

# Assessing Eligibility Guidance

**Higher Education Student Finance in Wales  
2016/17 Academic Year – Final version 1.0  
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The chapter contains guidance on assessing eligibility for support for students in 2016/17.

**References to the Regulations have been updated to refer to The Education (Student Support) (Wales) (Wales) Regulations 2015, as amended by the Education (Student Support) (Wales)(Amendment) (No.2) Regulations 2016. This guidance document makes note of some changes, which are subject to that legislation. The 2015 Amended Regulations are due to come into force in February 2016, The Regulations may be subject to further amendment.**

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This guidance does not cover every aspect of student support. The full details are contained in The Education (Student Support) (Wales) Regulations 2015 as amended by the Education (Student Support) (Wales) (Amendment) (No 2) Regulations 2016 are the legal basis of the student support arrangements for the academic year 2016/17. 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 the 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](#).**

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## 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 Education (Student Support) (Wales) Regulations 2015 as amended by the Education (Student Support) (Wales) (Amendment) (No 2) Regulations 2016. 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.

The Regulations referred to throughout this chapter are The Education (Student Support) (Wales) Regulations 2015 as amended..

In Academic Year 2016/17, a student will be defined as either, a, '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. Further information on the different support arrangements are set out in the chapter on 'Assessing Financial Entitlement' 2016/17.

A **'new system' student** is an eligible student who:

- started their current course on or after 1<sup>st</sup> September 2006. A **'2010 cohort'** student is a new system student who:
- is an eligible student and who started their present course on or after 1<sup>st</sup> September 2010 and before 1<sup>st</sup> September 2011, other than:
  - a '2010 gap year' student;
  - an eligible student who started the present course on or after 1<sup>st</sup> September 2010 and before 1<sup>st</sup> September 2011 where that course is an end-on course following on from a course that
- started before 1<sup>st</sup> September 2010; or
- started before 1<sup>st</sup> September 2011 and in relation to which the student is a '2010 gap year' student; or
  - an eligible student who started the present course on or after 1<sup>st</sup> 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 1<sup>st</sup> September 2010; or
  - before 1<sup>st</sup> 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 fee grant (regulation 16) or new fee grant (regulation 17) but may be entitled to the Welsh Government Learning Grant of £5,161 (regulation 38), depending on individual circumstances.

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

- is an eligible student and who begins their present course on or after 1<sup>st</sup> September 2011 and before 1<sup>st</sup> September 2012, other than:
  - a '2011 gap year' student;
  - an eligible student who started the present course on or after 1<sup>st</sup> September 2011 where that course is an end-on course following on from a course that
    - started before 1<sup>st</sup> September 2011; or
    - started before 1<sup>st</sup> September 2012 and in relation to which the student is a '2011 gap year' student; or
- an eligible student who started the present course on or after 1<sup>st</sup> 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 1<sup>st</sup> September 2011; or
  - before 1<sup>st</sup> 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 a fee grant (regulation 16) or new fee grant (regulation 17) but might be entitled to the higher Welsh Government Learning Grant of £5,780 (regulation 39, 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 1<sup>st</sup> September 2012 other than:
  - an eligible student who started the present course on or after 1<sup>st</sup> September 2012 where that course is an end-on course following on from a course that started before 1<sup>st</sup> September 2012;
  - an eligible student who started the present course on or after 1<sup>st</sup> 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 1<sup>st</sup> September 2012.

'2012 cohort' students may be eligible for the New Fee Grant (regulation 17) and accompanying fee loan (regulation 21), 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 of up to £6,000 only (regulation 22)). '2012 cohort' students may also be entitled to the Welsh Government Learning Grant of £5,161 (regulation 38), depending on individual circumstances.

Please refer to [Annex 8](#) for a breakdown of each Welsh cohort group.

## GAP YEAR STUDENTS

2. 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 1<sup>st</sup> August 2009. 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 below apply; and
- Those who received an offer of a deferred place for 2010/11 after having successfully appealed against their A-level results

The definition of a '2011 gap year' student is set out in regulation 2(16) – (22). 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 1<sup>st</sup> August 2010 . 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 below apply; and
- Those who received an offer of a deferred place for 2011/12 after having successfully appealed against their A-level results

### Exceptions

A student could be considered a 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.

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.

In determining whether a student qualifies as a gap year student, SFW 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 1<sup>st</sup> August 2009 (2010 gap year) or after 1<sup>st</sup> 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.

Where a student does not meet the criteria for being a gap year student they will be a new system student and eligible for the new system package of support. 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.

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

3. Paragraph (3) of Regulation 4 provides that students are excluded from *any support* under The Education (Student Support) (Wales) Regulations 2015 if they:

- 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 healthcare bursary (as defined in Regulation 2(1)). - see below for further explanation on the meaning and effect of the 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.

\* From AY 2014/15 onwards a ratification form is no longer required. The new wording that was added to the student declaration form covers previously borrowed loans where student was under the age of 18. By signing a new declaration the student acknowledges and agrees that they are automatically ratifying all student loans that they borrowed before reaching the age of 18.

NB: Where a person qualified as an eligible student for the previous academic year, it will not usually be necessary for SFW to determine personal eligibility for the following Academic Year (see Regulations 4(7)-(10)).

Students who have spent any time in prison (whether on remand or otherwise) within the Academic Year 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, SFW 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. SFW 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, SFW needs 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 only be eligible for tuition fee support 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 HEP, or a privately funded HEP on behalf of a publicly funded HEP. Where the course is wholly provided by a privately funded HEP, fee support will be tuition fee loan only. Prisoner students will not be eligible for Disabled Students’ Allowances. A prisoner who studies a full-time course which started prior to 1<sup>st</sup> September 2012 will be eligible for tuition fee loan only (and tuition fee grant if the student is eligible under the new system cohort arrangements). Such students will also be eligible for Disabled Students’ Allowances for those periods when they are imprisoned. For more information see the ‘Change of Circumstances’ guidance chapter.

## NHS BURSARIES

4. From 1<sup>st</sup> September 2012, the support available to students studying certain healthcare related subjects changed. Students who started prior to 1<sup>st</sup> September 2012 and are continuing on NHS funded courses such as nursing, midwifery and operating department practice still receive support for fees and non-means tested bursaries via the NHS Bursary scheme. They are not eligible for any support under The Education (Student Support) (Wales) Regulations 2015 as amended. The new support arrangements only apply to students who commenced healthcare related courses on or after 1<sup>st</sup> September 2012.

Eligible students who can apply for an NHS bursary for a course that started in September 2012 or later will have access to the same package of NHS support. All new entrants from 2012 on NHS funded courses receive the income assessed NHS Bursary and will also receive a non-means tested grant of £1000 from the NHSBSA.. Such students are also eligible to access limited support under The Education (Student Support) (Wales) Regulations 2015 in addition to the support available from the NHS. See Section I of Annex F of the 2016/17 'Assessing Financial Entitlement' guidance chapter for full details. Further information about NHS bursaries is provided at Annex 1 to this chapter. Not all students access the NHS bursary scheme but do have access to a healthcare award, for instance students on some paramedic courses. If the award is means tested, they should be assessed for reduced level maintenance loan.

From AY 2013/14, SAAS changed the funding regime for new and continuing Allied Health Profession (AHP) students studying in Scotland and, with the exception of nursing and midwifery students, have made available the "Young Students' Bursary (YSB)" and "Independent Students' Bursary (ISB)". These are income assessed bursaries that are available to all students studying AHP courses in Scotland, including students from England, Wales and Northern Ireland. The Welsh Government will continue to provide a reduced rate loan for living costs to all AHP students from Wales who are studying in Scotland, as they remain in a bursary year; have their fees paid and can apply for a living costs bursary.

## 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

5. The Education (Student Support) (Wales) Regulations 2015 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)).

The applicant is not eligible for support whether or not they have declared any such breach or non-ratification on their application (see paragraph (3)(d) and (e) of regulation 4). SFW does not have any discretion in determining an applicant's eligibility in these circumstances.

SFW has a record of students who are in breach and this is discovered when the assessment is sent for approval. A letter is triggered at that point advising the student they are ineligible whilst remaining in default. Once an applicant is no longer in breach, the SLC should advise SFW 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.

From AY 2014/15 onwards a ratification form is no longer required. The new wording that was added to the student declaration form covers previously borrowed loans where the student was under the age of 18. By signing a new declaration the student acknowledges and agrees that they are automatically ratifying all student loans that they borrowed before reaching the age of 18.

## APPLICANTS WHO BREACH ANY OBLIGATIONS TO REPAY ANY PREVIOUS STUDENT LOAN AFTER THEY HAVE BEEN ASSESSED

6. If an applicant is awarded funding 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 of funding applies.

## INELIGIBILITY ON GROUNDS OF UNFITNESS TO RECEIVE SUPPORT

7. A student does not qualify as an eligible student if, in SFW'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, SFW may terminate eligibility for similar reasons under paragraph (5) of regulation 6.

One example of when SFW 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 presented fraudulent information in their applications in order to receive more support than they are entitled to. In such cases SFW should consider exercising the power to refuse the application (or terminate eligibility, depending on when the fraud comes to light), on the grounds that due to their fraudulent conduct the student has demonstrated they are unfit to be considered for support. SFW may find STUDENT FINANCE WALES AUDIT GUIDELINES FOR THE ADMINISTRATION OF STUDENT FINANCE PAYMENTS helpful. The relevant guide can be accessed from the following link :

[https://userssecure.studentfinancedirect.co.uk/portal/page?\\_pageid=33,1224657,33\\_1224813:33\\_1502046&\\_dad=portal&\\_schema=PORTAL](https://userssecure.studentfinancedirect.co.uk/portal/page?_pageid=33,1224657,33_1224813:33_1502046&_dad=portal&_schema=PORTAL)

Other examples might include involvement in fraud against other government funds, such as DWP benefits. The committing of a serious criminal offence might also be grounds for refusal in some circumstances. SFW 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 SFW 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 SFW.

SFW might also decide that a student is unfitted to receive support where the student has made repeated applications for and received support for a number of different courses, whether completing or not completing those courses.

If a student has previously received support, for example, for four separate HE courses, SFW should consider whether that student should be eligible for further support. SFW might decide that a student who has received support for four successive undergraduate courses and withdrawn from each is unfitted to receive support for a fifth course. SFW should deal with each case on its own merits. In the case of fee support, SFW should consider any additional years of fee support awarded due to compelling personal reasons when making their decision. There might be other instances where SFW 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 SFW to consider whether the student, though being allowed to continue with the course, should continue to receive support for it.

The fact that a student is, or has in the past been, in dispute with the SFW 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.

It is important to remember that the purpose of these provisions is to safeguard public funds, and to ensure that they are spent properly. SFW 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 legal staff.

## ARMED FORCES PERSONNEL

**8.** To ensure applications for support from former members of the Armed Forces or family members of Armed Forces personnel are processed by the administration in the appropriate UK territory, from AY 2013/14 all UK administrations agreed a unified policy and have applied a consistent approach to the responsibility of processing such applications.

Where the applicant's family was ordinarily resident in Wales prior to enlisting, the student's application should be processed by SFW (unless the applicant or their family have established permanent residence elsewhere). Where an applicant's family have not established a permanent residence in Wales, and are living overseas or in Wales on a posting, SFW will check where in the UK the member of the Armed Forces was ordinarily resident when they enlisted. If this was deemed to be in England, Northern Ireland or Scotland, the applicant will apply to the appropriate UK administration for their student support.

## PERSONAL ELIGIBILITY

**9.** 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

**10.** 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.

## TIME LIMIT FOR APPLYING FOR STUDENT SUPPORT

**11.** Students must make their application to SFW 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 Union, if that happens after the first day of the academic year.

- from AY 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)**

SFW has the discretion to extend the deadline where they consider it is appropriate to do so.

## DOCUMENTATION REQUIREMENTS

**12.** For all loans paid in AY 2016/17, 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 64(1)). The Department of Work and Pensions (DWP) will in most cases issue NINOs to borrowers applying for student support (if they do not have one). In exceptional circumstances where a student has not provided a NINO the Welsh Ministers will be able to release loan instalments (regulation 64(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, SFW 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.

Regulation 65(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 2015 Regulations.

Relevant documents are listed in the notes for completion of each application. SFW 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 (currently employed or **retired**) 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.

If a student chooses to submit their birth certificate then this must be accompanied by a fully completed Identity Declaration Form.

SFW 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. SFW 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. In exceptional cases, SFW 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. SFW also has the discretion to process applications where a student has supplied a deed poll letter. SFW needs to ensure that the level of evidence obtained reflects the risk involved. Any decision made by the SFW must be fully documented with information explaining any variance from the usual procedures.

## RESIDENCE AND OTHER ELIGIBILITY CONDITIONS

**13.** Since 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.

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 students who commenced a course on or after 1<sup>st</sup> September 2007. SFW 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.. If SFW has difficulties confirming the situation they should see their own departmental legal advice in the first instance. SFW should not refuse support on the basis that the relevant immigration status expires within the lifetime of the course.

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 (4<sup>th</sup> 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.

SFW 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.

The information contained in this guidance on nationality, immigration and asylum etc represents the Welsh Government's understanding of the situation, but SFW should satisfy itself that they have understood the applicable law and practice in making their assessments.

**DEFINITIONS: REGULATION 2 – INTERPRETATION**

**14.** 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.

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 preceding the first day of the first academic year of the course in the United Kingdom and Islands.

The definition of a “refugee” is contained in regulation 2 for the purposes of the Regulations.

A definition of parent is included in Paragraph 1(2) of Schedule 1 Part 1 for the purposes of the Schedule.

Further definitions can be found in Schedule 1 Part 1.

**ORDINARY RESIDENCE**

**15.** 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**

**16.** 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. SFW should determine on a case by case basis whether an applicant has been resident here ‘wholly or mainly’ for education purposes.

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**

**17.** 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.

Such a student should contact the responsible authority in the area they have moved from.

#### TEMPORARY OR OCCASIONAL ABSENCES

**18.** 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. SFW 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, SFW will wish to consider whether it would be confident that their decision would be upheld if it were challenged in Court.

#### GAP YEARS

**19.** 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).

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. SFW 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

**20.** Paragraph 1(4) of Part 1 of Schedule 1 makes provision for students or their family members who have been temporarily employed outside of Wales or the United Kingdom and Islands (or the EEA, Switzerland and Turkey as appropriate).

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.

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 SFW if they want verification of the applicant's status from the Ministry of Defence.

## EMIGRANTS

**21.** 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 below.

## CHILDREN LIVING IN THE UK (OR EEA AND SWITZERLAND AS APPROPRIATE) WHOSE PARENTS ARE TEMPORARILY EMPLOYED ABROAD

**22.** 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(1) of Schedule 1 states that the three years' residence in the UK and Islands 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.

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, SFW should make a decision in such cases based on the particular facts.

## POSSIBLE CONSIDERATIONS WHEN ESTABLISHING TEMPORARY ABSENCE

**23.** In reaching a judgement, SFW 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, SFW 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).

The onus is on the applicant to satisfy SFW that: their absence was due to temporary employment abroad, 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).

In determining whether the absence was for purposes of employment but the applicant was not in employment immediately after moving overseas the SFW 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, SFW 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.

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, SFW 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

**24.** 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 –SFW 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 SFW to conclude that they would be likely to return here on completion of their overseas tour.

## SCHEDULE 1 PART 2 - CATEGORIES

25. Part 2 of Schedule 1 to the Regulations sets out the various categories of student, and 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)

26. 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<sup>st</sup> 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(1), 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.

Paragraph 2(1) of Part 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 Part 1 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
- the person's 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

**27.** 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.

## EU OUTERMOST REGIONS

**28.** There are 9 territories classed as EU Outermost Regions, these are territories belonging to EU states and the citizens there are protected by EU primary and secondary legislation and must be treated as if they were residents of their parent state. For student support purposes residency in these territories counts towards EU fee eligibility and citizens from these territories who have three years ordinary residence in the UK and Islands would be additionally eligible for living cost support. These territories are:

Reunion (France)  
 Mayotte (France)  
 French Guyana (France)  
 St Martin (France)  
 Martinique (France)  
 Guadeloupe (France)  
 Azores (Portugal)  
 Madeira (Portugal)  
 Canary Islands (Spain)

## BRITISH OVERSEAS TERRITORIES

**29.** The British Overseas Territories Act 2002 made the previously known "dependent" territories as British Overseas Territories. A further change took place on 21<sup>st</sup> 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 21<sup>st</sup> 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 21<sup>st</sup> 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 21<sup>st</sup> 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.

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 Education (Student Support) (Wales) Regulations 2015. 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
- St Barthelemy has been added to the list of overseas territories with effect from 1 January 2012. Since that date, St Barthelemy is no longer part of the EU and residence there can no longer be considered as ordinary residence in the EEA. However citizens of St Barthelemy retain their EU nationality.
- French Southern and Antarctic Territories

## GIBRALTAR

**30.** Gibraltar is the only overseas territory listed above that is part of the European Union (EU), although it is not part of the customs union and is not a member in its own right. None of the other Overseas Territories are members of the EU, and the main body of EU law does not apply to them and, although certain provisions of EU law are applied to those territories as part of the EU's Association of Overseas Countries and Territories (OCT Association), they are not commonly enforceable in local courts.

## 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)

**31.** 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.

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 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);
- Welsh Government Learning Grant or special support grant in any subsequent years of the course and in the quarters following the acquisition of the right of permanent residence, (if the status was acquired within three months of the first day of the academic year).
- Childcare Grant, Travel Grant or DSA in subsequent years of the course and in all quarters following the acquisition of the right of permanent residence. See the guidance chapter, 'Grants for Dependents' 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 Education (Student Support) (Wales) Regulations 2015. Family members of EU nationals can apply for tuition fee loan support under Paragraph 9 of Part 2 of Schedule 1.

In relation to these regulations only EEA and Swiss 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 *this category* (paragraph 3 of Part 2 of Schedule 1).

## ASYLUM SEEKERS WHO HAVE BEEN GRANTED REFUGEE STATUS

**32.** Refugees and their family members (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)) 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.

SFW must satisfy themselves that all of the relevant Home Office documentation is valid.

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.

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.

Prior to 30<sup>th</sup> 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 Protection 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.

New students who commenced their studies on or after 1<sup>st</sup> September 2013 are required to enter the date of expiry of their or their family member's immigration status on the online or paper application, if applicable. Before allowing student support to continue in the next academic year, SFW will be required to check whether the student is still entitled to student support. SFW should request revised documentary evidence of the student's or family member's immigration status from the Home Office.

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. SFW will require evidence from the Home Office that this is the case before processing the student support application.

Before allowing support to continue in the academic year following the expiry of the relevant immigration status, SFW 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.

Refugees arriving under the Gateway Protection Programme, the Mandate Refugee Scheme and the Ten or More Plan are granted immediate indefinite leave to enter.

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);
- Childcare Grant, Travel Grant and DSA in any subsequent years of the course and in all quarters following the award of the refugee status. See the guidance chapter "Grants for dependants" regarding the support available to students who become eligible during the course.
- Welsh Government Learning Grant or special support grant in any subsequent years of the course and in the quarters following the award of the refugee status (if the status was acquired within three months of the first day of the academic year).
- 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)**

**33.** Regulation 2 – Interpretation provides a definition of a "person with leave to enter or remain" for the purposes of the Regulations.

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 for a full definition of a person with leave to enter or remain.

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.

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

**34.** 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 EU nationals exercising treaty rights.

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 EU nationals who are exercising treaty rights.

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.

The student support application 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, SFW will be required to check whether the student is still entitled to student support. SFW should request revised documentary evidence of their immigration status from the Home Office.

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. SFW will require evidence from the Home Office that this is the case before processing the student support application

Before allowing support to continue in the academic year following the expiry of the relevant immigration status, SFW 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.

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.

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.

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 also 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.

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

- an application has been made to the Secretary of State to vary the limited leave to enter or remain;
- the application was made before the leave to enter or remain expired;
- 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.

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 2015 Regulations. Whether such a person is an eligible student or qualifies for any particular type of support available for the 2015/17 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.

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 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);
- Childcare Grant and Travel Grant and DSA in any subsequent years of the course and in the quarters following the award in the year of award, except the quarter in which the longest vacation falls. See the guidance chapter "Grants for Dependents" regarding the support available to students who become eligible during the course.

- Welsh Government Learning Grant or special support grant in any subsequent years of the course and in the quarters following the award of the status (if the status was acquired within three months of the first day of the academic year).
- Tuition fee support in any subsequent years of the course (and in the academic year following the award of the status if the award is made within three months of the first day of the academic year).

The Home Office have advised that SFW may send their requests to their Evidence and Enquiries (E&E) unit by fax. SFW needs to be registered with the unit. Their telephone enquiry unit can also be contacted. If they are unable to deal with the enquiry, SFW 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](mailto:ssin_queries@slc.co.uk). Please note this is for SFW staff only.

#### WORKERS, EMPLOYED PERSONS, SELF-EMPLOYED PERSONS AND THEIR FAMILY MEMBERS (PARAGRAPH 6 OF PART 2 OF SCHEDULE 1 TO THE REGULATIONS)

**35.** 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.

The definition of 'family member' is dependent on the category of person to whom we are referring. The table below explains this further:

<i>Category of person</i>	<i>Definition of family member</i>
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 the ascending line (see note 3 below) or that of the 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 the ascending line means parents, including adoptive or step-parents.

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 in any subsequent years of the course and in the quarters following the acquisition of worker status, (except the quarter in which the longest vacation falls).
- Childcare Grant and Travel Grant and DSA in any subsequent years of the course and in the quarters following the award in the year of award, except the quarter in which the longest vacation falls. See the guidance chapter "Grants for Dependants" regarding the support available to students who become eligible during the course.
- Welsh Government Learning Grant or special support grant in any subsequent years of the course and in the quarters following the award of the refugee status, (if the status was acquired within three months of the first day of the academic year).
- Tuition fee support, in any subsequent years of the course (and in the academic year in which worker status is acquired if this is acquired within three months of the first day of the academic year).

The residence criteria that must be met by those who come within paragraph 6(1) 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:

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

In order to decide whether an EEA national can be classed as a migrant/frontier worker or a Swiss national employed in the UK, SFW 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?

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 EU Directive 2004/38 and may also be referred to as the '*Lair*' conditions.

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.

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.

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.

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.

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)).

Applications for a Welsh Government Learning Grant should be processed if received within the 9 month timeframe. (An exception applies for Disabled Students' Allowances.)

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.

In some cases SFW's 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.

Where students have given up work to study, they 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 SFW knows which course is actually being attended.

In deciding whether an EEA national can be determined to be a worker, or a Swiss national can be determined to be an employed person, SFW should look closely at the EU law meaning.

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 SFW, 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

**36.** 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.

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'.

SFW 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

**37.** 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

**38.** 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, part-time, or 'Zero hours contract' 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."

The Welsh Ministers are of the view that employment which is unlawful is unlikely to be able to satisfy the test of being effective and genuine employment. For example, Croatian nationals 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 (WRS) was discontinued from 1<sup>st</sup> May 2011 and A2 WRS was discontinued from 1<sup>st</sup> of January 2014. By then the A2 and A8 countries were in the EU for over seven years and their nationals enjoy the same rights as those of established EU member states. As the scheme only required people to register if they were working for longer than one month, the practical abolition of the A8 WRS was effective from 1<sup>st</sup> April 2011.

On July 1<sup>st</sup> 2013 Croatia joined the European Union and the following guidance applies. A student can apply for permission to work on the express basis that they are exercising a treaty right as a student. The yellow registration certificate confirming they are a student will also permit them to work up to 20 hours a week during term-time and full-time during holidays. A student working in accordance with these conditions is not exercising a treaty right as a worker. If a student wants to work for more than 20 hours a week during term-time they would have to apply for an accession worker registration certificate. A student working more than 20 hours a week and who has an accession worker card is capable of exercising a treaty right as a worker. A student claiming they are also a worker but exempt from WAS requirements must be able to prove this. To do this, they could apply to HO for a registration certificate confirming their status. They will need to prove HO with evidence of 12 months previous continuous employment. A student who is exempt from worker accession registration requirements is able to exercise a treaty right as worker, however *they would still need to satisfy the 'genuine and effective' test to be eligible for maintenance support.* Croatians can also exercise a treaty right as a self-employed individual. There is no requirement to register with the worker accession certificate or obtain a registration certificate before working on a self-employed basis. Where an individual wishes to be assessed as eligible for student support on the ground that they are self-employed they should be asked to provide sufficient evidence to support that claim. Evidence of self-employment will include HMRC registration, business account bank statements, invoices showing payment for services, contracts for services, business advertisements, business premises etc.

## 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

**39.** 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

**40.** 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)

**41.** 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".

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)

**42.** 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. 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.

<b><i>Category of person</i></b>	<b><i>Definition of family member</i></b>
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.

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 child returns to the UK aged 18 to enter HE, they may be eligible for support under paragraph 8 of Schedule 1 if they satisfy the relevant provisions.

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.

### EU NATIONALS AND THEIR FAMILY MEMBERS (PARAGRAPH 9 OF PART 2 OF SCHEDULE 1)

**43.** EU 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.

The relevant family members of EU nationals are set out in the table below:

<p><b>EU national who falls within Article 7(1)(c) of Directive 2004/38 (not self-sufficient)</b></p>	<p>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</p>
<p><b>EU national who falls within Article 7(1)(b) of Directive 2004/38 (self-sufficient)</b></p>	<p>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 or that of the national's spouse/civil partner</p>

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 :

- the person has sufficient resources for [themselves] and [their] 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.

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 SFW must remain flexible in its assessment.

Students who become EU 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).

Under Paragraph 9(3) of Part 2 of Schedule 1, where a state accedes to the EU 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 EU 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 EU national and the state of which the person's relative/spouse/civil partner is a national accedes to the EU after the first day of the first academic year of the course, the relative/spouse/civil partner is treated as having been an EU national on the first day of the first academic year of the course.

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.

#### EU NATIONALS WITH A "GENUINE LINK" WITH THE UK UNDER PARAGRAPH 10 OF PART 2 OF SCHEDULE 1 TO THE REGULATIONS

**44.** EU 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 for support under paragraph 10, a person must be an EU national on the first day of the first academic year of the course. Where the person's state joins the EU after that date, the person is treated as if they were an EU 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)

**45.** 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.

Normally the parent(s) of the 'child of a Swiss national' must be exercising their free movement rights in the UK on the first day of the first academic year of the course for the student to be eligible to apply for the **full** package of support (tuition support, maintenance support and supplementary grants). If the student becomes

the 'child of a Swiss National' by one of their parents marrying a Swiss national; or if the child's Swiss National parent(s) move to the UK to live after the start of the course, the child would 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 acquisition of child of a Swiss national status, (except the quarter in which the longest vacation falls);
- Childcare Grant and Travel Grant and DSA in any subsequent years of the course and in the quarters following the award in the year of award, except the quarter in which the longest vacation falls. See the guidance chapter "Grants for Dependents" regarding the support available to students who become eligible during the course.
- Welsh Government Learning Grant or special support grant in any subsequent years of the course and in the quarters following the acquisition of child of a Swiss national status, (if the status was acquired within three months of the first day of the academic year).
- Tuition fee support, in any subsequent years of the course (and in the academic year in which the child of a Swiss national status is acquired if this is acquired within three months of the first day of the academic year)

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)

**46.** 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 as 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 preceding the first day of the first academic year of the course.

#### EU MEMBER STATES

**47.** The following countries are EU Member States: Austria, Belgium, Bulgaria, Croatia, 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.

From the date of accession, a state that has joined the EU 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.

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 EU. 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 EU on 1<sup>st</sup> January 2017. Students who are nationals of that country or family members of nationals of that country and whose academic start date was 1 September 2016 would not qualify for fee support for the 2016/17 academic year. They may, however, qualify for fee support for the 2017/18 academic year onwards.

## ELIGIBILITY FOR FEE AND LIVING COSTS SUPPORT AND DETERMINATION OF ENTITLEMENT

**48.** The personal eligibility requirements covered earlier in this guidance (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 fee loans for new system students (regulation 19 covers the general criteria which determine the availability of fee support for current system students). Regulation 37 covers entitlement to the **Welsh Government Learning Grant** for continuing *new system* students (non cohort), regulation 38 for '2010 cohort' and '2012 cohort' students, and regulation 39 for '2011 cohort' students.

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).

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.

A student who started their course on or after 1<sup>st</sup> September 2006 may be eligible for a tuition fee loan, tuition fee grant (for students who commenced study before 1<sup>st</sup> September 2010), a new Fee Grant (for students who commenced study on or after 1<sup>st</sup> September 2012), a tuition fee loan (for students starting designated courses at private institutions on or after 1<sup>st</sup> September 2012), an accelerated graduate entry tuition fee loan (for students starting graduate entry medical and dental courses after 1<sup>st</sup> September 2012), a loan for living costs, Disabled Students' Allowances, grants for dependants, grant for travel and either the Welsh Government Learning Grant or Special Support Grant. There are exceptions to these principles. In order to qualify for this support all applicants must complete the appropriate application form.

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)), or an ERASMUS year for (i) a course provided by an institution in England or Wales that began before 1<sup>st</sup> September 2012 or (ii) a course provided by an institution in Northern Ireland or Scotland (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)).

A new system student (all cohort groups) who has previously gained an honours degree from a UK institution will not generally be eligible for *support for fees* for a further course. Regulation 18 and regulations 7 and 6 provide exceptions to this general rule.

Where a student is ruled out of tuition fee support due to their previous study or already holding a UK honours degree, they will not qualify for some grants for living and other costs. This affects the Welsh Government Learning Grant (regulations –37-39), and Special Support Grant (regulations –41-43).

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 44 (old and new system students) applies.

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

**49.** References are to provisions of The Education (Student Support) (Wales) Regulations 2015.

(A) New system students:

Relevant provisions of The Education (Student Support) (Wales) Regulations 2015:

- Regulation 16 – tuition fee grant ('2010 cohort' and '2011 cohort' students do not qualify)
- Regulation 17– new Fee Grant ('2012 cohort' students only)
- Regulations 19 & 20 – general availability of fee loans to new system students ('pre 2010', '2010 cohort', and '2011 cohort'). '2012 cohort' students do not qualify for fee loans under regulation 20
- Regulation 21 – general eligibility of fee loans to '2012' cohort students
- Regulation 22 – new private institution fee loan (only available to '2012 cohort' students who study on courses wholly provided by private institutions)
- Regulation 23– accelerated graduate entry fee loan (only available to students starting accelerated graduate entry medical or dental courses after 1<sup>st</sup> 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(10)(a) – the entitlement of new system students on end-on courses and certain degree courses.
- Regulation 6(17)-(21) and regulation 7 – definition of previous course

## PREVIOUS STUDY: GENERAL PRINCIPLES

**50.** 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.

The previous study rules apply to fee loans (and fee grant where applicable) and the Welsh Government Learning Grant / Special Support Grant for all new system students. The rules do not apply to supplementary grants such as the Disabled Students' Allowances or Childcare Grants.

A new system student who has previously gained an honours degree from a UK institution will not generally be eligible for *support for fees* for a further course .

Students who intend to take a full-time course of initial teacher training (ITT) of not more than two years are exempt from the previous study rules unless they have already gained Qualified Teacher Status (QTS) (Regulation 7(3)).

## SUB-DEGREES AND “TOP UP” COURSES

**51.** Where a student has achieved a sub-degree or non-honours degree qualification on a full-time, part-time, full-time distance learning or compressed degree basis, wherever obtained and however funded, fee and maintenance support will be available to top up to a qualification that is at a higher level than the one they already hold. It does not allow funding to complete a second UK honours degree course. Previous study must be taken into consideration in making the calculation for the duration of that support. This will apply whether or not the current course is being undertaken immediately after achieving the sub-degree qualification.

The following basic principles will apply for AY 2016/17:

- a student who starts a top up course (not ‘end-on’) or new course on or after 1<sup>st</sup> September 2012 will be eligible for the 2012 package of fee support.
- a student who starts an end-on course on or after 1<sup>st</sup> 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).

## BURSARY YEARS

**52.** Regulation 16(2) excludes eligible ‘new system’ students who are neither 2010, 2011 nor 2012 cohort students from receiving a tuition fee grant, for any year in relation to which they are eligible to apply for 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).

First degree students undertaking an Allied Health Profession course in Scotland are eligible to apply for the normal undergraduate support package via SAAS. Under a special arrangement with the Scottish Health Directorate, Welsh domiciled students taking a degree course in one of the Allied Health Professions at a Scottish institution will have tuition fees paid and would be eligible to apply for the young or independent students’ bursary and living-costs grants. They should apply to SFW for a student loan.

Regulation 18(2) excludes an eligible student from receiving a fee loan for any year in relation to which they are eligible to apply for 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).

The young or independent students’ bursary and living-costs grants for students studying Allied Health Professional courses are paid by SAAS (Scottish Healthcare Allowance is defined in Regulation 2).

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.

A universal healthcare bursary of £1,000 (non-means tested) will be paid to students starting healthcare related courses after 1<sup>st</sup> September 2012, where the academic year is a bursary year. From AY 2012/13 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 Education (Student Support) (Wales) Regulations 2015. Not all students access the NHS bursary scheme but do have access to a healthcare award, for instance some paramedic students. If the award is means tested they should be assessed for reduced level maintenance loan.

## ERASMUS YEARS

**53.** Prior to academic year 2015/16, ERASMUS students were not eligible to receive a tuition fee loan for their study and/or work placement year abroad, and neither the UK HEI nor the HEI abroad charged the student tuition fees. This has changed from AY 2015/16 for all new and returning students who commenced a course on or after 1<sup>st</sup> September 2012. This change means that 2012 cohort students who take a study or work placement year abroad as part of the ERASMUS scheme may be charged tuition of up to £1,350 at a publicly funded HEI (up to £900 if no fee plans/ access agreements are in place) by their HEI in England or Wales for that year.

The tuition fee waiver, or concession, is still available for England or Wales domiciled students who commenced their course prior to 1 September 2012 and go abroad on ERASMUS for a full academic year. These students will not be eligible for any fee support (see regulations 16(2), 17(2), 18(2) and 21(2)). Instead, institutions can use funding provided from the Public Investment Fund or from their own resources to encourage 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 2016/17 'ERASMUS' guidance chapter.

## DEFINITION OF A 'PREVIOUS COURSE'

**54.** Regulations 6(17) - 6(21) 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. For example students who have previously undertaken a NHS funded diploma are considered to have years of previous study.

and

(c) none of the following apply:

(i) the current course is an ITT course lasting not more than 2 years and the student is not a qualified teacher. 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;

(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.

## YEARS OF PREVIOUS STUDY

55. 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

### Examples of entitlement:

#### New system cohort groups who have not studied on a previous course nor a preliminary course

Regulation 6(8) makes provision for students applying for student support in 2016/17 who have not studied on a previous course. Their entitlement is the ordinary duration (OD) of their course (ordinary duration is defined in regulation 2) [plus any repeated years (R) on the present course because of compelling personal reasons], plus one. For example, standard course length is 3 years:

**OD [+ R] +1**

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

The entitlement of a new system student returning to HE in September 2016 will be determined in accordance with regulation 6(9).

The entitlement of a student falling within regulation 6(9) is the ordinary duration of the current course plus one, minus the number of years spent on previous courses (PC).

Example: Student A started a three year course in 2014/15 and is applying for support in 2016/17. 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 years**

## COMPELLING PERSONAL REASONS (CPR)

56. Regulations 6(9), 6(13)(e) and 6(13)(f) 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 SFW should consider all cases carefully. Further guidance on determining the extent and nature of compelling personal reasons is set out 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.

All such applicants will be entitled to one additional year of eligibility. In addition, regulations provide discretion to award one further year of entitlement if it is appropriate to do so having regard to the circumstances of a particular case. SFW 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.

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 HEP'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 SFW should look at all cases carefully.

SFW will be able to identify potential cases of this kind from information provided on the application form.

Example: Student B, who has not attended a previous course applies as a new student in September 2016. 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 2018. Support is available for years 3 and 4 of the course. She fails the third year due to compelling personal reasons. SFW 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 cohort groups students**

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 (12)).

**Example:** Student C is a new system student who starts a four year degree course in September 2016 (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** – 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. 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:**

**Student F** starts a four year degree course in 2016 (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 2016/17 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.

**Student G** starts a 3 year degree course in September 2016 (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 2017 (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.

**Student H** enrolls on a 4 year course in September 2016 (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.

**Student J** is also on a 4 year course which starts in September 2016 (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.

**End on course example:**

A student completed a 2 year sub-degree course in August 2012. 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:**

**57.** 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).

**TRANSFERRING COURSE****CRITERIA FOR TRANSFERRING ELIGIBILITY**

**58.** Regulation 8 sets out the circumstances in which students may have their status as an eligible student transferred to another course. SFW is 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 apply; and

- the period of eligibility has not terminated.

The grounds for transfer are –

- on the recommendation of the academic authority the eligible student ceases one course and starts to:
  - attend another designated course at the same institution;
  - undertake another compressed degree course in the UK at the institution or
  - undertake a compressed degree course in the UK at the institution;
- the eligible student starts to -
  - attend a designated course at another institution; or
  - undertake a compressed degree course in the UK with another institution;
- 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;
- 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
- 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 SFW so that SFW can check, and, if necessary, reassess support. The notification will be taken as the receiving institution's consent to the transfer. 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 1<sup>st</sup> September 2012 having had their status transferred to that course under the Regulations from a course that they began before 1<sup>st</sup> September 2012 will not be a '2012 cohort' student (regulation 2(1)). 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 of mode has taken place on or after 1<sup>st</sup> September 2012, the student will become eligible for the package of support available to a new entrant since AY 2012/13 and not any previous package of support.

## ELIGIBILITY FOR SUPPORT FOR LIVING COSTS

### GENERAL

**59.** Support for living costs covers both loans and supplementary grants for dependants, travel grants and 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 44 and 45. Amounts of loans for living costs for 'new system' students who are neither 2010, 2011, nor 2012 cohort are set out in regulation 46. Amounts of loans for living costs for '2010 cohort' and '2012 cohort' students are set out in regulation 48, and amounts of loans for living costs for '2011 cohort' students are set out in regulation 49.

## STUDENTS AGED 60 AND OVER

**60.** 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 63. 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 2016/17’ Guidance Chapter for further details.

The age criterion does not apply to fee support for new system students, nor does it apply to dependants’ grants, travel grants and DSA.

## OTHER ELIGIBILITY REQUIREMENTS

**61.** The following new system students will not be entitled to *grants for living and other costs* (regulation 24):

- 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 24(2) and see also regulation 44(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 Annex 1 of this Chapter);
- students eligible to apply for an income assessed Scottish *young or independent students’ bursary and grants for living-costs* (as defined in regulation 2);
- students on part-time courses of initial teacher training (ITT) of any length, where the course begins on or after 1<sup>st</sup> September 2010 (these students should apply for the part-time support package – see the guidance chapter ‘Fee Support and Course Grant for Part-time Students’.
- 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 Clinical Commissioning group 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 or a Local Authority acting in the exercise of public health functions;
  - 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 Special Health Authority, the National Health Service Commissioning Board, the National Institute for Health and Care Excellence, the Health and Social Care Information Centre, Local Health Board, Health Board, Special Health Board or Health and Social Services Board H in England or Wales, or their Scottish or Northern Irish equivalents.

These groups of students will, however, be eligible for modified amounts of loans for living costs. Detailed guidance on these matters is provided in the ‘Assessing Financial Entitlement’ guidance chapter.

## DESIGNATED COURSES

**62.** Only designated courses will attract support. Regulations 5 (full-time), 71 (distance learning), 88 (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.

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

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

- of a type which is listed in Schedule 2 of the Regulations (this list is set out below);
- not a designated distance learning course;
- of at least one academic year's duration;
- wholly provided by a publicly funded UK educational institution or institutions, or by such an institution in conjunction with an overseas institution.

From the Academic Year 15/16 combined study courses between UK and Abroad can only be designated for student support where more than 50% of the teaching and learning that comprise the course takes place at a UK institution.

Therefore 4 year courses with a work placement and only one year of study in UK where the study abroad is 50% would not meet the required criteria for designation to qualify for student support.

Courses where exactly half is studied in the UK, would attract 2 years' of abroad rate fees. Where 10 weeks or more is studied at UK HEP the full fee can be applied.

As long as each year of the course satisfies the guidance criteria for a full-time course, a student would be entitled to apply for travel grant for each year of the course. In order to qualify for travel grant student would need to study abroad minimum of 50 % of any qualifying quarter.

“qualifying quarter” in relation to an academic year means a period in that year—

- beginning on 1st January and ending on 31st March;
- beginning on 1st April and ending on 30th June;
- beginning on 1st July and ending on 31st August; or
- beginning on 1st September and ending on 31st December;

Part-time courses are designated for part-time support under regulation 88 if they are at least one academic year's duration and since 2014/15 for the purposes of fee support and DSAs do not exceed four times 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, and at least half of the course is provided in the United Kingdom.

In relation to a postgraduate course (designated under regulation 117) (for Postgraduate Disabled Students' Allowances 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 started from 2014/15 onwards, should not exceed four times 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.

Please also refer to regulation 5 (and Regulations 71 and 88) for exceptions.

## SCHEDULE 2 COURSES

**64.** The following types of course are designated automatically providing they meet the other criteria set out above:

- a first degree course (e.g. a BA or BSc).
- a course for the Diploma of Higher Education (DipHE).
- a course for the Higher National Diploma (HND) or Higher National Certificate (HNC) of:
  - the Business and Technician Education Council; or
  - the Scottish Qualifications Authority
- a course for the Certificate of Higher Education.
- a course of initial training for teachers (ITT) (primary, secondary and post compulsory sector (further education) (excludes teacher training courses taken as part of an employment based teacher training scheme (Regulation 2)).

**NB:** A Post Graduate Certificate in Teaching Higher Education (PGCTHE) is not designated as an ITT course but may be designated for postgraduate Disabled Students' Allowances if it meets the criteria in Regulation 117.

- a course for the further training of youth and community workers.
- a course in preparation for a professional examination of a standard higher than that of:
  - 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
  - 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.
- a course -
  - 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

- 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

**65.** The Welsh Government does not normally maintain any lists of courses which are automatically designated under regulations 5 (full-time) and 88 (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 SFW to decide which of them are eligible for support. SFW 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.

## COURSES IN SCHEDULE 2

**66.** SFW 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. SCITT courses (undertaken in England only) can be found on the Higher Education Funding Council for England (HEFCE) website at <http://www.hefce.ac.uk/TheRegister/> 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. SFW 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

Courses for the *further* training of teachers are not in the list of courses at Schedule 2. The only FE ITT course attracting student support is at paragraph 72 below.

## COMPRESSED DEGREE COURSES (ENGLAND ONLY)

**67.** 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.

The number of students on these courses is small.. Regulation 2(1) of The Education (Student Support) (Wales) Regulations 2015 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.

A list of courses that are currently determined to be compressed degree courses for the purposes of The Education (Student Support) (Wales) Regulations 2015 is shown below. The courses listed are undergraduate honours degree courses delivered over two long academic years (twenty four months) at HEP funded by HEFCW.

SFW 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, SFW 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 2016/17 academic year if they are required to be in attendance on the course for part of that year.

Designated full time courses including compressed degree courses starting in 2016/17 will be listed at:

<http://www.practitioners.slc.co.uk/policy-information/designated-courses/full-list-of-designated-courses.aspx>

[Any designation queries should be referred to HEFCE in the first instance : www.hefce.ac.uk/reg/desig/](http://www.hefce.ac.uk/reg/desig/)

Information about the Welsh Government's list of specifically designated courses at Private (Alternative Providers) can be accessed format : <http://www.studentfinancewales.co.uk/practitioners/policy-information/designated-courses.aspx>

\*2FT means a full-time honours degree delivered over 2 academic years(up to 24 months).

#### PGDE COURSES IN SCOTLAND ONLY

**68.** 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 about Professional Graduate Diploma in Education which is also eligible for support. SFW 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.

#### INITIAL TEACHER TRAINING (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)

**69.** Students commencing ITT courses on or after 1<sup>st</sup> 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.

Guidance on the definition of ITT courses starting on or after 1st September 2010 is as follows:

#### FULL-TIME ITT COURSES

**70.** 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. These include ITT courses leading to Qualified Teacher Status (Primary, Secondary) and courses for those wishing to teach in the post compulsory sector (Further Education) as set out in the Further Education Teachers' Qualifications Wales 2002

#### PART-TIME ITT COURSES

**71.** ITT courses that 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 (continuing students in 2014/15) or 25% of an equivalent full-time course over the duration of the part-time course if the course started from 2014/15 onwards. 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. To note that there are no part time ITT programmes currently running in Wales leading to Qualified Teacher Status (QTS).

All new students commencing full-time PGCE and equivalent ITT courses from 2012/13 (formerly known as 'Type 2' ITT students) will be eligible for a fully means-tested Welsh Government Learning Grant or Special

Support Grant of up to £5,161. Eligible continuing '2011 cohort' full-time PGCE students may be entitled to a fully means tested Welsh Government Learning Grant or Special Support Grant of £5,780. Eligible continuing '2010 cohort' PGCE students may be entitled to a fully means tested Assembly Learning Grant or Special Support Grant of £5,161..

## FURTHER EDUCATION (FE) ITE/ITT COURSES

**72.** 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, University of Wales Trinity Saint David and University of South Wales). No other forms of training provision for **FE** 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 courses detailed 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.

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 sees all new Further Education teachers working towards either Associate Teacher Learning and Skills (ATLS) status or Qualified Teacher Learning and Skills (QTLS) status.

In England Qualified Teacher Learning and Skills (QTLS) in the Further Education Sector is the equivalent of Qualified Teacher Status (QTS) in schools and prior to April 2012 QTLS did **not** lead to QTS. However from April 2012 QTS status is conferred to QTLS holders, but where the QTLS holder does not hold a QTS certificate as issued by the Department for Education, they may be eligible for further tuition and maintenance support in order for them to meet the new Secretary of State teaching standards as defined in the English Student Support Regulations.

### Schools Direct Training Programme

**School direct** places are available in certain primary and secondary schools across England and are delivered in partnership with an accredited ITT provider (either a SCITT or an HEP). These programmes generally last for one academic year, although where the programme is undertaken on a part-time basis it will usually take longer. Successful completion of the programme will lead to the award of qualified teacher status (QTS). School Direct programmes may also include a postgraduate certificate in education (PGCE). There are two separate School Direct training options:

**Schools Direct Training Programme (unsalaried)** is for graduates who will be part of a school team from enrolment. These graduates may be eligible for a bursary of up to £20,000 to support them in training. The training bursary is paid by the National College of Teaching and Leadership. Where undertaken on a full-time basis – students on these courses can attract the full-time package of support. Where undertaken on a part-time basis, these students can attract the part-time tuition loan only.

Open University is also providing full-time courses in conjunction with the Schools Direct programme. Where

the course is designated as full-time, students on these course can also receive the full-time package of support including maintenance support.

**Schools Direct Training Programme (salaried)** is an employment-based route for graduates with at least three years' work experience. These graduates will earn a salary while they undertake this programme through Schools Direct. Where a student opts for the 'Salaried' programme they are ineligible for support under the student support regulations.

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.

Teachers will achieve ATLS status by studying a Certificate in Teaching in the Lifelong Sector (CTLLS) 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. SFW should ensure that courses meet the criteria set out in regulation 5.

A phased introduction of the new qualifications has taken place from September 2013 and DTLLS and ADTLLS will be replaced with the new level 5 Diploma in Education and Training (DET).

As DTLLS/ADTLLS courses are being replaced by the new FE teaching qualifications, DTLLS/ADTLLS will no longer be treated as ITT courses for the purpose of student support. This change is effective from 1<sup>st</sup> September 2014.

There are three types of FE ITT qualifications being introduced at Level 5:

- Level 5 Diploma in Education and Training – 120 credits;
- Level 5 Diploma in Education and Training with specialist pathways\* – 120 credits; and
- Standalone specialist Diplomas of 45 credits 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 SFW for funding.

\* The Diplomas with specialist pathways are:

Diploma in Education and Training (Literacy);  
 Diploma in Education and Training (ESOL)  
 Diploma in Education and Training (Literacy and ESOL)  
 Diploma in Education and Training (Disabled Learners)  
 Diploma in Education and Training (Numeracy)

## COURSES FALLING UNDER PARAGRAPHS 7 & 8 OF SCHEDULE 2

**73.** 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.

In establishing whether a course is within either of Paragraphs 7 and 8 of Schedule 2, SFW 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.

NVQ level 4 courses may in some cases be below first degree or HND level and NVQ level 5 courses may not be postgraduate. 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 postgraduate 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).

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.

SFW 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

**74.** 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 normally require that:

- students 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 student's 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.

The SFW 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.

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 provider 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.

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.

Additionally, such courses at authority 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

**75.** Distance learning, sometimes called flexible or open learning, is a programme of study that allows students to study at home. Most colleges and universities offer some distance learning programmes, 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.

For the purposes of this guidance, we are only concerned with undergraduate study.

A distance learning course may be deemed full-time by the HEP 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 71(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 1<sup>st</sup> September 2012 such courses at publicly funded institutions which meet the criteria set out above are 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 1<sup>st</sup> September 2012, the student qualifies 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 1<sup>st</sup> September 2012, the student will not, in the majority of cases, qualify for the full-time student support package. Instead they may qualify for limited means tested fee and maintenance support under Part 11 of the Regulations.

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 should be treated as if they were in attendance and should therefore complete the full-time application (online or paper). Disabled Students' Allowances are also available to full-time disabled students who are undertaking but not treated as in attendance on their course.

Students who start a full-time distance learning course on or after 1<sup>st</sup> September 2012 will complete the full-time application (online or paper). Those who are continuing on a full-time distance learning course which they started before 1<sup>st</sup> September 2012 will complete the shorter part-time student support application form to apply for support in connection with a full-time distance learning course.

Full-time distance learning courses which began before 1<sup>st</sup> September 2012 need to be specifically designated by the Welsh Ministers on an individual course basis under regulation 71. Students who began a 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.

Full-time distance learning courses which begin after 1<sup>st</sup> September 2012 are automatically designated in the same way as other full-time courses. As such, they need to meet the requirements in regulation 5 and Schedule 2 to the Regulations.

All students who are unable to attend their HEP for a reason related to their disability but who are able to undertake the course by distance learning are eligible for the full-time student support package. This is the case even if the course they are undertaking has been specifically designated under regulation 71(2). They continue to apply for student support via the full-time student support application form.

Students on full-time distance learning courses that started before 1<sup>st</sup> 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 includes disabled students who have chosen to study by distance learning.

- the package of support offered to eligible distance learning students in connection with their undertaking designated distance learning courses that started before 1<sup>st</sup> September 2012 is similar to that offered to eligible part-time students. SFW, HEPs and students should, however, wish to be aware of the following key differences:
- Regulation 69 sets out the criteria that a student must satisfy in order to be an eligible distance learning student where the course starts prior to 1<sup>st</sup> September 2012. These criteria are not identical to those found in regulation 86 (eligible part-time students). The criteria in regulation 69 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;
- 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 71 (2), where the course began before 1<sup>st</sup> September 2012. If a full-time distance learning course is not specifically designated under regulation 71 then students on that course will not be eligible for the distance learning support package;
- The support payable to eligible distance learning students who started a course before 1<sup>st</sup> September 2012 is set out in regulations 73 (covering fee grant and course grant) and 76 (covering Disabled Students' Allowances for distance learning);
- The maximum amount of fee grant payable to eligible distance learning students who started their current course before 1<sup>st</sup> September 2012 is £1,025, which is the maximum payable to part-time students, and the maximum amount of course grant is £1,155. SFW does 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.

All full-time distance learning students who started their course before 1<sup>st</sup> 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 76. DSAs are payable under regulation 76 at the full-time rates provided for in regulation 25 to reflect the position prior to 1<sup>st</sup> September 2007. Regulation 81 makes provision for the transfer of status of these students from eligible student to eligible distance learning student;

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 87).

## LEARNING IN THE WORKPLACE

**76.** 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.

Learning in the workplace is a structured academic programme, controlled by HE Providers, and delivered in the workplace by academic staff of the institution, or staff of the employer, or both.

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.

Learning in the workplace should, in the Welsh Government's view, be a substitute for learning that would normally take place within an institution.

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

**77.** 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 Welsh Government Learning Grant will depend on the number of aggregate weeks of full-time study and the cohort of student, see regulation 37 for 'new system students who are neither 2010, 2011 nor 2012 cohort', regulation 38 for '2010 cohort' and '2012 cohort' students, regulation 39 for '2011 cohort' students.

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.

Where the 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.

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,

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.

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 88.

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.

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 HE Provider (HEP) course database provided by the Student Loans Company will not provide sufficient information for SFW to determine the appropriate level of support (including extra weeks of support where appropriate). SFW 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.

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.

Provisions relating to the support available for new system students on sandwich placements are in the appropriate parts of regulation 24 (General qualifying conditions for grants for living and other costs), regulations 19-21 (Amount of the fee loan) and regulations 50(1)(b) and 2(b) (Maximum amounts of loans for living costs).

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.

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(6).

SFW will need to be observant of the difference between a sandwich course with periods of work experience and a part-time course. Regulations specify that the periods of experience must form part of the course and that they must be associated with full-time study at an institution.

'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

**78.** 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.

Regulations 5(6) and 5(7) of The Education (Student Support) (Wales) Regulations 2015 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.

The Education (Student Support) (Wales) Regulations 2015 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 SFW in determining how to treat a student who does not follow the typical pattern of study.

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 SFW 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 SFW 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 HEP.

If a student does not follow the typical study pattern and SFW has not received a notification from the student or the relevant HEP, the Welsh Government is of the view that SFW 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. Therefore where the student has a gap longer than three academic years between Parts 1 and 2 the single course provision would usually not apply. However, SFW will need to satisfy themselves, on a case by case basis, that such a decision would be appropriate.

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.

A student may apply to SFW 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.

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 Education (Student Support) (Wales) Regulations 2015.

Students who are on courses covered by regulation 5(7) that meet the definition of a sandwich course in regulation 2(6) are potentially eligible for support during their year of practical experience. They may only be eligible for a reduced amount of fee support if their periods of full-time study are below certain levels (under regulation 19(2)(a) if they are new system students (pre 2012 cohort groups) or under regulation 21(4) (if they are 2012 cohort students). Any student whose periods of full-time study in the relevant academic year are in aggregate 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 50(1)(b) and (2)(b) in that year (because regulation 24(7) will apply). This is of course subject to the student satisfying the other eligibility criteria for the loan.

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(6). Consequently, such a student will not be eligible for support during the year of practical experience.

## INTERCALATED STUDY

**79.** 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, SFW 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, SFW 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

**80.** 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.

Foundation years are not the same as [foundation degrees](#) and the two should not be confused.

## FREE STANDING FOUNDATION AND CONVERSION COURSES

**81.** 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 SFW 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

**82.** 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

**83.** 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

**84.** 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.

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 may apply to a franchised course.

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

**85.** Please refer to the separate guidance on part-time courses (Fee Support and Course Grant for Part-Time Students) . There are no significant changes to the support available for part-time study in AY 2016/17.

## 60 CREDIT COURSES

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

## SPECIFIC DESIGNATION

**87.** 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 88(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.

The list of designated courses for dance and drama awards can be found in the 'HE Dance and Drama Courses' section of the 2016/17 "Assessing Financial Entitlement" guidance chapter.

## SPECIFIC DESIGNATION OF POSTGRADUATE COURSES FOR THE PURPOSE OF DISABLED STUDENTS' ALLOWANCES

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

## FOUNDATION DEGREES

**89.** 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 HEPs 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.

Many foundation degree courses are automatically designated for support, provided they meet all parts of Regulation 5(1). However, HEPs 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.

Foundation degree courses may be full-time courses 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 88.

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.

**ANNEX 1****STUDENTS ELIGIBLE TO APPLY FOR AN NHS BURSARY**

NHS Bursaries are available (subject to income assessment) to students on full or part-time courses leading to professional registration in:

- Chiropody;
- Dental hygiene;
- Dental therapy;
- Dietetics and Nutrition
- Nursing (including courses to convert from second to first level registration);
- Midwifery;
- Occupational therapy;
- Operating department practice (Dip HE only);
- Orthoptics
- Physiotherapy;
- Podiatry
- Prosthetics and orthotics
- Radiography and Radiotherapy;
- Speech and language therapy.

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 Education (Student Support) (Wales) Regulations 2015. Please note that the NHS Bursary Scheme changed in relation to all students who started healthcare related courses on or after 1<sup>st</sup> September 2012. Nurses, midwifery and operating department practice students are eligible for the same level of support as other students who study healthcare related courses.

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 Education (Student Support) (Wales) Regulations 2015. In addition, all students who start the healthcare related courses above on or after 1<sup>st</sup> 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. These students will also be eligible to apply, under The Education (Student Support) (Wales) Regulations 2015 as amended<sup>6</sup> for a means tested, reduced rate maintenance loan of up to £4,259 (London Rate).

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 Education (Student Support) (Wales) Regulations 2015. However, see below for the special arrangements for graduate entry medical and dentistry students starting specific courses on or after 1<sup>st</sup> September 2012.

Students on the standard undergraduate medical and dentistry courses are eligible, under The Education (Student Support) (Wales) Regulations 2015 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 (non-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*.

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 Education (Student Support) (Wales) Regulations 2015. 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 1<sup>st</sup> September 2012 (AY 2012/13, 13/14, 14/15, 15/16 and 16/17 entrants) students will be eligible for a partial tuition fee loan for each year of their course (Regulation 23 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 updated 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.

The 4 year accelerated graduate entry programmes are at Birmingham, Bristol, Cambridge, Cardiff, 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.

Most of the information needed for dealing with applications from students who are eligible to apply for an NHS bursary for the 2016/17 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.

SFW 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 SFW, 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.

Students studying Nursing and Midwifery courses at Scottish HE Providers are eligible to apply for a non-income assessed bursary from SAAS, therefore they are ineligible for funding from SFE. This includes degree and diploma courses.

Students domiciled in Wales studying for Allied Health Professional courses (with the exception of nursing and midwifery) will have their fees paid in full by SAAS and can access via SAAS a means tested young students or independent students bursary and other grants. Such students can apply to SFE for a reduced level maintenance loan only. 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 with exception of the students studying at Cambridge University. These students require a MT assessment so their details appear on the Higher Education Bursary Scholarship Scheme (HEBSS) to allow Cambridge University to assess them for a Bursary. 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. Cambridge students will also only receive reduced rate maintenance loan from SFW as any other NHS funded course.

Responsibility for handling student applications for bursaries is dependent on where the student studies, but the student should apply to SFW 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 SFW a loan. Further information on NHS eligibility rules can be found on the NHS website at: <http://www.nhsbsa.nhs.uk/students>

The following are details of the bodies providing NHS bursaries to students in the United Kingdom.

### **England**

NHS Student Bursaries

Ridgway House  
Northgate Close  
Middlebrook  
Horwich  
Bolton  
BL6 6PQ

Tel: 0300 330 1345

email: [nhsbsa.sbaccount@nhs.net](mailto:nhsbsa.sbaccount@nhs.net)

### **Wales**

**NHS Wales - Student Awards Services**

6th Floor  
Churchill House  
17 Churchill Way  
Cardiff  
CF10 2TW

Telephone: 029 2037 6854

Website: [www.nwsspstudentfinance.wales.nhs.uk/home](http://www.nwsspstudentfinance.wales.nhs.uk/home)

### **Northern Ireland**

#### **Department of Employment and Learning (DEL)**

Student Support Branch  
4<sup>th</sup> Floor, Room 407  
Adelaide House  
39-49 Adelaide Street  
Belfast  
BT2 8FD

Tel: 028 9025 7777  
[www.delni.gov.uk](http://www.delni.gov.uk)

### **Scotland**

#### **Student Awards Agency for Scotland**

Saughton House,  
Broomhouse Drive  
Edinburgh  
EH11 3UT

Tel: 0300 555 0505  
[www.saas.gov.uk](http://www.saas.gov.uk)

### **NHS SECONDEES**

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).

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. However, when approving the application SFW should manually over-ride the tuition fee amounts and set them to zero to ensure the HEP is not paid fees by the SLC.

## ANNEX 2

### MEMBER STATES OF THE EU AND THEIR DATES OF ACCESSION

The member states of the EU 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 1<sup>st</sup> May 2004 the following countries joined the EU:**

Cyprus  
Czech Republic  
Estonia  
Hungary  
Latvia  
Lithuania  
Malta  
Poland  
Slovakia  
Slovenia

**With effect from 1<sup>st</sup> January 2007 the following countries joined the EU:**

Bulgaria  
Romania

**With effect from 1 July 2013 the following country joined the EU:**

Croatia

**The following rules also apply:**

**Cyprus:** The Sovereign bases on Cyprus are not part of the EU.

**Denmark:** On 1<sup>st</sup> February 1985, Greenland, part of the Kingdom of Denmark, ceased to be part of the EU. The Faroe Islands are not part of the EU.

**Germany:** From 3<sup>rd</sup> 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 EU rights. Heligoland, although a tax-free port, is part of the EU.

**Finland:** The Åland Islands are part of the EU.

**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 EU.

**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 EU (although many EU 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 EU 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 EU.

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

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

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

**The member states of the EEA are, as of 1<sup>st</sup> July 2013:**

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Croatia, 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 EU and Switzerland on the Free Movement of Persons, which was signed on 21<sup>st</sup> June 1999 and came into force on 1<sup>st</sup> 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 8<sup>th</sup> January 2004 and were 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**

**CERTIFICATE OF EMPLOYMENT FOR HOME FORCES**

**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.....

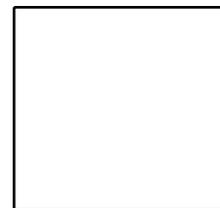
Rank.....

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)  
Saugton House Broomhouse Drive  
Edinburgh  
EH11 3UT

Tel: 0300 555 0505  
[www.student-support-saas.gov.uk](http://www.student-support-saas.gov.uk)

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

Tel: 028 9025 7777  
[www.delni.gov.uk](http://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.gov.uk/Student-Finance>

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

Student Support Information Line: 0300 100 0618  
<http://www.gov.uk/Student-Finance>

**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 – EU 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.

**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 EU worker and ceases to be a “child” under national law.

**ANNEX 8 WELSH STUDENT SUPPORT COHORTS**

Student Cohort	Eligibility period (first day of study)	2016/17 Fee Liability and Support	2016/17 Maintenance Support*
Continuing new system students (not 2010, 2011 or 2012 cohort students).	Started <b>on or after</b> 1 September 2006 and <b>before</b> 1 September 2010. Includes eligible gap year students who started on or after 1 September 2010.	Where Variable tuition fees are charged <b>£3,465</b> (or <b>£3,925</b> where the HEP is in NI)  Where the HEP is in Wales first <b>£1,380</b> can be self funded or take out a non-means tested repayable tuition fee loan In addition to a non-means tested tuition fee grant of up to <b>£2,085</b> .	Welsh Government Learning Grant of up to <b>£3,000</b> (household income –up to £39,329).
Continuing 2010 cohort ( <i>new system</i> )	Started <b>on or after</b> 1 September 2010 and <b>before</b> 1 September 2011. Includes eligible gap year students who started on or after 1 September 2011.	<b>£3,465</b> (or £3,925 if HEP in NI) – can self fund or take out a non-means tested tuition fee loan.	Welsh Government Learning Grant of up to <b>£5,161</b> (household income up to £50,020).
Continuing 2011 cohort ( <i>new system</i> )	Started <b>on or after</b> 1 September 2011 and <b>before</b> 1 September 2012. This <b>does not</b> include eligible gap year students who start on or after 1 September 2012.	<b>£3,465</b> (or £3,925 if HEP in NI) – can self fund or take out a non-means tested tuition fee loan.	Welsh Government Learning Grant of up to <b>£5,780</b> (household income up to £50,020).
2012 cohort ( <i>new system</i> )	Started <b>on or after</b> 1 September 2012	<b>£9,000</b> – first <b>£3,900</b> can self fund or take out a non-means tested repayable tuition fee loan. A non-means tested new fee grant of up to <b>£5,100</b> is available for eligible students.	Welsh Government Learning Grant of up to <b>£5,161</b> (household income up to £50,020)

\*All cohorts of students, continuing new system (2006, 2007, 2008, 2009) 2010, 2011 and 2012 can apply for a partially means-tested loan for living costs of between £4,786 and £8,662 (full-year loan rates) depending if they are living in the parental home or outside the parental home in London, overseas or elsewhere.

The Special Support Grant may be payable as an alternative to the Welsh Government Learning Grant 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' Allowances, Childcare Grant, Adult Dependants' Grant, Parents' Learning Allowance and Grants for Travel.

**ANNEX 9****REGULATION REFERENCE CHANGES BASED ON 2016 AMENDMENT**

2015 Main Regulations	Amendment Regulations
Regulation 2 (Interpretation) paragraph 1 “End-on year” ;“Universal healthcare bursary”	Regulation 3 (a) (b)
Regulation 10 (Time limits) paragraph (2)(e)	Regulation 4
Regulation 12 (Requirement to enter into a contract for a loan)	Regulation 5
Regulation 28 (Grants for dependants – childcare grant) Paragraph 2 , Paragraph 3	Regulation 6 (1) (2)
Regulation 37 (Maintenance grant – new system eligible students who are not new cohort students)	Regulation 7
Regulation 67 (Overpayments)	Regulation 8
Regulation 85 (Overpayments)	Regulation 9
Regulation 88 (Designated part-time courses)	Regulation 10
Regulation 97 (Part-time childcare grant) Paragraph (2) Paragraph (3)	Regulation 11 (1) (2)
Regulation 100 (Part-time grants for	Regulation 12

dependants – interpretation) Paragraph 1 Paragraph 5 Paragraph 6	(a), (b) and (c)(d)(e)
Regulation 114 (Overpayments)	Regulation 13
Regulation 124 (Overpayments)	Regulation 14
Please refer to the Schedule in the Amending Regulations	Regulation 15 (Schedule)  The Schedule to these Regulations has effect to substitute the figure in the third column of the table for the figure in the second column where it appears in the regulation of the 2015 Regulations set out in the first column.