frequently a feature of foundation degree courses, introduced in 2001/02. It may also occur in courses other than foundation degree courses.
- 242.** Learning in the workplace is a structured academic programme, controlled by HE institutions, and delivered in the workplace by academic staff of the institution, or staff of the employer, or both.
- 243.** Unlike *work experience*, which is one element of a course, learning in the workplace is at the heart of an individual's learning programme and must be subject to the same level of academic supervision and rigour as any other form of assessed learning. It includes:
- The imparting of relevant knowledge and skills to students
 - Opportunities for students to discuss knowledge and skills with their tutors
 - Assessment of students' acquisition of knowledge and skills by the institution's academic staff, and perhaps jointly with an employer.
- 244.** Learning in the workplace should, in the Welsh Government's view, be a substitute for learning that would normally take place within an institution.
- 245.** The actual machinery (whether lectures, tutorials, examinations or other means) is not crucial in identifying learning in the workplace, so long as knowledge and skills can be shown to be effectively imparted and assessed.

Sandwich courses

- 246.** Regulation 2(6) defines a sandwich course. A course is a sandwich course if it is not a course for the initial training of teachers, it consists of alternate periods of full-time study in an institution and periods of work experience; and taking the course as a whole, the student attends the periods of full-time study for an average of not less than 18 weeks in each year. Entitlement to the Assembly Learning Grant will depend on the number of aggregate weeks of full-time study and the cohort of student, see regulation 39 for 'new system students who are neither 2010, 2011 nor 2012 cohort', regulation 40 for '2010 cohort' and '2012 cohort' students, regulation 41 for '2011 cohort' students.
- 247.** Regulation 2(7)(b) provides that, for the purposes of calculating the student's attendance, the course shall be treated as beginning with the first period of full-time study and ending with the last such period.
- 248.** Regulation 2(7)(c) provides that where periods of full-time study and work experience alternate within any week of the course, the days of full-time study shall be aggregated with each other and with any weeks of full-time study in determining the number of weeks of full-time study in each year.
- 249.** Only *full* days of full-time study (not part days) should be counted. Also, when counting days of study to make up a number of weeks of study, the divisor should be 5 rather than 7 – see the following example.

- 250.** As an example, a course that required 3 days' full-time study and 2 days' work experience per week, over a 30-week academic year, would give an aggregate of 18 weeks' study (3 days x 30 weeks = 90 days, which, divided by 5, gives 18 weeks). If that were the pattern in each academic year of the course, so that the average of (not less than) 18 weeks' full-time study in a year was maintained throughout, this course would attract support as a sandwich course.
- 251.** Conversely, a course would not attract support as a sandwich course if it required 2 days' study and 3 days' work experience per week over 30 weeks, in each academic year of the course, because the number of days of full-time study would add up to less than 18 weeks in each year (and thus less than 18 weeks a year on average). It could however attract part-time support if it met the definition of a part-time course in Regulation 91.
- 252.** Another possible example is of a 2-year sandwich course that required:
- Year 1 - 4 days' study and 1 day's work experience each week for 30 weeks
 - Year 2 - 2 days' study and 3 days' work experience each week for 30 weeks.
- There would be an aggregate of 24 weeks' study in Year 1 and 12 weeks' study in Year 2, averaging 18 weeks a year. The course would attract support.
- 253.** Where students will be undertaking weeks which alternate periods of full-time study in an institution and periods of work experience, the term dates from the HEI course database provided by the Student Loans Company will not provide sufficient information for LAs to determine the appropriate level of support (including extra weeks of support where appropriate). LAs will need to refer to the information provided by students in their applications; and they may also need to contact HEIs to ascertain attendance patterns.
- 254.** Full-time study in an institution does not in our view include *learning in the workplace*. Such learning is a feature of some foundation degree courses. It may also occur in courses other than foundation degree courses. There is further guidance and a definition of learning in the workplace in paragraph of this chapter.
- 255.** Provisions relating to the support available for old system students on sandwich placements are in regulations 17 (Amount of grants for fees), regulation 25 (General qualifying conditions for grants for living and other costs), regulation 22 (Amount of the Fee Contribution Loan) and regulations 53(1)(b) and (2)(b) (Maximum amounts of loans for living costs).
- 256.** Provisions relating to the support available for new system students on sandwich placements are in the appropriate parts of regulation 25 (General qualifying conditions for grants for living and other costs), regulations 23 and 24 (Amount of the fee loan) and regulation 53(1)(b) and 2(b) (Maximum amounts of loans for living costs).
- 257.** Further guidance on support available for sandwich placements is in the 'Assessing Financial Entitlement' chapter of this guidance, which explains how the principle of aggregating days of study applies also to determining levels of support.

- 258.** The intention of the definitions of full-time and sandwich courses is to distinguish those courses which consist entirely of full-time study from courses which involve work experience. Courses involving periods of study and of work experience, even if the work experience placements are very short and amount to only weeks or parts of weeks (as they often do in the case of full-time HNC courses), should be treated as sandwich courses, and whether they are designated for student support will depend, among other things, on whether they meet the definition at regulation 2(7).
- 259.** LAs will need to be observant of the difference between a sandwich course with periods of work experience and a part-time course. Regulation 2(7) specifies that the periods of experience must form part of the course and that they must be associated with full-time study at an institution.
- 260.** 'Periods of work experience' are defined in Regulation 2(1) and may include periods during which modern language students spend living and working in a country whose language they are studying on their course.

Architecture courses

- 261.** The Welsh Government's understanding is that in order to potentially qualify to register as an architect a student must complete five years' study - years 1 to 3 being Part 1 (leading to a first degree) and years 4 and 5 being Part 2 (leading to a professional Diploma or equivalent qualification). Students are also required to complete two years worth of relevant practical experience. Students following the typical pattern of study normally complete one year of practical experience between Parts 1 and 2 and a further year at the end of Part 2.
- 262.** Regulations 5(6) and 5(7) of The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended allow the two parts of the architecture course, which may be undertaken at different institutions, to be treated as one single course for student support purposes. The Welsh Government is of the view that this position is unaffected by a student undertaking a year's practical experience between the two parts. The final year of Part 1 will therefore attract the full-year loan rate, rather than the final-year loan rate. The Welsh Government is also of the view that the two parts can still be treated as a single course even if a student takes a break of more than one year between them provided it is clear that the student had not withdrawn from the overall course at the end of Part 1. So, for example, if a student completes Part 1 and a year of practical experience and then decides to take a year out before starting Part 2, the student can still be treated as attending the same single course provided the facts of the student's case do not show that they withdrew from the course at the end of Part 1.
- 263.** The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended do not require a student to declare, before starting or completing Part 1, their intention to attend both Parts 1 and 2 in order for the two Parts to be treated as a single course. However, establishing the student's intentions at the outset of or during Part 1 may assist LAs in determining how to treat a student who does not follow the typical pattern of study.
- 264.** The Welsh Government is of the view that a student, who takes more than a single year out between Parts 1 and 2 and notifies their LA of this and of their intention to resume their studies at a later date, should be treated in the same way as any other student who has temporarily suspended study. For example, if after completing their year of practical experience a student decides to take a year out, then provided that the student has notified their

LA of this, the student should normally remain eligible for full support for Part 2 of the course. This would apply equally if a suspension of study notice was received from the student's HEI.

- 265.** If a student does not follow the typical study pattern and the LA has not received a notification from the student or the relevant HEI, the Welsh Government is of the view that an LA should only treat that student as having temporarily suspended study if it is clear on the particular facts of the case that the student had not withdrawn from the course at the end of Part 1. The Welsh Government is of the view that where a period of three years has elapsed since the student completed Part 1 (in other words two years after one would expect the period of practical experience to have been completed), it may be reasonable to determine that the student has withdrawn from the single course. However, LAs will need to satisfy themselves, on a case by case basis, that such a decision would be appropriate.
- 266.** The previous study rules should apply in the case of any student who is treated as having withdrawn from the original single course. Consequently, such a student would not be eligible for tuition fee support for a Part 2 course.
- 267.** A student may apply to their LA for support in respect of Part 2 of the architecture course only. This may be because they have undertaken relevant previous study overseas and do not need to take Part 1
- 268.** It should be noted that there is also a Part 3 to an architecture course but the Welsh Government is of the view that this is of a standard higher than a first degree and as such is not covered by The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended.
- 269.** Students who are on courses covered by regulation 5(7) that meet the definition of a sandwich course in regulation 2(7) are potentially eligible for support during their year of practical experience. They may only be eligible for reduced amount of fee support if their periods of full-time study are below certain levels (under regulation 17(4)(b) if they are new system students (all cohort groups) or under regulation 17(2) if they are old system students). Any student whose periods of full-time study in the relevant academic year are in aggregate are less than 10 weeks and whose periods of work experience do not constitute periods of unpaid service will qualify only for the reduced loan for living costs under regulation 53(1)(b) and (2)(b) in that year (because regulation 25(5) will apply). This is of course subject to the student satisfying the other eligibility criteria for the loan.
- 270.** In cases where a student takes a free-standing Part 1 course followed by a year of practical experience, then subsequently takes a free-standing Part 2 course, it is the Welsh Government's view that he or she cannot be said to be on a sandwich course as defined in regulation 2(7). Consequently, such a student will not be eligible for support during the year of practical experience.

Intercalated study

- 271.** Certain courses which are not higher than first degree level and which lead to more than one qualification, either as an optional or integral part of the course, will be considered to be single courses (regulations 5(6) and (7)). These are:
- Medical, dental and veterinary science courses which include

an intercalated first degree such as a BSc;

- Courses in architecture, landscape architecture, landscape design, landscape management, town planning and town and country planning where qualifications are awarded both at an intermediate point in the course and at the end. However, LAs should note that where the second part of a course leads to a postgraduate degree, that part should not attract support. In the case of architecture Part 2 courses, in order to qualify for funding for Part 2 the student must be attending an undergraduate not postgraduate course where the degree awarded is not higher than the first degree.
- Courses in architecture which are prescribed by the Architects Registration Board and which cover Part 1 and Part 2 but not Part 3. Part 2 of the course (years 4-5 of study) will attract support even if the student is additionally awarded a postgraduate degree as long as the content of the course is undergraduate level and undergraduate level fees are charged. However, LAs/SLC should note that Part 2 should only be funded when taken by a student who has already taken Part 1 as an undergraduate course, such as MArch (or is exempted from Part 1)

Foundation years as part of an extended course

- 272.** Some courses are extended beyond their normal length to include a foundation year designed to prepare for study in their chosen subject those entrants whose qualifications or experience, while acceptable for entry to higher education, are not entirely appropriate for normal entry to their particular course. The whole of this type of extended course is designated for support provided that:
- The foundation year is an integral part of the course and that the course as a whole is designated by or under the Regulations; and
 - Students enrol at the outset for the full duration of the extended course.
- 273.** Foundation years are not the same as foundation degrees and the two should not be confused (see paragraph 283 for guidance on full-time courses including foundation degrees).

Free standing foundation and conversion courses

- 274.** Free-standing foundation or conversion courses are not normally designated in their own right if they are not an integral part of a designated course. The following additional tests may help LAs to determine whether or not a foundation year is an integral part of a designated course. In the Welsh Government's view, it may be regarded as such a part, provided that:
- Where the foundation year is undertaken at another institution, students are enrolled with the parent institution providing the designated course and for the full duration of the extended course;
 - The foundation year does not normally lead to any separate award or qualification in its own right; and
 - The whole course provides for students to proceed

automatically on successful completion of the foundation year to the next year of the course.

Access courses

- 275.** Access courses are separate and distinct courses which prepare students for entry to courses in Higher Education (HE). They are courses of further education and assume successful completion before progression to HE takes place. They are not therefore likely to be capable of designation for student support purposes in their own right because they do not lead directly to one of the qualifications shown in Schedule 2. At the same time they are unlikely to meet the criteria for foundation years as part of a designated extended degree course and so will not attract support on that basis either.

Twin-track access courses

- 276.** A recent development has been to provide access courses which also allow students to treat attendance on them as part of a later degree course for credit transfer purposes. In the Welsh Government's view, such courses should properly be regarded as access courses for the purposes of the Regulations. A twin-track course should be treated as part of a designated course only if it meets the criteria set out for foundation years above.

Franchising arrangements

- 277.** Many institutions of higher education have entered or are considering franchising arrangements for their courses with other institutions of higher and of further education (including private institutions). Franchising arrangements take a number of forms. For example, the parent institution may determine to a varying degree the course content, may provide some or all of the course materials and may provide some or all of the lecturers. The parent institution may also enrol the students itself and receive grant from its Funding Council in respect of them, and be responsible to its Funding Council for the quality of the teaching on the course.
- 278.** Where a whole course is franchised, it should be regarded for the purposes of the Regulations as being provided by the franchisee, as long as the franchisee is providing the training and supervision. A course is provided by the institution which provides the teaching and supervision of the course (regulation 5(5)(a)). If the franchisee is a publicly funded institution, and the course is one which is capable of designation under regulation 5, it will be automatically designated. However, if it is a private institution, specific designation for it will have to be sought from the Welsh Government. The public rate of fees would apply to a franchised course.
- 279.** Courses which have been partly franchised should be regarded as courses which are being jointly provided by both institutions. Courses which are jointly provided by two publicly funded institutions satisfy regulation 5(1)(e). Courses which are jointly provided by a publicly funded institution and a private institution may be specifically designated by the Welsh Government.

Part-time courses

- 280.** Please refer to the separate guidance on part-time courses. [There are no significant changes to the support available for part-time study in AY 2012/13 \(the application period has been extended to 9 months to bring it into line with full-time applications\). There are likely to be significant](#)

changes made in AY 2013/14 with the introduction of a fee loan and a fee grant.

60 credit courses

281. Please refer to the separate guidance on part-time courses.

Specific designation

282. The Welsh Government has the power to designate courses, which are not automatically designated under the Regulations (regulation 5(8) for full-time courses, regulation 91(6) for part-time courses and regulation 117(4) for postgraduate courses). The Welsh Government considers applications for designation for courses of HE at private institutions and NHS colleges. These can be for full-time or sandwich courses, part-time courses, or part-time courses of ITT, as well as Postgraduate courses for the purpose of awarding DSAs. These courses would need to be satisfactorily validated by a recognised UK awarding body.
283. The list of designated courses for dance and drama awards can be found in the 'HE Dance and Drama Courses' [section of the 2012/13 "Assessing Financial Entitlement" guidance chapter..](#)

Specific designation of postgraduate courses for the purpose of Disabled Students' Allowances

284. Postgraduate courses can be specifically designated solely so that students can receive the Disabled Students' Allowance. This includes courses such as the Legal Practice and Bar Vocational course.

Foundation degrees

285. Foundation degrees are vocational higher education qualifications that frequently combine academic study with learning in the workplace. They are designed to address the skills gap at the associate professional and higher technician level. The first foundation degrees began in autumn 2001. Foundation degrees are being developed and delivered by consortia consisting of HEIs with degree awarding powers, further education colleges, relevant professional bodies and employers. They are designed to be flexible to suit different situations, and courses will be completed in two years if studied full-time. Foundation degrees constitute 240 credits, and should enable the student to graduate to honours degree level with up to 1.3 years of further study.
286. Many foundation degree courses are automatically designated for support, provided they meet all parts of Regulation 5(1). However, HEIs have been encouraged to be flexible in their provision of foundation degrees, and consequently a number may be organised so that days of learning in the workplace and days of study are combined in the same week. We do not want students on these courses to be penalised relative to those doing a similar amount of study but via a more traditional route.
287. Foundation degree courses may be full-time courses (as described at paragraphs 223 - 227) or sandwich courses. Some may be part-time in that (a) they do not contain enough full-time study per year on average to meet the definition of a sandwich course, and (b) they meet the definition of a part-time course at regulation 91.

- 288.** Some foundation degree courses feature learning in the workplace, which should be treated as full-time study in an institution for the purposes of the definition of a sandwich course and of determining levels of support.

Students on a course in Scotland lasting four years or more

- 289.** Old system Welsh domiciled students continuing on an honours degree course at a Scottish HEI which they began on or after September 2001 will have any assessed contribution to their tuition fee waived in their final year of study. This arrangement is referred to as the Quigley agreement and was agreed in September 2001 by the Scottish Government (SG). To qualify the student has to be enrolled on an honours course of four or five years duration and at the time of commencing their studies, there was an equivalent course over a lower number of years in their home domicile. The Student Awards Agency for Scotland (SAAS) will be paying the tuition fee contribution on behalf of the Scottish Government, though this is only for eligible students that have been assessed to make a part or *full* contribution to their fees.
- 290.** The Quigley Agreement will also apply to Welsh domiciled gap year students who started in 2006/07.
- 291.** Eligible Welsh students under the Quigley agreement will be identified by the SLC using the single system and a 'potentially eligible flag' will be applied to all identified student records in. From the single system, LAs will be able to identify Quigley students by the 'potentially eligible flag' when they apply for student support for the following academic year. LAs will then issue the Financial Support Notification (FSN) to the eligible student which will show they are entitled to full fee support. The Quigley flag will then update to 'eligible'. Students will not be informed of the details regarding their exemption from payment of tuition fees under the Quigley agreement. Instead, they will just be notified that their tuition fees will be waived in their final year of study and their HEI will receive the funds direct.
- 292.** LAs should be aware that the amount of assessed contribution that is being waived and paid for by the SG should not be applied against any dependants' grants or the means-tested element of the loan and reduced by that amount. If the student is assessed for a contribution which exceeds the maximum amount of grant for fees then, in these circumstances, the amount above the maximum should continue to be offset against any dependants' grants or the maintenance loan which they are eligible for.
- 293.** The SLC in conjunction with other external stakeholders will ensure that Scottish HEIs receive the Quigley payment the following February once the SLC has received attendance reports.
- 294.** The Quigley agreement does not apply to 'new system' students starting courses in 2006/07 or later.

Annex 1

STUDENTS ELIGIBLE TO APPLY FOR AN NHS BURSARY

1. NHS Bursaries are available (subject to income assessment) to students on full or part-time courses leading to professional registration in:
 - Audiology (for courses recognised by the British Association of Audiological Technicians (BAAT), the British Association of Scientists (BAAS) and the British Society of Hearing Therapists (BSHT);
 - Chiropody;
 - Dental hygiene;
 - Dental therapy;
 - Dietetics;
 - Nursing (including courses to convert from second to first level registration);
 - Midwifery;
 - Occupational therapy;
 - Operating department practice (Dip HE only);
 - Orthoptics;
 - Physiotherapy;
 - Physiological measurement technicians – cardiac, neurology and audiology
 - Prosthetics and orthotics;
 - Radiography;
 - Speech and language therapy.
2. Continuing NHS-funded students on courses in nursing, midwifery and operating department practice are eligible for support for fees and non-means tested bursaries via the NHS Bursary Scheme. They are not eligible for any support under The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 [as amended](#). [Please note that the NHS Bursary Scheme will change in relation to all students who start healthcare related courses after 1st September 2012. Nurses, midwifery and operating department practice students will be eligible for the same level of support as other students who study healthcare related courses.](#)
3. [Under the new arrangements, fees for the above courses will continue to be commissioned directly by the NHS. As such, no fees will be charged directly to students and no fee support will be available under the Assembly Learning Grants and Loans \(Higher Education\) \(Wales\) \(No.2\) Regulations 2011 as amended. In addition, all students who start the healthcare related courses above after 1st September 2012 will be eligible for a non means tested NHS bursary of £1,000. Such students will also be able to apply for a means tested NHS bursary of up to £4,395. These students will also be eligible to apply, under the Assembly Learning Grants and Loans \(Higher Education\) \(Wales\) \(No.2\) Regulations 2011 as amended for a means tested, reduced rate maintenance loan of up to £2,324.](#)

4. As stated above, in general terms students eligible for NHS bursaries (whether means tested or not) are not eligible for support for fees or maintenance grants under The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended - see regulations 4(3)(c), 16(3)(a), 21(2)(a) and 25(3)(a). (However, see paragraphs 6-7 below for the special arrangements for graduate entry medical and dentistry students starting specific courses on or after 1st September 2012.)
5. Students on the standard undergraduate medical and dentistry courses are eligible, under The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended, for support on the same terms as other students for the first four years of their courses. For the fifth and subsequent years of their courses they are eligible for NHS bursaries and a reduced rate maintenance loan (means tested) under the Regulations. Fees for their fifth and subsequent years of study will be commissioned directly by the NHS, and as such no fee support is available. There are some exceptions to this rule: students who intercalated in the first four years of their course will only be in the fourth year of their medical or dental course when they reach their fifth year of study, but will still be eligible for the NHS bursary. Similarly, any students who undertook a foundation year as an integral part of their medical course will be eligible for the NHS bursary in the fifth year of study. Students who repeat a year, however, will not be eligible for a NHS bursary until the fifth year of their course.
6. Students on a graduate entry accelerated programme (a course leading to a qualification as a doctor or dentist which normally requires a first degree (or equivalent) as an entrance qualification and does not take longer than four years to complete) are covered by The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2011 as amended. Subject to meeting the usual eligibility conditions and income assessment, they are entitled to full loan and grants for dependants and travel grants. In most cases they will not be entitled to fee support or the maintenance grant or special support grant because of previous study. However, there will be circumstances where previous study does not prevent graduate entrants from receiving fee support or the maintenance grant or special support grant. For example, regulation 7 does not exclude students who obtained their first degree outside the UK. Therefore, graduate entrant medical students should be assessed for fee support and the maintenance grant or special support grant for the first year of their course in the same manner as any other student, but with particular regard for the previous study rules. Also, please note that where a graduate entry accelerated programme starts on or after 1st September 2012 (AY 2012/13 only) students will be eligible for a partial tuition fee loan for each year of their course (Regulation 24B of the Regulations). These students are required to self fund the first £3,465 of the fee charged in year one, and can receive a partial tuition fee loan for any additional fee charged above £3,465, up to a maximum of £9,000. In subsequent years of the course the first £3,465 (or uprated amount) will be paid by the Department of Health and the student can receive a tuition fee loan to fund the difference of up to £9,000.
7. In year 1 of their course, students starting a graduate entry accelerated programme from 1st September 2012 will be eligible for a full rate means tested maintenance loan under the Regulations (Regulation 51). In years 2-4 of the course, they will also be eligible for NHS bursaries, comprising of fee support (up to £3,465) and a combination of means-tested and non means tested maintenance bursaries, as well a reduced rate means tested maintenance loan under the Regulations. . The 4 year accelerated graduate entry programmes are at Birmingham, Bristol, Cambridge,

Leicester, Warwick, Newcastle, Nottingham, Oxford and Queen Mary's University College (London) Universities, Swansea and also at St George's and Southampton Medical Schools, The Royal Free and University College Medical School and London and Liverpool Medical School.

8. Most of the information needed for dealing with applications from students who are eligible to apply for an NHS bursary for the 2012/13 year of their course is covered by the questions set out in the application form and most of that information will be relevant to the student's eligibility.
9. LAs will need to determine, in particular, the course subject, qualification and start date, to determine whether it is a pre-registration course, whether it leads to a diploma in nursing, midwifery or operating department practice, whether it is a medical or dental course and whether it is subject to the new or revised NHS bursary arrangements. They will also need to note the year of the course, in the case of a medical or dental course. Students who are eligible to apply for an NHS or DOH income-assessed bursary should send the letter which confirms this. It will be in order for LAs, if they wish, to ask the student for supplementary information about the bursary (such as a letter from the appropriate NHS grants unit) before determining their eligibility for the minimum amount of loan for a student with reduced entitlement. Such students will be subject to the same eligibility criteria for loans as other students. They will therefore need to be under 60 on the relevant date.
10. It will not be necessary to go through the financial assessment process if the student is eligible only for the minimum amount of loan for a student with reduced entitlement. Where an applicant has indicated that they are eligible to apply for an income assessed NHS or DOH Bursary, the system will calculate their entitlement to living costs support at the reduced rate. For further information see the 'General Administration Eligibility and Assessment' chapter.
11. Responsibility for handling student applications for bursaries is dependent on where the student studies, but the student should apply to the LA where they are ordinarily resident for a loan. For example, a student ordinarily resident in Wales who is studying at an institution in England would apply to England for an NHS bursary and to their LA in Wales for a loan. Further information on NHS eligibility rules can be found on the NHS website at: <http://www.nhsbsa.nhs.uk/students>
12. The following are details of the bodies providing NHS bursaries to students in the United Kingdom.

England

Student Grants Unit
Hesketh House
200-220 Broadway
Fleetwood
Lancashire
FY7 8SS

Tel: 0845 358 6655
email : nhs-sgu@ukonline.co.uk

Wales

The (NHS) Wales Student Awards Unit
3rd Floor
14 Cathedral Road
Cardiff
CF11 9LJ

Tel: 029 2019 6167
www.wales.nhs.uk

Northern Ireland

Scotland

Department of
Employment and Learning
(DELNI)
Student Support Branch
4th Floor, Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD

Tel: 028 9025 7777
www.delni.gov.uk

Student Awards Agency for Scotland
Gyleview House,
3 Redheughs Rigg
South Gyle
Edinburgh
EH12 9HH

Tel: 0845 111 0243
www.saas.gov.uk

NHS Secondedees

13. The Department of Health has confirmed that health care students who are employed by NHS trusts and seconded onto health care courses are not eligible for NHS bursaries. These students continue to receive their salary and have their tuition fees paid by the NHS, but the payment of their fees falls outside the NHS bursary scheme. Such students, who receive assistance from the NHS only for their fees, are not excluded from the student support provisions and can therefore receive grants and loans for living costs on the same basis as other students, subject of course to their satisfying all the usual eligibility criteria. Further information is provided in 'Update' Edition 63 (April 2004).
14. As seconded NHS employees will have their fees paid by the NHS, in order to prevent double funding of fee support, applications should be processed in the usual way through Protocol. However, when approving the application LAs should manually over-ride the tuition fee amounts and set them to zero. Setting the 'public contribution to fees' box to zero will ensure the HEI is not paid a fees contribution by the SLC. Setting the 'student contribution to fees' box to zero will ensure the HEI does not invoice the student for a contribution to fees.

Annex 2

MEMBER STATES OF THE EC AND THEIR DATES OF ACCESSION

The member states of the EC and their dates of accession are:

Belgium	1.1.58
France	1.1.58
Italy	1.1.58
Luxembourg	1.1.58
Netherlands	1.1.58
West Germany	1.1.58
Denmark	1.1.73
Ireland	1.1.73
United Kingdom	1.1.73
Greece	1.1.81
Portugal	1.1.86
Spain	1.1.86
Austria	1.1.95
Finland	1.1.95
Sweden	1.1.95

With effect from 1st May 2004 the following countries joined the EC:

Cyprus
Czech Republic
Estonia
Hungary
Latvia
Lithuania
Malta
Poland
Slovakia
Slovenia

With effect from 1st January 2007 the following countries joined the EC:

Bulgaria
Romania

Cyprus – The Sovereign bases on Cyprus are not part of the EC.

Denmark: On 1st February 1985, Greenland, part of the Kingdom of Denmark, ceased to be part of the EC. The Faroe Islands are not part of the EC.

Germany: From 3rd October 1990, the former German Democratic Republic became part of the Federal Republic of Germany. The enlarged Germany remains a member state and all nationals have full EC rights. Heligoland, although a tax-free port, is part of the EC.

Finland: The Åland Islands are part of the EC.

France: The French Overseas Departments (DOMs) (Guadeloupe, Martinique, French Guyana, Réunion) are part of Metropolitan France and the Treaties apply. But French Overseas Territories (French Polynesia, etc.) (TOMs) are not part of the EC.

Netherlands: The Netherlands Antilles and Aruba are not part of the EU.

UK: The Channel Islands and Isle of Man are not part of the EC (although many EC provisions relating to trade are applied there). Gibraltar on the other hand is

part of the territory of the Union (even though exempt from many EC rules). Gibraltarians are eligible to apply for fees-only awards. They may be eligible for migrant worker status if they took up employment in an EEA country or Switzerland before coming to the UK to take up employment. The Sovereign Bases on Cyprus, the Falklands and other UK Dependent Territories are not part of the EC.

Spain: The Balearic Islands and the Canaries are part of the EC as are Ceuta and Melilla.

Portugal: Madeira and the Azores are part of the EC (under special terms). Macao is not.

Andorra, Monaco, San Marino and The Vatican City are not part of EC.

Member states of the EEA as from 1st January 2007

The member states of the EEA are, as of 1st January 2007:

Austria	Belgium
Bulgaria	
Cyprus	Czech Republic
Denmark	Ireland
Estonia	Finland
France	Germany
Greece	Hungary
Iceland	Italy
Latvia	Lithuania
Luxembourg	Liechtenstein
Malta	Netherlands
Norway	Poland
Romania	
Portugal	Slovakia
Slovenia	Spain
Sweden	United Kingdom

Switzerland: Although Switzerland is not a member of the EEA, Swiss migrant workers and their spouses/civil partners and children are treated on the same basis as EEA migrant workers for student support purposes. This is consequential to the Agreement between the EC and Switzerland on the Free Movement of Persons, which was signed on 21st June 1999 and came into force on 1st June 2002

The amendments required to implement the agreement were first set out in the Education (Student Fees and Support) (Switzerland) Regulations 2003 SI2003/3280 which came into force on 8th January 2004 and have been incorporated in the Education (Student Support) Regulations 2006

Turkey: Although Turkey is not a member of the EEA, children of Turkish migrant workers are treated on the same bases as EEA nationals for student support purposes. This is consequential to the European Court of Justice Ruling.

Gibraltar: Gibraltar is part of the territory of the EEA

Dependent territories

The following is a dependent territory of an EEA member state:

Norway: Svalbard

Annex 3

EXTRACT FROM LORD SCARMAN'S JUDGEMENT

The following are extracts from the judgement given in the House of Lords on 16 December 1982, as reported in [1983] 2 WLR 16. *At page 31 H:*

"It is my view that LEAs, when considering an application for a mandatory award, must ask themselves the question:- has the applicant shown that he has habitually and normally resided in the United Kingdom from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences? If an LEA asks this, the correct, question, it is then for it, and it alone, to determine whether as a matter of fact the applicant has shown such residence. An authority is not required to determine his/her 'real home', whatever that means: or need any attempt be made to discover what his/her long-term future intention or expectations are.

The relevant period is not the future but one which has largely (or wholly) elapsed, namely that between the date of the commencement of his/her proposed course and the date of his/her arrival in the United Kingdom. The terms of an immigrant student's leave to enter and remain here may or may not throw light on the question: it will, however, be of little weight when put into the balance against the fact of continued residence over the prescribed period - unless the residence is in itself a breach of the terms of his/her leave, in which event his/her residence, being unlawful, could not be ordinary."

At page 27 B-G:

"There are two and no more than two, respects in which the mind of the 'propositus' (the student applicant) is important in determining ordinary residence. The residence must be voluntarily adopted. Enforced presence by reason of kidnapping or imprisonment, or a Robinson Crusoe existence on a desert island with no opportunity of escape, may be so overwhelming a factor as to negative the will to be where one is. And there must be a degree of settled purpose. The purpose may be one; or there may be several. It may be specific or general. All the law requires is that there is a settled purpose. This is not to say that the 'propositus' intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode. And there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled.

The legal advantage of adopting the natural and ordinary meaning, as accepted by the House of Lords in 1982 and recognised by Lord Denning in this case, is that it results in the proof of ordinary residence, which is ultimately a question of fact, depending more upon the evidence of matters susceptible of objective proof than upon evidence as to the state of mind. Templeman L J emphasised in the Court of Appeal the need for a simple test for LEAs to apply: and I agree with him. The ordinary and natural meaning of the words supplies one. For if there is to be proved a regular, habitual mode of life in a particular place, the continuity of which has persisted despite temporary absences, ordinary residence is established provided only if it is adopted voluntarily and for a settled purpose.

An attempt has been made in this case to suggest that education cannot be a settled purpose. I have no doubt it can be. A man's settled purpose will be different at different ages. Education in adolescence or early adulthood can be as settled a purpose as a profession or business in later years. There will seldom be any difficulty in determining whether residence is voluntary or for a settled purpose: nor

will enquiry into such questions call for any deep examination of the mind of the 'propositus'."

Annex 4

REGULAR MILITARY AND AIR FORCES AND ROYAL NAVY FORCES

CERTIFICATE OF TEMPORARY EMPLOYMENT OUTSIDE THE UNITED
KINGDOM

ELIGIBILITY FOR STUDENT SUPPORT

I certify that:

Number.....Surname.....Initials.....

Rank

Unit.....

has been in continuous service as a member of the regular military or air forces or
of the Royal Navy forces since:

(date).....

and that he*/she* is the spouse/civil partner*/ parent*/ guardian*/ has parental
responsibility for */ has care of* (*delete as applicable)

Surname.....Initials.....Date of Birth.....

Signed.....

Name.....

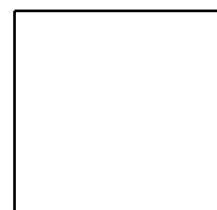
Rank.....

Unit Records Officer

Date.....

Telephone Number.....

Unit Address

.....
.....
.....
.....

Unit Stamp

[Note: this certificate should be used to support a claim for exemption from the UK
ordinary residence requirements.]

Annex 5

HOME OFFICE IMMIGRATION PASSPORT STAMPS

We have previously given examples of the stamps but as new stamps are introduced or perhaps changed since the chapter was issued, we will no longer print the stamps but instead give the direct link to the Home Office's Immigration and Nationality Directorate's website which is constantly updated.

The website is <http://www.ind.homeoffice.gov.uk/>

Annex 6

ORGANISATION CONTACT DETAILS

The Student Awards Agency for Scotland (SAAS)
Gyleview House
3 Redheughs Rigg
Edinburgh
EH12 9HH

Tel: 0845 111 1711
www.student-support-saas.gov.uk

Department for Education and Learning (Northern Ireland)
Higher Education, Policy, Research and Finance
Room 407
4th Floor
Adelaide House
39-49 Adelaide St
Belfast
BT2 8FD

Tel: 028 9025 7777
www.delni.gov.uk

Student Loans Company
European Team
Memphis Building
Lingfield Point
McMullen Road
Darlington
County Durham
DL1 1RW

Tel: 0141 243 3570
<http://www.direct.gov.uk/en/EducationAndLearning/UniversityAndHigherEducation/StudentFinance/StudentsFromOtherEUCountries/index.htm>

SLC
Memphis Building
Lingfield Point
McMullen Road
Darlington
County Durham
DL1 1RW

Student Support Information Line: 0845 6020583
<http://www.direct.gov.uk/en/EducationAndLearning/UniversityAndHigherEducation/StudentFinance/index.htm>

Annex 7

MIGRANT WORKERS / CHILDREN OF MIGRANT WORKERS AIDE-MEMOIR

WHO DOES NOT NEED TO BE ASSESSED UNDER THE MIGRANT WORKER PROVISIONS?

- **Is the applicant eligible under any other eligibility paragraph (other than paragraphs 6, 7 or 9)?**
 - If yes, then assess under this alternative paragraph and no need to proceed with assessment as migrant worker. For example, think Bidar? (para 10 – EC national, OR in Wales on relevant date, OR in UK for 3 years preceding relevant date and, if OR for education purposes, prior residence in EEA).
- **Is the applicant actually working?**
 - Workers looking for work but who have not yet worked in Wales are not workers for student support purposes.
 - Workers who were working but who leave work voluntarily to begin a course of study which has no link to the previous employment will not be eligible for maintenance support (this applies to the student only – if a family member is the migrant worker but no longer working consider if paragraph 7 applies).
- **Was the applicant ordinarily resident in Wales on the first day of the first academic year of the course (the relevant date will usually be 1 September of the first academic year)?**
 - OR test can be satisfied by arrival in Wales on or before the relevant date. If applicant not arrived in Wales until after the relevant date then not eligible for maintenance support. OR test applies to the applicant only and not to the migrant worker in cases where the application is made by a student who is a family member of a migrant worker.
- **A8/A2 nationals * - is the employment registered with WRS/does applicant have permission to work? If not, the employment likely to be unlawful. It is the Welsh Assembly Government's view that unlawful employment is unlikely to be considered as genuine and effective employment.**
 - A8 national-worker must comply with the requirements of the WRS
 - Employment must be registered with one month of commencement or else employment will be unlawful until date of registration;
 - If registered within one month, the employment will be lawful from the date of commencement;
 - Each separate employment/employer must be registered;
 - Registration must continue for a 12-month period with no more than 30 days total unemployment.
 - A2 national – worker must have permission to work in the UK (permission usually endorsed on identity documents)
 - See UKBA website for full details of the restrictions on EEA nationals to work in UK - <http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/>

* Please note that the A8 Worker Registration Scheme was discontinued from 1st May 2011. By that time the A8 countries have been in the E.U. for over seven years and their nationals will enjoy the same rights as those of established E.U. member states. An end date for the A2 Worker Registration Scheme has not been confirmed at the time of writing (December 2011).

Additional guidance on Children of Migrant Workers

What happens if a Child of a Migrant worker marries a British Citizen

The child of a migrant worker who marries would not be able to rely on A2 of Directive 2004/38. A2 defines "family member" to include direct descendants who are under the age of 21 or over 21 but who are dependent, i.e. a student supported by their parents. Once married a child ceases to be dependent on the EC worker and ceases to be a "child" under national law.

Annex 8

WELSH STUDENT COHORTS – FINANCIAL SUPPORT GENERALLY AVAILABLE

Student Cohort	Eligibility period (first day of study)	2012/13 Fee Liability and Support	2012/13 Maintenance Support*
Continuing Old System	Started before 1 September 2006 including eligible gap year students who started on or after 1 September 2006.	£1,380 – can self fund or take out repayable tuition fee loan. No liability for variable fees. Additional <i>grant for fees</i> may also be payable.	May be entitled to a Higher Education Fee Grant up to £1,000 (household income up to £22,750).
Continuing new system students (not 2010, 2011 or 2012 cohort students).	Started on or after 1 September 2006 and before 1 September 2010. Includes eligible gap year students who started on or after 1 September 2010.	£3,465 – first £1,380 can self fund or take out a non-means tested repayable tuition fee loan. A non-means tested tuition fee grant of up to £2,085 is available for eligible students studying in Wales.	Assembly Learning Grant of up to £2,906 (household income – up to £39,329). National Bursary of £338 available if student is eligible.
Continuing 2010 cohort (<i>new system</i>)	Started on or after 1 September 2010 and before 1 September 2011. Includes eligible gap year students who started on or after 1 September 2011.	£3,465 – can self fund or take out a non-means tested tuition fee loan.	Assembly Learning Grant of up to £5,000 (household income up to £50,020). National Bursary of £338 if eligible.
Continuing 2011 cohort (<i>new system</i>)	Started on or after 1 September 2011 and before 1 September 2012. This does not include eligible gap year students who start on or after 1 September 2012.	£3,465 – can self fund or take out a non-means tested tuition fee loan.	Assembly Learning Grant of up to £5,600 (household income up to £50,020).
2012 cohort (<i>new system</i>)	Started on or after 1 September 2012.	£9,000 – first £3,465 can self fund or take out a non-means tested repayable tuition fee loan. A non-means tested new fee grant of up to £5,535 is available for eligible students.	Assembly Learning Grant of up to £5,000 (household income up to £50,020)
<p>*All cohorts of students, old system, continuing new system (2006, 2007, 2008, 2009) 2010, 2011 and 2012 can apply for a partially means tested loan for living costs of between £3,673 and £6,648 (full-year loan rates) depending if they are living at home, elsewhere, (overseas study) or in London.</p> <p>NB: Unlike in previous years, students who start their studies on or after 1 September 2012 after taking a gap year will be subject to the same terms and conditions as other students who begin their studies on or after September 2012.</p> <p>The Special Support Grant may be payable as an alternative to the Assembly Learning Grant</p>			

to those *new system* students who were on certain prescribed state benefits before they started their course of study. Levels of support depend on when they started their course.

All cohorts may be eligible for other grants for living costs: Disabled Students' Allowance, Childcare Grant, Adult Dependants' Grant, Parents' Learning Allowance and Grants for Travel.

