

Assessing Eligibility Guidance

Higher Education Student Finance in Wales Academic Year 19/20 – Version 5.0

Summary

This section provides details on the eligibility criteria for the financial support package for full-time students.

Disclaimer

This guidance is designed to assist with the interpretation of the student support regulations as they stand at the time of publication. It does not cover every aspect of student support nor does it constitute legal advice or a definitive statement of the law. Whilst every endeavour has been made to ensure the information contained is correct at the time of publication, no liability is accepted with regard to the contents and the Regulations remain the legal basis of the student support arrangements for the academic year 2019/20. In the event of anomalies between this guidance and the Regulations, the Regulations prevail. Please note the Regulations are subject to amendment.

Please note this guidance is for Student Finance Wales (SFW) students only.

Regulation References

From academic year 2018/19 there have been two sets of Regulations governing student support in Wales. As these Regulations often have mirroring provisions the regulation references throughout this guidance are followed by either “(2017)” or “(2018)” to denote which set of Student Support Regulations the regulation is in reference too.

“(2017)” denotes the “The Education (Student Support)(Wales) Regulations 2017 (SI 2017/47)” as amended

“(2018)” denotes the “The Education (Student Support)(Wales) Regulations 2018 (SI 2018/191)” as amended

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Abbreviations

Abbreviation	Full
ADG	Adult Dependants' Grant
AY	Academic year
BDTC	British dependant territories citizen
BOTC	British overseas territories citizen
CCG	Childcare Grant
CMS	Courses Management Service
CIW	Care Inspectorate Wales
DfE	Department for Education
DSA	Disabled Students' Allowances
DWP	Department for Work and Pensions
FTDL	Full time distance learning
GfDs	Grants for Dependants
HEFCW	Higher Education Funding Council for Wales
NINO	National Insurance Number
OfS	Office for Students
PLA	Parents' Learning Allowance
RRML	Reduced Rate Maintenance Loan
SAAS	The Student Awards Agency for Scotland
SFW	Student Finance Wales
SSG	Special Support Grant
TG	Travel Grant
UC	Universal Credit
WGLG	Welsh Government Learning Grant

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General Eligibility

An eligible student qualifies for support if they are studying on a designated course and in accordance with the Education (Student Support) (Wales) Regulations 2017 as amended or the Education (Student Support) (Wales) Regulations 2018 as amended.

Within the regulations, regulations 4 and Schedule 1 (2017) and regulations 9-11 and Schedule 2 (2018) outline the personal eligibility criteria. The provisions on designated courses are in regulations 5 and Schedule 2 (2017) and regulations 5-8 (2018) and are discussed in a later section of this guidance (section 4.1).

Other general provisions are made that all eligible students are subject to, such as time limits for applications and requirements to provide documents, these are discussed in detail below.

1.1 Time limit for applying for Student Support

The general rule is that a student must make their application to SFW within nine months of the first day of the academic year (AY) in respect of which the student is applying for support (regulations 10(1) (2017) and 33 (2018)). SFW has the discretion to extend this deadline where they consider it is appropriate to do so, with consideration to the individual's situation (regulations 10 (2(f)) (2017) and 33 (2018)).

The general rule does not apply when an "event" as described in regulations 10 (2) (2017) and 33 (2018) occurs, examples of these events include:

- The date on which the course was designated, if that happens after the first day of the academic year.
- 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.
- 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.
- The date on which the country of which they are a national gains accession to the European Union (EU), if that happens after the first day of the academic year.

It is important to note that the above list is not exhaustive. See [Annex A](#) for a full list of events.

The general rule also does not apply where the student is making a separate application for a loan product, and is applying for an additional amount of loan or for Disabled Students' Allowances (DSAs).

1.2 Documentation Requirements

The Regulations stipulate that a student must present documentation as required by Welsh Ministers with their application. Regulation 9(2) (2017) and 32(2) (2018) provides that the Welsh Ministers may take such steps and make such enquiries as they consider necessary to determine eligibility.

For all loans paid in AY 19/20, 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) as a condition of entitlement to payment of any loan (regulations 59(1) (2017) and 96(1) (2018)). The DWP will in most cases issue NINOs to applicants 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 (regulations 59(3) (2017) and 96(2) (2018)). This will avoid hardship in the event that there are delays for students obtaining a NINO which are outside their control.

Regulations 60(2) (2017) and 35(2) (2018) state that 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. Relevant documents are listed in the supporting notes available when completing each application.

Students are asked at the point of application whether or not they hold a UK passport. If the answer is yes, they can provide SFW with their passport number and details rather than sending the original passport. SFW verify these details with the Identity and Passport Service (IPS) via the Government Secure Intranet.

SFW may accept legally certified or notarised true copies of documents on an exception only basis where they consider it unreasonable to insist on originals. Every endeavour should be made however to have sight of original identity documents, preferably a passport or identity card. A certified true copy is a photocopy of an original document. It must have been stamped and signed as being a true copy of the original by an official such as a minister of religion, doctor, lawyer, civil servant, teacher/lecturer or police officer. The person certifying the copy must provide their name, address and contact number. The certifying person must not be a relative.

If a student chooses to submit their birth certificate, this must be accompanied by a fully completed Birth/ Adoption Certificate 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, with valid reason, be unable to provide either a birth certificate or passport: 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 in order to ensure that they can satisfy themselves of the applicant's identity.

1.3 Students ineligible for funding

The Regulations also make provision for certain persons that are excluded for any support under the Regulations (regulations 4(3) (2017) and 10 (2018)). A student is ineligible for support from SFW if they:

- are in receipt of a non-income assessed 'healthcare bursary'
- are in receipt of any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 207(46)
- 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

Where a person qualified as an eligible student for the previous academic year, it will not usually be necessary for SFW to re-determine personal eligibility for the following year (see regulations 4(7-10) (2017) and 11 (2018)).

1.3.1 Healthcare Bursaries

Courses starting on or after 1 August 2018

From 1 August 2018 new dental hygiene and dental therapy (DH/DT) students on undergraduate pre-registration courses in England/Scotland no longer receive healthcare bursaries but instead access loans through the standard student loans system under the Regulations.

Students studying these courses in Wales will continue to be able to access the healthcare bursary subject to the same eligibility criteria as in AY 17/18, including the requirement to work in the NHS in Wales for up to two years

Courses starting on or after 1 August 2017

From 1 August 2017, new nursing, midwifery and allied health professional (AHP) students on undergraduate pre-registration courses in England/Scotland no longer receive healthcare bursaries but instead access loans through the standard student loans system under the Regulations.

Most students who started nursing, midwifery or AHP courses in Wales before 1 August 2017, or a DH/DT courses before 1 August 2018 will be in receipt of income-assessed healthcare bursaries, which they will continue to receive until completion. A new healthcare bursary eligibility requirement was introduced for courses starting on or after 1 August 2017. This requires students studying eligible healthcare courses in Wales to sign an agreement to work in the NHS in Wales for up to two years after course completion.

Courses starting on or after 1 September 2012

The support available to students studying certain healthcare related subjects changed from 1 September 2012. Students who started prior to 1 September 2012 are continuing on NHS funded courses such as nursing, midwifery and operating department practice still receive support for fees and non-income assessed bursaries via the NHS Bursary scheme. They are not eligible for any support under the Student Support Regulations. The new support arrangements only apply to students who commenced healthcare related courses on or after 1 September 2012.

Eligible students who can apply for a healthcare bursary for a course that started in September 2012 or later 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 also receive a non-income assessed grant of £1,000 from the NHSBSA. Such students are also eligible to access limited support under the Student Support Regulations in addition to the support available from the NHS. See the 19/20 Assessing Financial Entitlement guidance chapter for full details.

Not all students access the NHS bursary scheme but do not 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.

AY 13/14 changes

SAAS changed the funding regime for new and continuing Allied Health Profession (AHP) students studying in Scotland from AY 13/14, with the exception of nursing and midwifery students, making 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.

For detailed guidance on the support available to students studying on these courses please see the NHS guidance chapter.

1.3.2 Previous student loans – breaches of obligation to repay loan and un-ratified loans

The Regulations provide that a person shall not be eligible for support if they are in breach of any obligation to repay any loan (regulations 4(3) (2017) and 10(Exception 4) (2018)) 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 regulations 4(3)(e) (2017) and 10(Exception 5) (2018)).

Outstanding loan or grant overpayment is not a breach of an obligation to repay previous loans. Breaches to repay relate to repayment such as unpaid overseas contributions and cancelled direct debits. SFW does not have any discretion in determining an applicant's eligibility in these circumstances. The applicant is not eligible for support whether or not they have declared any such breach or non-ratification on their application.

SFW systems are able to identify students who are in breach and this is discovered when the assessment is sent for approval. A letter is sent to the student at that point advising that they are ineligible while remaining in default.

Once an applicant is no longer in breach, SFW should 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 cease to be in breach of any such obligation or ratify any such agreement.

From AY 14/15 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, that student acknowledges and agrees that they are automatically ratifying all student loans that they borrowed before reaching the age of 18.

Where an applicant is awarded funding but subsequently breaches any obligation to repay any previous student loan, he or she will remain eligible for support in the academic year to which the notification of funding applies.

1.3.3 Unfitness to receive support

A student does not qualify as an eligible student if, in SFW's opinion, they have shown themselves by their conduct to be unfitted to receive support (regulations 4(3)(f) (2017) and 10(Exception 6) (2018)). This 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 a student's period of eligibility for similar reasons under regulations 6(5) (2017) and 20(1) (2018).

A student may be deemed unfit for support by SFW for a number of reasons. The following are examples that demonstrate when a student could be considered unfitted for support:

- Where it comes to light that the student has committed fraud in applying for support:

- In these cases, SFW should consider exercising the power to refuse the application (or terminate eligibility, depending on when the fraud comes to light). This is based on the grounds that the student has demonstrated they are unfit due to fraudulent conduct to be considered for support. This can include making applications (and receiving support) to more than one authority and presenting fraudulent information in order to receive more support than they are entitled to. SFW may find Student Finance Wales Audit Guidelines for the Administration of Student Finance Payments helpful.
- Where the student has made repeated applications for support and received support for a number of different courses without completing those courses:
 - This is most likely to involve loans for living costs and supplementary grants (such as GfDs and DSAs), as entitlement for these loans and grants is not subject to the previous study rule. It may also involve fee loan and (for pre 2016 cohorts) maintenance grant support. Where a student has already received support for four uncompleted courses, SFW should consider whether that student should be eligible for further support based on the student's individual circumstances. If applicable, the student should be deemed unfit for further support. 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.
- Where evidence from the HEP calls a student's fitness to receive support into question:
 - The institution may provide evidence of attempted fraud against it. This may not actually lead to the student being expelled but may lead SFW to consider whether the student, though being allowed to continue with the course, should continue to receive support for it.

Fraud against other government departments such as the DWP, or conviction of a serious criminal offence might also be grounds for refusal of support in some circumstances. SFW will need to consider such cases carefully. Whilst a student's sentence may be argued as adequate punishment, it is SFW's responsibility to consider whether it is appropriate to support a student whose conviction casts doubt on their suitability for their intended career.

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. Consideration should also be given where the applicant is pursuing higher education as a means towards their rehabilitation.

The fact that a student is, or has in the past been, in dispute with SFW over a student support issue should not of itself be a reason for refusing or terminating support. This applies even if the dispute was acrimonious. It may be a different matter however if the student has behaved criminally in pursuing their grievance, though each 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 SFW's legal staff.

1.4 Prisoners

Prisoners are ineligible for support from SFW (regulations 4(3)(g) (2017) and 10(Exception 7) (2018)) unless they meet the definition of an eligible prisoner.

An eligible prisoner under the Regulations is one who begins their current course on or after 1 September 2012 and is serving their sentence of imprisonment in the UK. They must have an earliest release date within six years of the first day of the first academic year, and the appropriate prison authority must have approved the student to study the current course. The student must not have transferred to the current course from a course beginning before 1 September 2012.

A full-time '2012 cohort' or '2018 cohort' student who is an eligible prisoner will be eligible for tuition charge support only for those periods when they are imprisoned.

A full-time student who is not a '2012 cohort' or '2018 cohort' student will be eligible for tuition fee loan and DSAs for those periods when they are imprisoned. For more information see the Change of Circumstances (including Overpayments) guidance.

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

In exceptional circumstances, 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 AY. 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 need to consider factors such as a student's ability to pay rent and other living expenses to enable them to continue with their course. It is expected that exercising the discretion would be appropriate when a student spends a very short time in prison.

1.5 Students attending more than one course

Under the Regulations a student can only be eligible for support for one course of higher education at any one time. This provision does not prevent the student from moving between courses during an academic year. It does however, prevent the student from being eligible for support for more than one course where they take two (or more) courses concurrently.

2 General Residency

The following information on matters of residency represents the Welsh Government's understanding on such matters. The Welsh Government is of the view that SFW should satisfy itself that it has understood, and applied correctly, the current law and practice in relation to residency when carrying out assessments.

2.1 Ordinary Residence

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

A person is not to be treated as ordinarily resident in a place unless that person lawfully resides in that place. Therefore, periods where an applicant has not been lawfully resident in the UK and Islands or the European Economic Area (EEA) or Switzerland at any time within the three years prior to the first day of the first academic year of the course cannot be treated as ordinary lawful residence.

This means that applicants must hold a valid Home Office status throughout the period of ordinary residence required by SFW when establishing their eligibility to student support. Students will normally be able to provide evidence from the Home Office confirming their immigration history and current immigration status, which will normally be sufficient to fulfil this requirement. The WG policy is that the SLC will rely on information from the Home Office in relation to residency matters.

In cases where the Home Office has the power to disregard a period of overstaying, which was until 24 November 2016 a period of overstaying up to 28 days. Therefore an application made up to 28 days out of time would not be refused by the Home Office solely for that reason. This power was changed from 24 November 2016, paragraph 39E of the Immigration Rules now allows the Home Office to consider some exemptions for over-stayers whose application could not be made within 14 days of the applicants leave expiring. The Home Office can apply this exemption (sometimes called a 'grace period') in both Limited Leave to Remain (Immigration Rules) cases and in Discretionary Leave to Remain (outside the Immigration Rules) cases. This means that the Home Office can determine that a period of up to 14 days does not constitute a break in lawful residence for the purposes of a further application for leave to remain. In cases where there was a late application within the 'grace period' and further leave was granted, it is expected the Home Office will confirm this to SFW.

Where that is not possible, SFW should consider whether a student's residence is lawful by virtue of their relationship to someone with a valid status. One such example would be a child of an EU national, who is not required to apply for an EU residency permit, and therefore the Home Office is unable to confirm their status. If such a child's parent is lawfully resident in the UK the parent's status, in most cases, is extended to the child.

For considerations when assessing the ordinary residence of Armed Forces Personnel please see section 2.9. below.

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

In order to be eligible for support, persons who are settled in the UK (as outline in Schedule 1 (2017) and Schedule 2 (2018)) must not have been resident in the UK 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 in the UK wholly or mainly for the purpose of receiving full-time education.

The Welsh Government is of the view that a student is not prevented from qualifying for support simply because they have been receiving full-time education during some or all of the three year prescribed period. For example, the child of spouse/civil partner of a foreign business person 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 not wholly or mainly for the purpose of receiving full-time education) and so be entitled to support if the time requirements are met.

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

The Regulations provides for student who have been ordinarily resident in either England, Scotland, Northern Ireland, the Channel Islands or the Isle of Man, and then moves to Wales: if the move was for purpose of undertaking the current course or a course which the student was undertaking immediately before the current course, they should be regarded as being ordinarily resident in the place from which they have moved.

To apply for support, such a student should contact the responsible authority in the area they have moved from as they are assessed for support under the rules that apply there. Only those students ordinarily resident in Wales apply to SFW.

2.4 Temporary or occasional absence

When establishing whether an applicant meets the requirements of ordinary residence throughout the three-year period preceding the start of the first academic year of a course, temporary or occasional absences may have to be considered.

Each absence should be reviewed in the context of the person's period of residence, with decisions on whether an absence affects an applicant's ordinary residence being made on a case-by-case basis. SFW should not apply 'rules of thumb' in determining a temporary or occasional absence. The applicant's place of birth or nationality should not be considered.

Additionally, whilst the duration of the absence must be taken into account, it must not be the only factor evaluated. SFW will wish to consider whether it would be confident that their decision would be upheld if it were challenged in court.

2.5 Gap Years

Students taking a gap year before starting a HE course do not break their ordinary residence in the UK and Islands (or the EEA and Switzerland).

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 (or EEA and Switzerland as appropriate) other than solely for the purpose of completing the relevant course.

Students on a gap year immediately prior to starting their course can be considered to meet the requirement to be ordinarily resident in Wales on the first day of the first academic year of the course, even if still abroad. In order for criteria to be satisfied the student must be able to evidence that they will return to the UK prior to the first day of the course.

2.6 Emigrants

An absence from the UK because of emigration should generally not be considered to be of a temporary nature, however each case should be considered on its own merits.

2.7 Temporary Employment Outside of Wales, the UK and Islands(or EEA, Switzerland and Turkey)

Students are to be treated as ordinarily resident in Wales, the UK and Islands (or EEA, Switzerland or Turkey as appropriate) if they would have been so resident but for the fact that they, their spouse or civil partner, their parent, or in the case of a dependent relative, their child or child's spouse or civil partner, is or was temporarily employed outside of Wales or the UK and Islands (or the EEA, Switzerland and Turkey) during the three year period (Schedule 1, Part 1, Paragraph 1(4) (2017) and Schedule 2 Paragraph 9 (2018)).

A person can only be considered temporarily absent from the UK and Islands (or EEA, Switzerland or Turkey) if they have previously established ordinary residence in the UK (or the EEA, Switzerland or Turkey) at an earlier point in time.

Information on the temporary absence due to an armed forces personnel being posted outside of the UK (or the EEA, Switzerland or Turkey) can be found in section 2.9.

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.

2.8 Children living in Wales, the UK and Islands (or EEA, Switzerland and Turkey) whose parents are temporarily employed outside these areas

Children whose parents are temporarily employed outside Wales, the UK and Islands (or EEA, Switzerland or Turkey) but who remain in Wales, the UK and Islands (or EEA, Switzerland or Turkey) will normally retain the relevant connection with the UK (or EEA, Switzerland or 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. Schedule 1, Part 2, paragraph 2(1) (2017) and Schedule 2, paragraph 1(1) (2018) states that three years of residence in the UK and Islands which was not wholly or mainly for the purpose of receiving full-time education does not apply to a person who is treated as ordinarily residence in the UK and Islands in accordance with Schedule 1, Part 1, paragraph 1(4) (2017) and Schedule 2, paragraph 9(2) (2018).

A person who has come to the UK to study or be schooled may initially be ordinarily resident here primarily for educational purposes, but the purpose of residence may subsequently change. For example, they may set up normal habitual residence in the UK. As always, however, SFW should make a decision in such cases based on the particular facts of the application.

2.9 Considerations when establishing temporary employment

When determining if a break in ordinary residence is a result of temporary employment abroad, SFW should be satisfied that the period abroad arises from employment. They should then assess whether or not the absence is temporary, and decide whether, but for the temporary employment of the applicant (or parents or spouse/civil partner), the applicant 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, period of time spent abroad, the time spent in the country and whether a residence has been maintained in Wales or the UK and Islands (or as the case may be EEA, Switzerland or 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, SFW may wish to consider:

- whether the applicant had applied for jobs prior to their departure
- the length of time spent overseas before obtaining work
- whether the applicant resided in the same overseas country before and after obtaining a job and
- what the applicant was doing prior to obtaining a job, or between jobs

In determining whether the employment was temporary or permanent, SFW should review the nature of the current contract, with consideration given to the following:

- does the contract include liability for the UK and Islands (or EEA, Switzerland or Turkey) tax on earnings
- is the posting for a specified period, or if for an unspecified period, what is the reason for no specification
- how long is the contractual period?
- is the contract renewable, has it 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
- how long has the employee already been resident abroad

When reviewing the contract, SFW 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 that is kept under review. They may also indicate a long-term posting with the contract being renewed as a matter of formality rather than a real review.

SFW should also review as necessary and take into consideration the following

- 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?
- 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) in his or her home country on completion of the duty abroad?
- periods between overseas postings:

- Have such periods been spent in this country. For example, in the employer's HQ in the UK and Islands (or EEA, Switzerland and Turkey) offices?
- previous contracts
- if there is no contractual period, how long has the employee already been resident abroad?

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. 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.

2.10 Determining dual residence

In determining ordinary residence, it may be necessary to consider if an applicant has been dually resident in the UK and Islands (or the EEA or Switzerland, where applicable) and another overseas state outside of the UK and Islands, the EEA or Switzerland.

It is possible for a person to be ordinarily resident in two countries at the same time. Evidence must be provided to enable SFW to make a judgment as to whether there are significant and continued ties to the UK. SFW should consider the following factors alongside the evidence:

- Was the student settled in the UK prior to leaving?
- Does the student or their family maintain/have ownership of property? Note however that maintaining a property in the UK will not necessarily mean that somebody is ordinarily resident. For example, a property may be an investment or a future retirement home.
- Has the student or their family retained UK citizenship and valid UK passports and documents?
- Has the student or their family retained temporary status in the other state despite having the option to have become citizens?
- Was the student a minor when the family left the UK?
- Has the student (or parents/guardian) maintained UK bank accounts and/or paid UK taxes?

Has the student or their family maintained business, work and/or social connections in the UK? Have regular visits been made to the UK during their absence not just for the purposes of holidays and visiting relatives?

2.11 Armed Forces Personnel

2.11.1 Ordinary Residence

For the purposes of this guidance, 'UK Armed Forces' includes active service members of the British Royal Navy, Royal Air Force and Army Reserves only.

To ensure applications for support from former members of the UK Armed Forces or family members of UK Armed Forces personnel are processed by the administration in the appropriate UK territory, from AY 13/14 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.

2.11.2 Temporary Absence

The Regulations state that members of:

- the regular naval, military or air forces of the Crown (UK) or
- another EEA State or
- Switzerland or Turkey

who serve any period outside these areas 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 UK and Islands or the territory comprising the EEA, Switzerland and Turkey if they would have been so resident but for the fact that they or their family member was serving overseas or in another country within the UK.

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.

Family member is defined as the student's spouse or civil partner, their parent or, in the case of a dependent relative, their child or child's spouse or civil partner.

The provision is only intended for serving armed forces personnel's family members who follow them on postings. Students who had been living overseas but not with the parent on active service would not be considered under this provision.

2.11.3 Distance Learning exception

The general provisions in the Regulations are that eligible students undertaking a distance learning course provided by a UK institution must be undertaking the course in Wales on the first day of the first academic year of that course in order to qualify for any student support. If a student subsequently moves within the UK they remain eligible for support, however if they move outside of the UK they cease to be eligible for support.

In AY 17/18 the Regulations were amended for students starting or continuing distance learning courses so that eligible students who are either:

- UK Armed Forces personnel serving overseas or
- Family members living with UK Armed Forces personnel serving overseas

became eligible for support for a distance learning course if they were undertaking the course from outside the UK as a result of their or their family member's posting on the first day of the first AY of the course, or were subsequently posted overseas after the start of their course.

From AY 18/19, eligibility to support for a distance learning course was extended to students who are UK Armed Forces personnel or the family members of personnel serving outside their domicile on the first day of the first academic year of their course but within another country in the UK.

"Family member" has the same definition as detailed in respect of temporary absence above. The same consideration that the student must be living with the serving family members should also be observed.

2.12 Residency categories (Schedule 1 Part 2)

Part 2 of Schedule 1 (2017) and Schedule 2 (2018) of the Regulations describes the categories under which a student can be eligible. The residency requirements and other conditions that must be met are set out under each category.

A student's eligibility is not solely derived from satisfying the requirements of one of the categories, and they must meet the other conditions as prescribed under regulations 4 (2017) and 9-11 (2018).

2.13 Persons who are settled in the UK but not by virtue of having acquired a Permanent Right of Residence in the UK

To qualify under Schedule 1 Part 2 paragraph 2 (2018) or Schedule 2 paragraph 1 (2018) the student must be able to satisfy the requirements relating to their residence and immigration status on the first day of the first academic year of the course. For a course starting in the autumn, this date is 1 September.

On that date the student must:

- have been ordinarily resident in the UK 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 UK, without being subject to any restriction on the period for which they may remain (as defined in section 33(2A) of the Immigration Act 1971).

The requirement that any part of the student's residence in the UK and Islands is not wholly or mainly for the purpose of receiving full-time education is waived where the student or their family member has been considered to be temporarily employed abroad.

A person is to be treated as ordinarily resident in Wales, the UK 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 UK and Islands or, as the case may be, outside the area in question.

2.13.1 Settled Status

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
- they are a person who 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).

2.13.2 British Citizen by Descent

The British Nationality Act 1981 (section 2) provides that a child born outside the United Kingdom will be a British citizen by descent if either parent was a British citizen "otherwise than by descent".

Settled status is defined as being ordinarily resident in the UK without being subject to immigration time restrictions. A person who is a British citizen has the right of abode in the UK and so is not subject to immigration control. These students therefore meet the settled status requirement.

"Parent" means:

For children born before 1 July 2006:

- the mother (if the child was born on or after 1 January 1983, before 1983, women were not able to pass on citizenship to their children)
- the father (but only if he was married to the mother)

NB: If the parents were not married when the child was born, but then get married, the marriage might legitimise the child's birth. If it does, the child would become a British citizen (and would be regarded as having been one from birth) if the father was a British citizen (or settled) when the child was born. Children of a void marriage may also, in some circumstances, be treated as legitimate.

For children born on or after 1 July 2006:

- the mother (the woman who gives birth to the child)
- the father if:
 - he is married to the mother at the time of the birth
 - he is treated as the father under section 28 of the Human Fertilisation and Embryology Act 1990: or
 - (if neither (1) nor (2) apply) he can satisfy certain requirements as regards proof of paternity – for example, he is named as the father on a birth certificate issued within one year of the child's birth or he can satisfy the Home Secretary that he is the father of the child (by means of DNA test results, court orders or other relevant evidence)

2.13.3 British Overseas Territories

The British Overseas Territories Act 2002 renamed the previously known “British dependent territories” (BDT) as “British Overseas Territories” (BOT). A further change took place on 21 May 2002: if a person was a British Overseas Territories citizen (BOTC) (except by virtue of a connection only with the Sovereign Base Areas of Akrotiri and Dhekelia), immediately before 21 May 2002, they automatically became a British citizen on that date.

Students from a BOT may also be a British citizen if they were born on or after 21 May 2002 in a BOT, or born outside of a BOT to a parent who is a British citizen. The list of overseas territories can be found in [Annex C](#).

- Any BOTC entering the UK from the relevant countries (provided they have not renounced or acquired their BOTC status by naturalisation as a BOTC in an overseas territory after 21 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 2002.
- These students still have to meet the ordinary residence criteria.
- Students from BOTs are eligible for home fee status only (unless they meet the criteria of a residency category under Schedule 1 (2017) or Schedule 2 (2018)).

Students may be asked to provide proof that they are UK nationals, when applying for places at colleges and universities in England, Wales and Northern Ireland.

Acceptable evidence might be:

- a British Citizen passport
- a BOTC passport or BDTC passport issued before 21 May 2002
- a BOTC passport issued after 21 May 2002, with evidence that the person, or their parent, was born in an overseas territory or registered or naturalised as a citizen before that date

They will not be eligible for student support unless they also meet the eligibility criteria of one of the residency categories within the Regulations.

The BOTs provision, to preserve home fee status, has also been extended to the overseas territories of other EU member states.

Overseas territories of other EU Member states can be found in [Annex C](#)

2.13.4 Gibraltar

Gibraltar is the only BOT that is part of the European Union (EU). It is not part of the customs union and is not a member in its own right however specific considerations must be taken. For more information see the following sections: Gibraltar nationals working in the UK (3.8.1), and persons settled in the UK who move to Gibraltar then return before the first day of the first academic year (3.9.1).

Whilst the other BOTs are not members of the EU, the main body of EU law does not apply to them, 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).

2.14 Persons who have a Right of Permanent Residence in the UK

Only EEA and Swiss nationals and their family members who have acquired the right of permanent residence in the UK may become eligible students under Schedule 1 Part 2 paragraph 3 (2017) or Schedule 2 paragraph 1(2) (2018).

Please note retired EEA migrant workers and their family members may acquire permanent residence subject to Home Office guidance and relevant regulations and will also qualify for support subject to meeting the criteria set out below.

To be eligible under this category, the student must be able to satisfy four requirements. They must:

- be settled in the UK by virtue of having acquired the permanent right of residence
- be ordinarily resident in Wales on the first day of the first academic year of the course
- have 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
- 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

Details of the countries and territories that make up the EEA can be found in [Annex C](#).

As acquiring the right of permanent residence is an “event” under Regulations, an applicant may become eligible after the start of the course. Please see section 3.15 below for the support they may be entitled to.

2.15 Refugees and their family members (their spouses, civil partners, children or step-children)

Those granted refugee status by the Home Office and their family members claiming student support under this category must satisfy these criteria below in order to potentially be eligible for support (Schedule 1 Part 2 paragraph 4 (2017) and Schedule 2 paragraph 2 (2018)). The student must be:

- a refugee in their own right, ordinarily resident in the UK and Islands who has not ceased to be so resident since they were recognised as a refugee or
- the spouse or civil partner of a refugee and who was also the spouse or civil partner of the refugee on the date on which the refugee made his application for asylum to the Home Office, and is ordinarily resident in the UK and Islands and has not ceased to be so resident since the refugee status was awarded or
- the child or step-child of a refugee who upon the date on which the refugee made their application for asylum to the Home Office, was the child or step-child of the refugee and also under the age of 18 and is ordinarily resident in the UK and Islands and has not ceased to be resident since Refugee 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, civil partner or child arrived after the date refugee status was awarded, they must have indefinite leave to enter or remain or refugee status in their own right. SFW must satisfy itself that all of the relevant Home Office Documentation is valid.

“Refugee” is 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 themselves 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 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 five 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 are 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. Refugees arriving

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

As being recognised as a refugee, or the spouse, civil partner or parent of a refugee is an “event” under the Regulations an applicant may become eligible under this category after the start of the course.

2.16 Persons granted Stateless leave

From AY 18/19 onwards, a person granted leave to remain as a stateless person by the Home Office, because they have no right to residence in their country of former habitual residence or any other country, has fallen under a new category of eligible students under Schedule 1 part 2 paragraph 4A (2017) or Schedule 2 paragraph 2A (2018).

The new category will only apply to new and continuing students applying in respect of a current course from 1 August 2018 onwards (subject to meeting other eligibility criteria such as time limits). Students will not be made retrospectively eligible for support.

To be eligible under this category students must:

- be a person granted stateless leave status by the Home Office
- be ordinarily resident in Wales on the first day of the first academic year of their course and
- have been ordinarily and lawfully resident in the UK and Islands throughout the three-year period preceding the first day of the first academic year of their course.

Family members of persons granted stateless leave may also be eligible for support. The definition of a family member will mirror that currently used for a refugee or person who has been granted humanitarian protection.

If the student is the:

- Spouse
- Civil partner
- Child or step-child (under 18)
- Child or step-child (under 18) of the spouse or civil partner

of a person granted leave to remain as a stateless person , and was so on the date that the valid application for leave (the application to remain in the UK) was made to the Home Office, they may be eligible for support. Note that family members will also need to:

- hold a valid Home Office form of leave (Limited Leave to Remain or Discretionary Leave to Remain) on the first day of the first academic year of their course and
- have been ordinarily and lawfully resident in the UK and Islands throughout the three-year period immediately prior to the first day of the first academic year of their course

As being recognised as a person with leave to remain as a stateless person, or their family member is an “event” under the Regulations, an applicant may become eligible under this category after the start of the course. Please see section 3.15 below for the support they would be entitled to.

2.17 Persons with Leave to enter or remain and their family members

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.

Schedule 1 Part 2 paragraph 5 (2017) and Schedule 2 paragraph 3 (2018) are only concerned with students:

- who:
 - have applied for refugee status and have been informed by the Home Office that they do not qualify for refugee status but have been awarded leave to enter or remain in the UK on the grounds of humanitarian protection or discretionary leave
 - have not applied for refugee status but have been informed by the Home Office that they have been awarded leave to enter or remain on the grounds of discretionary leave
 - have been granted leave to remain on the grounds of private life under the immigration rules
 - has applied for leave to remain on the grounds of private life, but did not qualify and was subsequently granted leave to remain outside of the immigration rules under Article 8 of the European Convention on Human Rights or
 - are the spouse or civil partner of such persons listed above at the time of the application to the Home Office
 - was the child of such persons listed above at the time of the application to the Home Office, who was under 18 years old at the time of the application

- whose leave to enter or remain status is still valid or in respect of which an appeal is pending
- who has been ordinarily resident
 - in the UK and Islands throughout the period since they or their eligible family member were granted leave to enter or remain, for at least the three years preceding the first day of the first AY of the course
- and will be ordinarily resident in Wales on the first day of the first AY of the course

Exceptional leave to enter or remain with Humanitarian Protection (HP) or Discretionary Leave (DL) is not the same as asylum and does not constitute recognition as a refugee within the meaning of the United Nations Convention.

Exceptional leave to enter or remain with Humanitarian Protection (HP) or Discretionary Leave (DL) is 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.

Humanitarian protection is not the same as asylum and does not constitute recognition as a refugee within the meaning of the 1951 United Nations Convention. Persons granted this status are nevertheless in genuine need of international protection.

As being recognised as a person with leave to remain (or the family member of such a person) is an “event” under the Regulations, an applicant may become eligible under this category after the start of the course. Please see section 3.15 below for the support they would be entitled to.

2.17.1 Further information on leave to enter or remain

Since 30 August 2005, people qualifying for leave on grounds of Humanitarian Protection have been granted leave to enter or remain, as appropriate, for five years in the first instance with the possibility of Indefinite Leave to Remain (ILR) thereafter. Previously the initial period granted was three years. Humanitarian Protection status is not granted to people who qualify for asylum or to EU nationals exercising treaty rights. At the end of the five year qualifying period people with refugee and humanitarian protection status are entitled to apply for ILR.

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 of 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 UK 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 UK, 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 2017 Regulations and Schedule 3 of the 2018 Regulations. Whether such a person is an eligible student or qualifies for any particular type of support available for AY 19/20 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 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. Please note this is for SFW staff only.

2.18 Paragraph 3A Persons Granted Leave to Remain under Section 67 of the Immigration Act

Section 67 of the Immigration Act 2016 requires the Government to relocate to the UK and support a specified number of unaccompanied asylum-seeking children from Europe. This change is commonly known as the ‘Dubs amendment’ and came into force on 31 May 2016 and the children known as ‘Dubs children’.

Following an assessment of their asylum claim, Dubs children will fall into one of the following categories:

- Those who are awarded refugee status in line with the 1951 Refugee Convention, or humanitarian protection leave. Residency categories already exist in the Regulations for these persons.
- Those who are not awarded refugee status or humanitarian protection leave, and are instead awarded the new form of leave under section 67 leave of the act. This new form of leave will allow those awarded it to study, work, access public funds (including student support) and healthcare and apply for settlement after five years.

Note that dependent children of those granted leave to remain under Section 67 will be granted leave to remain for the same duration as their parent, provided that the requirements specified in the Immigration Rules are met. Under the Immigration Rules a ‘child’ means an individual who is under 18 years of age on the date the application was made and for whom the person granted Section 67 leave has parental responsibility.

The Section 67 leave residency category only applies to new students from AY 19/20, those who start a course on or after 1 August 2019. Continuing students in AY 19/20 are not eligible to apply under the Section 67 residency category.

To be eligible for support, students with leave to remain under section 67 must also:

- Be ordinarily resident in Wales on the first day of the first academic year of the course.
- Have 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
- Hold leave to enter or remain which has not expired.

2.19 Workers, employed persons, self-employed persons and their family members

Directive 2004/38/EC of the European parliament and of the Council of the European Union 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.

Details of the countries and territories that make up the EEA can be found in [Annex C](#).

2.19.1 Assessing eligibility of workers

EEA migrant workers, EEA self-employed persons, Swiss employed persons, Swiss self-employed persons, as well as family members of such persons (as defined in the Regulations) should be ordinarily resident in Wales on the first day of the first academic year of the course and be ordinarily resident in the EEA and Switzerland for the three-year period preceding this day. (The 'first day of the course' is defined in the Regulations and is generally not the day individual courses may start (for a course starting in autumn this date is 1 September).

Note that being ordinarily resident in England on the first day of the first academic year of the course is not a requirement 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 the above two categories

A specialist support team will carry out the assessment of support for all students whose eligibility for support falls under the EEA Migrant Worker category (Schedule 1, Part 2 paragraphs 6 & 7 (2017) and Schedule 2 paragraph 4 (2018)).

2.19.2 Effective and genuine versus marginal and ancillary employment

The number of hours worked is only one of the factors to be taken into account in determining whether the work is genuine and effective. The SLC will consider the principles set out below including the remuneration received and whether the work is lawful.

Guidance has set an indicative threshold of ten hours of paid work per week either in term time or during holidays. Where a student works ten or more hours per week and is paid for that work under an employment contract, that is a strong indicator the student is a worker. It is important to note that were this threshold is not met, a person may still qualify as a worker. Consequently, all the individual circumstances must be considered by SFW.

Self-employed persons, are in a slightly different position to workers. It is common for self-employed workers to have periods where no work is carried out. Irregular or intermittent work will not preclude a person from being properly regarded as self-employed (or as a worker). It must be considered whether the person is experiencing a temporary lull in work or whether the change in their working patterns means that they are no longer in continuing self-employment. It would be reasonable to consider a period of at least three months (without work to represent that continuous self-employment has ceased).

Work is marginal if it is minimal, negligible or insignificant. In *Raulin* (*Raulin v Minister Van Onderwijs en Wetenschappen* Case 352/89 1992 I-ECR 1054), it was suggested that work may be marginal where it was on such a small scale that it did not allow the person to become acquainted with the work or had little or no economic value for the employer. It is reasonable to use the minimum wage as an indicator when calculating what is reasonable reimbursement, although individual cases need to be considered on their merits.

Ancillary employment involves something additional or subsidiary to the primary activities or functions of the person. Work will be ancillary if it is done pursuant to some other relationship between the person providing the services and the person receiving the benefit of those services, such as where a lodger performs a small task for his landlord as part of the terms of their tenancy (*Barry v Southwark* [2008] EWCA Civ 1440).

Principles from EU case-law

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 which has established the following principles:

- Freedom of movement of workers is one of the fundamental freedoms guaranteed by the EU, therefore the term “worker” – which determined the scope of application of that freedom – must be interpreted broadly and not restrictively.
- The essential characteristics of an 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 they receive remuneration.

- To qualify as a worker, the activity performed by the person must nevertheless be effective and genuine, to the exclusion of activities of such a small scale as to be regarded as purely marginal and ancillary.
- When determining whether the work is effective and genuine, the decision maker must take its decision on the basis of objective criteria and taking into account all the circumstances of the case.
- A person is not precluded from being classified as a worker where their work is part time (*Levin v Secretary of State for Justice* case 53/81 [1982]), low wage (*Lawrie-Blum v Land Baden-Württemberg* case 66/85 [1986] ECR 2121 [16]), below the minimum subsistence wage (*Levin*), on call (*Raulin*), or short term (*Brown v Secretary of State for Scotland* [1988] ECR 3205). In particular, a person is not required to complete a minimum period of employment before being able to attain the status of a worker (*Brown* [22]). The irregular nature and limited duration of the services provided are however factors which may be taken into account when assessing whether the work is effective and genuine or purely marginal and ancillary (*Raulin*). Depending upon the circumstances of the individual case, multiple short-term contracts may be satisfactory where these show that an individual has, in total worked a more than negligible number of hours per week for the period being assessed.
- The services performed by the person have to have some economic value and form part of the normal labour market. As a result, where work is performed solely as a volunteer without payment as a means of social rehabilitation or reintegration, it is unlikely to be regarded as real and genuine economic activity (*Trojani v CPAS* Case C-456/02 [2004] 3 CMLR 38 [18]).
- The person's subjective intentions or motives in carrying out or seeking work or in applying for entry to or residence in the Member State are irrelevant and must not be taken into account. What matters is that the person is performing genuine and effective work in paid employment (*Levin*). It follows that a person who enters the UK with the principal intention of pursuing a course of study, but who also pursues effective and genuine employment activities in the UK, is not precluded from having the status of a worker (*Styrelsen* Case C-46/12 [2013] ICR 715 [39]).
- The person, however is not entitled to be classified as a migrant worker at the start of an academic year for student support purposes, where the person has arrived in the UK and is not working, or is actively seeking employment but has not yet worked here (*Collins v SSWP* [2005] QB 145).
- Where a person has ceased work before undertaking higher education studies, the person will be able to retain their status as a worker (and be eligible to receive the same benefits as national workers) provided there is a link or connection between the previous work activities performed in the host Member State and the course of study they have undertaken (*Lair V University of Hanover* Case 39/86 1988 ECR 3161 [24] [28] (*Raulin*). As an exception, such a connection may not be required where

the person has involuntarily become unemployed and is obliged by labour market conditions to undertake occupational retraining in another field of activity (Lair) (Raulin). It is not necessary however to show any link or connection where the person works at the same time as studying.

- A person's work history with a particular employer could be one of the objective factors to which a decision maker can have regard in determining a person's worker status, particularly if there are questions about whether the work is genuine and effective or marginal and ancillary. It is probably unnecessary to do so in most cases. Where, a student has demonstrated consistent work for an employer over several years but only for a few hours a week, this could indicate they were a worker.

2.20 Assessing eligibility of family members

Family members of an EEA or Swiss migrant worker or employed person, frontier worker or self-employed person are also potentially eligible for support, with the same entitlements as the worker. The nationality of the family member is not relevant, as long as they fulfil relevant residency requirements. The definition of 'family member' varies according to the category of person in question. The table below explains this further.

Category of person	Definition of family member
EEA migrant worker EEA self-employed person EEA frontier worker EEA frontier self-employed person	<ul style="list-style-type: none"> • the person's spouse or civil partner • direct descendants of the person or of the person's spouse or civil partner who are either under the age of 21, or dependants of the person or the person's spouse or civil partner • dependent direct relatives in the ascending line or that person or the person's spouse or civil partner
Swiss employed person Swiss self-employed person Swiss frontier employed person Swiss frontier self-employed person	<ul style="list-style-type: none"> • the person's spouse or civil partner • the person's child or the child of that person's spouse or civil partner

When establishing eligibility under Schedule 1, Part 2 paragraphs 6 & 7 (2017) and Schedule 2 paragraph 4 (2018)) of the Regulations:

- a 'direct descendant' of an EEA worker or of their spouse/civil partner refers to their:
 - children, step-children, grandchildren or great-grandchildren that are either:
 - under the age of 21 or
 - a dependant of the EEA worker or of their spouse/civil partner
- a 'dependent direct relative in the ascending line' of an EEA worker or of their spouse/civil partner refers to their:
 - parent, step-parent, adoptive parent or grandparent

When establishing the eligibility of persons who may come within scope of a dependent direct relative in the ascending line of an EEA migrant/frontier worker or EEA self-employed/frontier self-employed person, "dependent" will generally mean financially dependent or dependent for health reasons. Other reasons can however also be considered.

Swiss workers

When establishing eligibility under paragraph 6 (and 7) of Schedule 1 (Part 2) of the Regulations:

- a 'child' of a Swiss worker or of their spouse/civil partner refers to their:
 - child, a child of whom they are a guardian, or a child for whom they have parental responsibility (this includes a step child)

For EEA workers/Swiss workers and their spouses/civil partners

- 'child' refers to their:

- child, a child of which they are a guardian, or a child of which they have parental responsibility (this includes a step child)
- ‘parent’ refers to a:
 - parent, guardian or any other person having parental responsibility for a child (this includes step parents) and
 - in every case the parent must have established migrant worker status in this country and the child must meet the residence conditions

The residence criteria that must be met by those who student under Schedule 1, Part 2 paragraphs 6 &7 (2017) and Schedule 2 paragraph 4(2018)) is as follows:

- they are ordinarily resident in Wales on the first day of the first academic year of the course and
- they have 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

Please note that EEA frontier workers, EEA frontier self-employed persons, Swiss frontier employed persons, Swiss frontier self-employed persons, as well as family members of any of these persons do not need to be ordinarily resident in Wales on the first day of the first academic year of the course.

Where the status of an EEA or Swiss migrant worker is acquired before the start of the academic year, the student will be eligible to be assessed for support for the entire year. This is subject to the student remaining in employment throughout the academic year, except where the cessation in employment is the result of voluntary redundancy or being temporarily unable to work as a result of illness or injury.

If the employment ceases before study the person will be able to retain their status as a worker provided there is a link or connection between the previous work activities and the course of study undertaken. SFW may not be able to establish this until the course being attended is confirmed. Exceptionally, such a connection may not be required where the person has involuntarily become unemployed and is obliged by labour market conditions to undertake occupational retraining in another field of activity.

As qualifying under this category of student is an “event” under the Regulations an applicant may become eligible under this category after the start of the course. Please see section 3.15 below for the support they would be entitled to.

2.21 Workers Registration Scheme

EU nationals of the A8 countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) that joined the EU in 2004 were required to have registered their employment in accordance with the Workers Registration Scheme (WRS). The A8 Worker Registration Scheme was discontinued from 1 May 2011, as by then the A8

countries had been in the EU for over seven years and their nationals enjoyed 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 scheme was effective from 1 April 2011. As from January 2014, the same applies to Bulgarian and Romanian (A2) nationals.

On July 1 2013, Croatia joined the European Union and a workers' registration scheme was in place for a five-year transitional period. Under the rules of this scheme, a Croatian student could apply for permission to work on the express basis that they were exercising a treaty right as a student. The registration certificate confirming their student status also permitted 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 was not exercising a treaty right as a worker. If a Croatian student wanted to work for more than 20 hours a week during term-time they would have to apply for an accession worker registration certificate, and in that case could be capable of exercising a treaty right as a worker. Self-employed Croatians were not required to register with the worker registration scheme or obtain an accession worker registration certificate. The transitional arrangements that applied to Croatian nationals came to an end on 30 June 2018 this means that Croatian nationals now have the same rights to work in the UK as other EU nationals.

2.22 Children of Former EEA Migrant Workers

To be eligible for support under this paragraph a student must be the child of someone who was an EEA migrant worker in the UK and who has remained in this country in order to complete their studies.

To consider eligibility under Schedule 1 Part 2 paragraph 7(2017) and Schedule 2, paragraph 4 (2) (2018), WG are of the opinion that it would be reasonable to require that the child had studies here (at a level below HE) whilst they were dependent or under 21.

Once eligibility is established under this paragraph, it will continue, whether or not the parent remains in the UK. Eligibility for the child of a migrant worker will also continue for the duration of the course in cases where the migrant worker dies.

Students qualifying under this category are persons who are entitled to support by virtue of Article 10 of Council Regulation 492/2011 on the freedom of movement as workers as extended by the EEA Agreement.

Article 10 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.

As qualifying under this category of student is an “event” under the Regulations, an applicant may become eligible under this category after the start of the course. Please see section 3.15 below for the support they would be entitled to.

2.23 UK Settled Persons who have exercised a Right of Residence Elsewhere

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.

Schedule 1 Part 2 paragraph 8(2) (2017) and Schedule 2 paragraph 5(2) (2018) sets out when a person has exercised a right of residence for the purpose of paragraph 8(1) (2017) and 5(1)(2018).

The following are some examples of situations where a person has exercised a right of residence for the purpose of this category:

- a UK national exercises a right under Article 7 of Directive 2004/38 in another Member State (for example, a UK national goes to work in France).
- a UK national exercises a right under the EEA Agreement or the Swiss Agreement with the Swiss Federation that is equivalent to a right under Article 7 of the Directive 2004/38 (for example, 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 (please note that ‘family member’ here has the meaning provided in Article 7 of Directive 2004/38) (for example, the American spouse of a UK national accompanies them when they goes to work in Germany).
- a family member of a UK national exercises a right under the EEA Agreement or the Agreement with the Swiss Federation that is equivalent to a right under Article 7 of the Directive 2004/38 (please note that ‘family member’ here has the meaning provided in relation to the right being exercised under the EEA Agreement or Swiss Agreement) (for example, 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 (for example, 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 Agreement with

the Swiss Federation that is equivalent to a right under Article 7 of Directive 2004/38.

- 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 they are a national or of which the person in relation to whom they are a family member is a national*.

*For example, the Moroccan national and their 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 2004/38 however paragraph 8 of Schedule 2 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 listed below. 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

An example of when this category might be relevant is where a family of UK nationals who are ordinarily resident in the UK leaves Wales to live in Spain, with the parents going as workers and the children accompanying them. If the daughter returns to the UK aged 18 to enter HE, she may be eligible for support under paragraph 8 of schedule 1 if she satisfies the relevant provisions.

Students who commenced their course in September 2009 or later who are settled in the UK and exercise a right of residence anywhere in the EEA or Switzerland for a period in excess of three months then return to the UK and apply for support within three years of their return, should apply to the UK domicile that they were resident in before they left the UK, regardless of the domicile they are resident in once returned to the UK.

2.24 EU nationals and their family members

Until at least AY 19/20, EU nationals and their family members must satisfy the residence conditions in Schedule 1 Part 2 paragraph 9 (2017) or Schedule 2 paragraph 6 (2018) 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:

Category of person	Definition of family member
EU national who falls within Article 7(1)(c) of Directive 2004/38 (not self-sufficient)	<ul style="list-style-type: none"> • the person's spouse or civil partner • direct descendants of the person or of the person's spouse or civil partner who are either under the age of 21, or dependants of the person or the person's spouse or civil partner
EU national who falls within Article 7(1)(b) of Directive 2004/38 is self-sufficient	<ul style="list-style-type: none"> • the person's spouse or civil partner • direct descendants of the person or of the person's spouse or civil partner who are either under the age of 21, or dependants of the person or the person's spouse or civil partner • dependent direct relatives in the person's ascending line or that of the person's spouse or civil partner

The table above refers to 'self-sufficient' although this is not a term used in the Regulations, they do 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 himself/herself and family members not to become a burden on the social assistance system of the host Member State during their period of residence and have 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 their assessment.

A student who becomes an EU national 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.

Under paragraph 9(3) (2017) and 6(3) (2018) where a state accedes to the EU after the first day of the first academic year of the course, and a student or their family member is a national of that state, the requirement that they are 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.

Students who fall within this category 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. They must however be undertaking the course in Wales.

Details of the countries and territories that make up the EU can be found in [Annex C](#).

2.25 UK Nationals

UK nationals who will be assessed under paragraph 9 (2017) or 6 (1) (2018) are as follows

- UK nationals who have never lived in the UK and have been ordinarily resident in the EEA/Switzerland for three years prior to the course start date.
- UK nationals who have been ordinarily resident outside of the EEA/Switzerland, then ordinarily resident in the EEA/Switzerland for three years or more, then come to the UK to undertake the course (they are not assessed under paragraph 8 (2017) or 5 (1) (2018) as they were not ordinarily resident in the EEA/Switzerland immediately before leaving Wales).
- Family members of EU nationals, where the family member is not an EU national. This would include a spouse of a UK national who has a temporary spouse visa, as long as the spouse has three years of ordinary residency in the EEA/Switzerland.

Whilst it is possible for UK nationals to be assessed for fee support under paragraph 9, it should be noted that:

- where the UK national has been resident in Wales, then resides in the EEA/Switzerland and returns to the UK to undertake the course, they will be assessed for full funding under paragraph 8.
- where the UK national moves to Wales from another UK territory to undertake the course, they will be considered ordinarily resident in the UK territory that they came from under paragraph 1(3) and should apply to that territory for student support.

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

Category of person	Definition of family member
In the case of a UK national	<ul style="list-style-type: none">• the person's spouse or civil partner or• direct descendants of the person or of the person's spouse or civil partner who are<ul style="list-style-type: none">a) under the age of 21 orb) dependants of the person or the person's spouse or civil partner

2.26 EU Nationals with a “Genuine Link” with the UK

EU Nationals (other than UK nationals) with a “genuine link” with the UK may 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:

- 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 Schedule 1 Part 2 paragraph 10 (2017) of Schedule 2 paragraph 6 (2) (2018) , 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.

2.27 Children of Swiss Nationals

A student is potentially able to qualify for support under Schedule 1 Part 2 paragraph 11 (2017) or Schedule 2 paragraph 7 (2018) where:

- they are the child of a Swiss national entitled to support in the UK under the Swiss Agreement with the Swiss Federation
- they are ordinarily resident in Wales on the first day of the first academic year of the course
- they have been ordinarily resident in the EEA and Switzerland throughout the three year period preceding the first day of the first academic year of the course and
- the period of ordinary residence in the EEA and Switzerland referred to above was wholly or mainly for the purpose of receiving full-time education, the person was ordinarily resident in the EEA or Switzerland immediately preceding 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).

As becoming the child of a Swiss National is an “event” under the Regulations, if a 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 fall under this category after the start of the course. Please see Section 3.15 below for the support they would be entitled to.

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

2.28 Children of Turkish Workers

A student is potentially able to qualify for support under Schedule 1, Part 2, paragraph 12 (2017) or Schedule 2 paragraph 8 (2018) where:

- they are the child of a Turkish worker – Regulation 2 defines such a worker as a Turkish national who is ordinarily resident in the UK and Islands, and is, or has been, lawfully employed in the UK (this includes periods of self-employment)
- they are ordinarily resident in Wales on the first day of the first academic year of the course and
- they have been ordinarily resident in the territory comprising the EEA, Switzerland and Turkey throughout the three year period preceding the first day of the first academic year of the course

As becoming the ‘child of a Turkish Worker’ is an “event” under Regulation 17 an applicant may become eligible under this category after the start of the course. Please see Section 3.15 below for the support they would be entitled to.

2.29 Students who become eligible after the start of the course (events)

Students who fall within certain of the categories of student outlined above can become eligible to apply for support in the course of an academic year. Please see Annex A for a list of the “events” under the Regulations.

Applications for support must be made in line with the general time limits as set out in section 1.1 of this guidance. If an application for support is received within the initial nine-month period and the student subsequently wishes to apply for an additional amount of loan then the new loan application must be received no later than one month before the end of the academic year to which the application relates. Applications for support relating to multiple academic years should only be processed if they were received within the applicable time frames for each academic year.

If a student becomes eligible due to an event after the start of the course they may be eligible to apply for:

- Maintenance Loan, WGLG, SSG, GfDs and DSAs in any subsequent years of the course (and for the remaining quarters of the AY of the award, (excluding the quarter in which the longest vacation falls).

- Tuition fee support in any subsequent years of the course if the event occurs after the first three months of the AY.
- Tuition fee support in respect of the full AY in which the event occurs if the event occurs within three months of the first day of the AY.

Please note if the student becomes an EU national, or the family member of an EU national and does not have three years of ordinary residence in the UK and Islands they will only be eligible to apply for tuition fee support.

3 Course Eligibility

3.1 Designated courses

Only designated courses will attract support under the Regulations. Course designation is not a function delegated to SLC, it is either the responsibility of the HEP to confirm designation (in relation to automatically designated courses) or HEFCW in the case of specifically designated courses.

The provisions in relation to the designation of courses for tuition fee support, living cost support and supplementary grants are as follows:

- regulation 5 (2017) or regulation 6 (2018) for full-time courses and regulation 66 (2017) for full-time distance learning courses
- regulation 83 (2017) or regulation 6 (2018) for part-time courses including part-time distance learning courses
- schedule 2 (2017) or regulation 6 (2018) for course types that can be designated
- regulation 112 (2017) or schedule 4 (2018) sets out provisions in relation to the designation of postgraduate courses for Postgraduate Disabled Students' Allowances only.

Courses beginning on or after 1 September 2012 which fall within schedule 2 (2017) or regulation 6 (2018) should lead to a qualification which is granted by a body which is recognised to award UK degrees. A recognised body or a body that is permitted to act on behalf of a recognised body in the granting of degrees (for example a listed body).

3.2 Automatic designation of full-time courses

A course will automatically be designated for FT or FTDL (post 2012) support under the Regulations if it is:

- of a type which is listed in Schedule 2 (2017) or regulation 6 (2018) (section 4.8)
- it is not a designated distance learning course (under regulation 66 (2017))
- one of the following:
 - a full-time course (including full-time distance learning courses that begin on or after September 2012)
 - a sandwich course
- of at least one academic year's duration
- Where the course is a full-time course that begins before 1 August 2019, it is provided:
 - by a Welsh regulated institution, a protected English provider, a Scottish funded institution or a Northern Irish funded institution (whether alone or in conjunction with an institution outside the UK)
 - by a charity within the meaning given by section 1 of the Charities Act 2011 on behalf of a Welsh regulated institution or
 - on behalf of a protected English provider by an institution that was a publicly funded institution before 1 August 2019 or
- Where the course is a full-time course that begins on or after 1 August 2019, it is provided by:
 - a Welsh regulated institution, an English regulated institution, a Scottish funded institution or a Northern Irish funded institution (whether alone or in conjunction with an institution situated outside the UK)
 - a charity within the meaning given by section 1 of the Charities Act 2011 on behalf of a Welsh regulated institution or
 - a registered English institution on behalf of an English plan provider

A “protected English provider” means an institution which on or after 1 August 2018 but before 1 August 2019 was maintained or assisted by recurrent grants pursuant to section 65 of the Further and Higher Education Act 1992 other than an institution maintained or assisted by recurrent grants made by HEFCW.

A “registered English institution” means an institution registered by the Office for Students on the register.

An “English regulated institution” means a registered English institution subject to a fee limit condition under section 10 of the Higher Education and Research Act 2017⁽¹⁾.

An “English plan provider” means a registered English institution which has an access and participation plan approved by the Office for Students⁽²⁾ under section 29 of the Higher Education and Research Act 2017 and which remains in force.

3.3 Automatic designation of part -time courses

A course will be automatically designated for part-time support under the Regulations if it is:

- of a type which is listed in Schedule 2 (2017) or regulation 6 (2018) (section 4.8) (other than a course of Initial Teacher Training (ITT) teachers or a course taken as part of an employment based teacher training scheme)
- of at least one academic years duration
- ordinarily possible to complete the course in not more than:
 - twice the period normally required to complete a full-time course where the course began before the first of September 2014 or
 - four times the period normally required to complete a full-time course where the course begins on or after the 1 of September 2014
- Where the course begins before 1 August 2019, it is provided by an institution that before 1 August 2019 was:
 - a publicly funded institution (whether alone or in conjunction with an institution situated outside the United Kingdom)
- Where the course begins on or after 1 August 2019 it is provided by:
 - a Welsh-funded institution, a Scottish-funded institution, a Northern Irish-funded institution or an English-regulated institution (whether alone or in conjunction with an institution situated outside the United Kingdom) or
 - a registered English institution on behalf of an English plan provider
- is substantially provided in the UK (50% or more of the course is delivered in the UK)
- is not a designated FT or FT distance learning course (under regulation 66 (2017)) or postgraduate course

⁽¹⁾ 2017 (c. 29).

⁽²⁾ The Office for Students is a body corporate established under section 1 of the Higher Education and Research Act 2017.

A “protected English provider” means an institution which on or after 1 August 2018 but before 1 August 2019 was maintained or assisted by recurrent grants pursuant to section 65 of the Further and Higher Education Act 1992 other than an institution maintained or assisted by recurrent grants made by HEFCW.

A “registered English institution” means an institution registered by the Office for Students on the register.

An “English regulated institution” means a registered English institution subject to a fee limit condition under section 10 of the Higher Education and Research Act 2017(3).

An “English plan provider” means a registered English institution which has an access and participation plan approved by the Office for Students⁽⁴⁾ under section 29 of the Higher Education and Research Act 2017 and which remains in force.

3.4 Automatic designation of postgraduate courses for DSAs

A postgraduate course will be automatically designated for postgraduate DSAs only if:

- it is a course for which a first degree (or equivalent qualification) or higher is normally required (other than a course of Initial Teacher Training (ITT) teachers or a course taken as part of an employment based teacher training scheme)
- it is a course of at least one academic year’s duration
- where the course is a PT PG course
 - which began before 1 September 2014, it is ordinarily possible to complete the course in not more than twice the period ordinarily required to complete the full-time equivalent or
 - after 1 September 2014, it is ordinarily possible to complete the course in not more than four times the period ordinarily required to complete a full-time course leading to the same qualification
- where the course begins before 1 August 2019, it is provided by an institution that before 1 August 2019 was a publicly funded institution or is provided by such an institution in conjunction with an institution outside the United Kingdom or

⁽³⁾ 2017 (c. 29).

⁽⁴⁾ The Office for Students is a body corporate established under section 1 of the Higher Education and Research Act 2017.

- where the course begins on or after 1 August 2019, it is provided by a Welsh funded institution, a Scottish funded institution, a Northern Irish funded institution or an English regulated institution
- is substantially provided in the UK (50% or more of the course is delivered in the UK)

Some courses designated under this regulation may also be designated for further support under the provisions of The Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017 (as amended) and The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 . Further guidance on postgraduate loans can be found in the relevant postgraduate guidance.

3.5 Combined Study (UK and Abroad) Considerations

Combined study courses between the 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. WG has advised that the determination of 50% should be based on the number of weeks study.

For example, a course which is comprised of two years of study in the UK and two years of study abroad would appear to meet the 50% criteria. On review of the number of weeks of study however (53 weeks study in the UK and 54 weeks study abroad), it would not be designated for support.

Another course which is four years in length (one year work placement (23 weeks), one year of study in the UK (24 weeks), and two years of study abroad (46 weeks)) would not meet the required criteria for designation to qualify for student support. The requirement that 50% of the teaching and learning that comprise the course is in the UK is not met.

The Regulations do not define how the time spent in the UK/abroad should be split and therefore combined courses may consist of:

- full years abroad, two years in the UK and two years abroad or
- part years abroad, half the academic year is studied in the UK and the other half abroad or
- a combination of both

Please note that AYs on combined courses are subject to the same fee restrictions in respect of time spent at the home HEP, and subject to being a FT course students may also qualify for a Travel Grant. For more information please see the Assessing Financial Entitlement guidance chapter.

3.6 Interpretation of provisions on automatically designated courses

The Welsh Government does not normally maintain any lists of courses which are automatically designated under the Regulations. All of these courses should appear on the Course Management System (CMS).

Whilst it is expected that the courses on CMS should meet the designation criteria, if SFW has any concerns regarding whether a course meets the relevant designation criteria or not, they should investigate. SFW may decide to contact the student or HEP directly for further information.

3.7 Franchising arrangements

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 or registered and unregistered institutions in England). 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.

Courses which have been partly franchised should be regarded as courses which are being jointly provided by both institutions.

The designation of the franchised courses follow the rules above.

3.8 Course Types - Automatic Designation

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

- a first degree course (a BA or BSc)
- a course for the Diploma of Higher Education (Dip HE)
- 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 education (ITE) (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 Postgraduate Certificate in Teaching Higher Education (PGCTHE) is not designated as an ITE course but may be designated for postgraduate Disabled Students' Allowances if it meets the criteria for PG DSAs designation.

- 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 (an NVQ level 4 where this is awarded along with a first degree, Dip HE or HND)

3.9 Foundation Degrees

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. 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 the requirements of the Regulations. 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 designation criteria of a part-time course.

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.

3.10 Initial Teacher Education (ITE) Courses

For the purpose of student support there are two main types of ITE courses which can be designated – Schools ITE courses and ITE courses for those wishing to teach in the FE sector. These courses can be delivered under a range of different models and the designation and approval arrangements vary.

Schools ITE courses can be delivered by authority-funded institutions, private institutions or by School Centred Initial Teacher Training providers some of these may be delivered under the Schools Direct programme. ITE courses for the FE sector are delivered mainly by authority-funded institutions and in some cases by private institutions. Further details are provided below.

ITE courses taken as part of an employment based teacher training scheme are not designated courses.

3.10.1 Full-time ITE courses

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

Full-time ITE 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 ITE 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.

3.10.2 Part-time ITE courses

ITE courses that are at least 1 year in length and do not meet the minimum hours criteria as set out above for full-time non-first degree courses are considered to be part-time ITE 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 14/15) or 25% of an equivalent full-time course over the duration of the part-time course if the course started from 14/15 onwards. These courses attract the part-time support package only, regardless of whether or not the course leads to a first degree. To note that there are no part-time ITE programmes currently running in Wales leading to Qualified Teacher Status (QTS)

3.10.3 School Centred Initial Teacher Training (SCITT) scheme

ITT courses will include courses on the School Centred Initial Teacher Training (SCITT) scheme. SCITT courses (undertaken in England only) are designated by the DfE where the institution is not registered with the OfS. If the provider is registered with the OfS, SCITT courses will be automatically designated upon registration with the OfS.

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 ITE course attracting student support is at paragraph 7.10 below.

3.10.4 FE ITE courses

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 ITE courses.

3.10.5 England only ITE courses

Welsh domiciled students who choose to undertake the English ITE 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 ITE 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.

3.10.6 Schools Direct Training Programme

Schools direct places are available in certain primary and secondary schools across England and are delivered in partnership with an accredited ITE 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.

The 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 (CTLTS) and QTLS by studying a Diploma in Teaching in the Lifelong Learning Sector (DTLLS). Courses may continue to be badged as CertEd or PGCE course or given new titles (Professional Diploma in Education (PDE) and Professional Graduate Diploma in Education (PGDE) courses at Bolton University). ITE courses provided by higher education institutions can attract student support under the Regulations. However, since AY 08/09, 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 designation criteria set out in the Regulations.

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 ITE courses for the purpose of student support. This change is effective from 1st September 2014.

There are three types of FE ITE 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 ITE 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 ITE course at a publicly funded institution, then they can apply to the SFW for funding.

* The Diplomas with specialist pathways:

- 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)

3.10.7 PGDE courses in Scotland

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 ITE 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 ITE 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.

3.11 Courses leading to professional examinations

Schedule 2 paragraph 7 (2017) and regulation 6 (condition 1(g)) (2018) specifies courses leading to professional examinations. For example 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 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 Schedule 2 paragraph 8 (2017) and regulation 6 (condition 1(h)) (2018) is a very general one. It has the effect of designating any course which meets the other designation requirements and:

- is at a standard higher than GCE A level, Scottish Higher, National Certificate and National Diploma but
- 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.

3.12 Free standing foundation and conversion courses

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

3.12.1 Access courses

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.

3.12.2 Twin-track access courses

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.

3.12.3 Accelerated degree courses

These courses are full-time undergraduate degree courses compressed into a shorter timescale than a standard length degree. The most common scenario is where an undergraduate degree course is delivered over two academic years instead of three.

Accelerated degrees courses are not offered by HE providers in Wales. Students domiciled in Wales who are studying a new accelerated degree course in England in AY 19/20 will be able to access the standard package of fee support for these courses. The fee charged may

exceed the maximum standard fee, in that case the student would need to self fund the additional amount above the standard cap.

3.12.4 Compressed degree courses (England only)

Welsh students who attend compressed degree courses at designated English institutions will qualify for student support over the full period of study.

The number of students on these courses is small. The Regulations define 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 2017 is shown below. The courses listed are undergraduate honours degree courses delivered over two long academic years (twenty four months) at a 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 AY 18/19 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 2017/18 are 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 OFS in the first instance:
[https://www.officeforstudents.org.uk/advice-and-guidance/the-register/Information about the Welsh](https://www.officeforstudents.org.uk/advice-and-guidance/the-register/Information%20about%20the%20Welsh)

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).

3.12.5 Foundation years as part of an extended course

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.

3.12.6 Single Course provisions

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&7) (2017) and 6(3&4) (2018)). 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).

3.12.7 Architecture courses

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.

The Regulations 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, 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 2017 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 2017.

Students who are on courses covered by regulations 5 (7) (2017) and 6 (3) (2018) that meet the definition of a sandwich course in 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 regulations 19 (4) (2017) and 40 (2018)). 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 45 (1) (b) and (2) (b) (2018) and 55 (2018) in that year. 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 the Regulations. Consequently, such a student will not be eligible for support during the year of practical experience.

3.13 Specific Designation

The Welsh Ministers have the power to designate courses, which are not automatically designated under the Regulations. HEFCW, on behalf of the Welsh Ministers, considers applications for designation for HE courses at private institutions in Wales, Scotland and Northern Ireland and Approved or unregistered providers in England and NHS colleges. These can be for full-time or sandwich courses, part-time courses, or part-time courses of ITE, 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 2019/20 Assessing Financial Entitlement guidance chapter.

3.13.1 Specific Designation of postgraduate courses for the purpose of DSA

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.

3.14 Guidance for Determining Mode of Study

3.14.1 Part-time courses

For guidance on part-time courses please refer to the separate guidance 'Support for Part-Time students'.

3.14.2 Credit courses

For guidance of Credit Courses please refer to the separate guidance 'Support for Part-Time students'.

3.14.3 Full-time courses

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 (attendance on the course is the main call on the student's time during the working day).

- full-time ITE 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.

Study at premises outside the institution (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, consideration is given to the number of weeks that a student would normally be required to attend, rather than those which are undertaken by individuals.

3.14.4 Sandwich courses

The Regulations define 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 WGLG will depend on the number of aggregate weeks of full-time study and the cohort of student.

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 designation criteria of a part-time course in the Regulations.

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 and further guidance is set out in the Assessing Financial Entitlement guidance chapter.

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 under the Regulations).

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) (2017) and Schedule 1 paragraph 6 (1) (2018) and may include periods during which modern language students spend living and working in a country whose language they are studying on their course.

3.14.5 Learning in the workplace

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.

3.15 Distance Learning courses

Distance learning, sometimes called flexible or open learning, is a programme of study that allows students to study at home. Distance learning programmes have become increasingly popular over the last few years, as the internet has developed into a reliable channel of tuition.

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 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. A whole year full-time fee should be 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).

It is understood that full-time means that students are required to undertake their course on most days of the week and for most weeks of the year.

3.15.1 Distance Learning courses and student support - students starting courses after 1 August 2018

3.15.2 Distance Learning Courses

Welsh Government has provided clear guidance on the support available to students on distance learning courses. The clarification provides a consistent package of support to all students on courses that are ordinarily undertaken via distance learning.

From AY 18/19 full-time students who are undertaking a designated distance learning course may be assessed for tuition fee loan, maintenance support and DSAs only.

Full-time students who are undertaking a designated distance learning course are ineligible for GfDs. This is because being on a distance learning course is listed as an exception to qualifying for GfDs under Regulation 69 (2018) and there are subsequently no other provisions providing any exemption to this for any reason.

3.15.3 Unable to attend a course due to a disability

Students on courses which ordinarily require them to be in attendance at a provider (“in attendance” courses), who cannot attend owing to their disability, will be eligible to apply for tuition fee loan, maintenance support, DSAs and GfDs.

Conversely to students on distance learning courses, these students qualify for GfDs under regulation 69, as they are on an in attendance course and there is a subsequent exemption to the requirement to attend granted in cases of where the student’s disability prevents attendance.

For more information on the support available for these students please see the AY 19/20 Assessing Financial Entitlement guidance and the AY 19/20 Grants for Dependents guidance.

3.15.4 Distance Learning courses and student support – new students starting courses on or after 1 September 2012 but before 1 August 2018

Full-time distance learners who start a full-time course on or after 1 September 2012 qualify for full-time fee support and DSAs only. These students do not qualify for maintenance support or GfDs.

There is an exception to this rule is for students who are undertaking a course which normally requires attendance, but owing to their reasons relating to their disability. These students should be treated as if they were in attendance and should therefore complete the full-time application (online or paper).

Disabled students who are undertaking a full-time distance learning courses are not subject to this exception and remain eligible for full-time fee support and DSAs only.

For more information on the support available for these students please see the AY 19/20 Assessing Financial Entitlement guidance and the AY 19/20 Grants for Dependents guidance.

3.15.5 Distance learning courses and student support – students starting courses before 1 September 2012

Full-time distance learning courses which began before 1 September 2012 need to be specifically designated by the Welsh Ministers on an individual course basis under regulation 66 (2017).

Full-time distance learners who started a designated distance learning before 1 September 2012 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. Where the student began the full-time distance learning course before 1 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 (2017).

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 66 (2) (2017). 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 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.

Regulation 64 (2017) 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 September 2012. These criteria are not identical to those found in regulation 81 (eligible part-time students). The criteria in regulation 61 (2017) 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 (2017) and not Part 5 (2017). The support payable to eligible distance learning students who started a course before 1 September 2012 is set out in regulations 68 (2017) (covering fee grant and course grant) and 71 (2017) (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 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.

Eligible full-time distance learning students who started their course before 1st September 2012 who are currently eligible for DSAs and are not treated as in attendance for the purposes of the Regulations will be paid DSA under regulation 71 (2017). DSAs are payable under regulation 71 (2017) at the full-time rates provided for in regulation 24 (2017) to reflect the position prior to 1st September 2007. Regulation 76 (2017) 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 82 (2017)).

3.16 Mixed mode courses

In order to be a designated course, the course structure cannot include a mixture of study modes. For example, a three year course where years one and two are part-time and the final year is full-time. As course with a structure like this cannot be designated for support under student support regulations.

4 Eligibility to Fee Support

The personal eligibility requirements covered earlier in this guidance apply both to support for fees and support for living costs. Additional eligibility requirements are described in this section for fee loans (regulations 18 & 19 (2017) and 40 (2018) cover the general criteria which determine the availability of fee support for 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 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

A student who started their course on or after 1 September 2012 may be eligible to apply for a new Fee Grant, a tuition fee loan (in accordance with the regulations explained in this section), an accelerated graduate entry tuition fee loan (for students starting graduate entry medical and dental courses). Whilst most students will qualify for support, there are exceptions to these principles.

A student who started their course on or after 1 August 2018 may be eligible for Fee Loan only.

4.1 First Degree Rule

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

A first degree is defined in the regulations as an Honours Degree, an Ordinary degree or a Foundation Degree.

Students who hold a first degree cannot access further student support, unless they are topping up a an Ordinary degree or a Foundation Degree to an honours degree.

Regulation 6 & 7 (2017) and 17 (2018) provide exceptions to this general rule.

4.2 Students with No Previous study

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.

Regulations 6 (8) (2017) and 14 (2018) make provision for students applying for student support in 19/20 who have not studied on a previous course.

Their entitlement is the ordinary duration (OD) of their course, [plus any repeated years (R) on the present course because of compelling personal reasons], plus one.

OD [+ R] +1

For example, students studying on a course with an OD of three years would generally be eligible for up to four years of fee support.

The general rule does not apply to supplementary grants such as the DSAs or GfDs, as these are not affected by previous study.

4.3 Students with Previous study

Once it has been determined that the student has been on a previous course, the Regulations set 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

The entitlement of a eligible student returning to HE in September 2017 was determined in accordance with regulations 6 (9) (2017) and 17 (2018).

The entitlement of a student falling within these regulations 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 AY 17/18 and is applying for support in AY 17/18. The student has in the past completed a year of study on a previous course. The student's entitlement is 3 years (the ordinary duration of the current course plus 1, less the year spent on the previous course).

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

Please note whilst students with first degrees cannot generally receive support for another course, students studying sub degree qualifications (DipHE, CertHE and HNC/HND) may qualify for support for more than one course of the same level, subject to previous study.

4.3.1 Definition of a previous course

Regulations 6(21) (2017) and 17(3) (2018) set out what is a previous course for the purposes of determining eligibility to fee support and living cost support

A "previous course" is any full-time higher education course or any part-time course for the initial training of teachers which the student began to attend or, in the case of a compressed degree course or a designated distance learning course, undertake before the present course and which meets one or both of the following conditions:

- a) the course is provided by an institution in the United Kingdom which was a recognised educational institution for some or all of the academic years during which the student took the course or
- b) any scholarship, exhibition, bursary, grant, allowance or award of any description which was paid in respect of the student's attending or, in the case of a compressed degree course or a designated distance learning course, undertaking the course to defray fees was from public funds or funds attributable to public funds.

A course which would otherwise be a previous course will not be treated as such if:

- a) the present course is a course for the initial training of teachers
- b) the duration of the present course does not exceed two years where the present course is a full-time course and
- c) the student is not a qualified teacher.

A course for the Certificate in Education which would otherwise be a previous course will not be treated as such if:

- a) the present course is a course for the degree (including an honours degree) of Bachelor of Education
- b) the student transferred to the present course from the course for the Certificate in Education before the completion of that course or began the present course on completion of the course for the Certificate in Education

A course for the degree (other than an honours degree) of Bachelor of Education will not be treated as a previous course if:

- a) the present course is a course for the honours degree of Bachelor of Education
- b) the student transferred to the present course from the course for the degree (other than an honours degree) of Bachelor of Education before the completion of that course or began the present course on completion of the course for the degree (other than an honours degree) of Bachelor of Education

4.4 Exception for ITE courses

Students who intend to take a full-time course of ITE of not more than two years (or a part-time course the duration of which is not more than four year) are exempt from the previous study rules unless they have already gained Qualified Teachers Status (QTS) as outlined in regulations.

A requirement of regulations under this section may relate to:

- a) the possession of a specified qualification or experience of a specified kind
- b) participation in or completion of a specified programme or course of training
- c) compliance with a specified condition
- d) an exercise of discretion by the Secretary of State, the National Assembly for Wales or another specified person

The National Assembly for Wales shall consult the General Teaching Council for Wales before making regulations under this section which make provision by reference to:

- a) the content of a course or programme or
- b) the standard of education or training provided through a course or programme

4.5 Compelling Personal Reasons (CPR)

The Regulations 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.

In the case of an eligible student who did not successfully complete the latest previous course because of compelling personal reasons an additional year of eligibility is added. 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.

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

Example:

Student B, has not attended a previous course and applies as a new student in September 2017. They starts a four year honours degree course therefore their entitlement is support for four years plus an additional year.

OD (4 years) + 1

Student B fails the second year of the course which they successfully repeat using up the additional year and enter the third year of the course in September 2020. The student still has support for years 3 and 4 of the course.

However student B 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

4.5.1 Evidence of Compelling Personal Reasons

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 ask a HEP's student support advisory service to 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.

4.6 Self-funded years

Where the number of academic years for which eligibility to fee 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 (regulations 6 (12) (2017) and 12 (4) (2018)).

Example:

Student C is a new system student who starts a four year degree course in September 2017 (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 the Regulations. 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.

Where a student transfers courses, the basic principle still applies, 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 2017 (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 AY19/20. The student's entitlement is four years (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 2017 (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 2018 (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 – 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 2017 (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 ($3+1-2 = 2$). 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 2017 (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 ($3+1-2 = 2$). 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 2015. They went onto a 3 year course to top up to an honours degree – the honours degree course is an ‘end-on’ course and the application of the remaining years of support to the latest years of the course still applies. The student’s entitlement is two years support. ($3 + 1 - 2 = 2$ 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.

4.7 Transferring course

Regulations 8 (2017) and 28-30 (2018) set 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 August 2018 having had their status transferred to that course under the Regulations from a course that they began before 1 August 2018 will not be a '2018 cohort' student.

Where a student has their eligibility transferred from a previous course to the current course, but has switched their mode of study (from PT to FT, FTDL to FT), and where the switch of mode has taken place on or after 1 August 2018, the student will become eligible to apply for the package of support available to a new entrant since AY 18/19 and not any previous package of support.

4.8 Students Topping up to Honours Degree after a Preliminary Course

Under regulations 6 (10&11) (2017) and 16 (2018) students who have studied a preliminary HE qualification (CertHE, DipHE or HNC/HND) or a non-honours first degree (Ordinary Degree or Foundation Degree) are able to access support to "top-up" their qualification to an Honours Degree.

The mode, funding method and study location of the lower level qualification studied has no impact on the student's ability to 'top-up' their qualification. However, the previous study will be taken into account when carrying out the calculation for entitlement to fee support. This applies whether or not the current course is being undertaken immediately after the lower level HE qualification (disregarding any intervening vacation).

Please note that all preliminary courses previously undertaken should be taken into account when calculating further entitlement to fee support.

The regulations set out the calculation as follows:

$$(D+X) - PrC$$

Where:

(D) is the greater of 3 or the number of academic years that make up the ordinary duration of the current course

(X) is 1 where the ordinary duration of the preliminary courses (in total) was less than 3 years

Or

(X) is the ordinary duration – 1 where the ordinary duration of the preliminary courses (in total) was 3 years or more

(PrC) is the number of academic years that the student spent on any preliminary course (including part years of study) excluding any years of repeat study for compelling personal reasons

For example, a student has studied for 1 year on an HNC, 2 years on an HND and now wishes to study on a 3-year degree course from year 1.

In this case $D = 3$, $X = 2$, $PrC = 3$, making the entitlement to further fee support 2 years ($3 + 2 - 3 = 2$).

As the student's current course is 3 years in duration, and the student only has 2 years of fee entitlement available they will have to selffund their fees in the first year. Student support will be available for tuition fee loans from year 2. The student will be entitled to maintenance loan and supplementary grants for the full duration of the course.

The above calculation applies to students to both:

- end-on students: who are students that commence the honours degree course immediately after the preliminary qualification (disregarding the intervening vacation) and
- top-up students: who are students that do not commence the honours degree course immediately after the preliminary qualification

Please note that end-on students will retain the cohort they were in on their preliminary course.

4.9 Healthcare Bursary Years – Previous Study Considerations

A student will not qualify for fee support in an academic year in which a student is eligible to apply for a healthcare bursary (defined in regulations 2(1) (2017) and 10 (4) (2018)). As result years in which a student is eligible to apply for a healthcare bursary (also known as bursary years) are not counted as years for the purpose of the OD of a course.

Additionally students who are in receipt of an healthcare bursary in respect of an nursing, midwifery or allied healthcare profession course and who hold a first UK honours degree can qualify for reduced rate maintenance support regardless of their qualification.

4.10 Erasmus years – Eligibility to Fee Support Considerations

A student will not qualify for fee support in an AY which is an ERASMUS year for:

- (i) a course provided by an institution in England, Scotland or Wales that began before 1 September 2012 or
- (ii) a course which began after 1 September 2012 provided by an institution in Northern Ireland or
- (iii) a course which began after 1 September 2012 provided by an institution in Wales or England where the AY which was the ERASMUS year was before AY 14/15
- (iv) a course which began after 1 September 2012 provided by an institution in Scotland where the AY which was the ERASMUS year was before AY 17/18

As these students are entitled to a fee waiver, this also means this is not counted as part of the ordinary duration of the course.

ERASMUS Year is defined in regulations 2 (1) (2017) and Schedule 2, paragraph 4 (3) (2018).

A student will qualify for limited fee support in an AY which is an a ERASMUS year for

- (i) a course which began after 1 September 2012 provided by an institution in Wales or England where the AY which was the ERASMUS year is after AY 14/15.
- (ii) a course which began after 1 September 2012 provided by an institution in Scotland where the AY which was the ERASMUS is after AY 17/18.

4.11 Medicine, Dentistry, Veterinary Science, Architecture, Social Work, and Initial Teacher Training (ITT) Courses as a Second Degree

The Regulations make an exception for students taking courses in medicine, dentistry, veterinary science, architecture, social work and undergraduate Initial Teacher Training (ITT). Students will continue to be eligible for loans for living costs, even if they already hold an equivalent or higher level qualification.

For more information on the support available for these students please see the NHS guidance chapter.

5 Eligibility for support for living costs

5.1 General

Support for living costs covers both loans and supplementary GfDs, Travel Grants and maintenance. Details of the general additional eligibility criteria for these are set out below.

5.2 Students who are not eligible for support for living costs

The following eligible students will not be entitled to grants for living and other costs (regulation 23):

- EU students who fall within Schedule 1, Part 2, Paragraph 9 (2017) and Schedule 2, paragraph 6 (2018) and in no other paragraph of Schedule 1, Part 2 (2017) or Schedule 2 (2018) will not be eligible for any support towards living costs under the Regulations
- students who are eligible to apply for an income assessed “healthcare bursary”
- 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 education (ITE) of any length, where the course begins on or after 1st September 2010, these students should apply for the part-time support package, see the Support for Part-time Students guidance chapter
- students on sandwich years where the periods of full-time study are in aggregate less than 10 weeks, and the periods of work experience are not:
 - unpaid service in a hospital or in a public health service laboratory or with a 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.

5.3 Students aged 60 and over

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 first day of the first AY of the students course.

In most cases it will be the first day of the first academic year of the current course. Please refer to the AY 19/20 Assessing Financial Entitlement guidance chapter for further details.

The age criterion does not apply to fee support for new system students, nor does it apply to GfDs, Travel Grants and DSA.

6 Annexes

6.1 Annex A – Events under the Regulations

The events are—

- the student's course becomes a designated course
- the student or the student's spouse, civil partner or parent is recognised as a refugee or becomes a person granted humanitarian protection
- a state accedes to the EU where the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state
- the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national
- the student acquires the right of permanent residence
- the student becomes the child of a Turkish worker
- the student becomes a person described in paragraph 6(1)(a) of Schedule 1 or
- the student becomes the child of a Swiss national

6.2 Annex B – Extract from Lord Scarman’s

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 and 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'."

6.3 Annex C – EU/EEA Member States and Overseas Territories

Country	Date of Accession	EU	EEA	Related Territory	EU	EEA
Austria	01/01/1995	Y	Y			
Belgium	01/01/1958	Y	Y			
Bulgaria	01/01/2007	Y	Y			
Croatia	01/07/2013	Y	Y			
Cyprus	01/05/2004	Y	Y			
Czech Republic	01/05/2004	Y	Y			
Denmark	01/01/1973	Y	Y	Greenland*	N	N
				Faroe Island*	N	N
Estonia	01/05/2004	Y	Y			
Finland	01/01/1995	Y	Y	Åland Islands	Y	Y
France	01/01/1958	Y	Y	French Overseas Departments ¹	Y	Y
				French Overseas Territories ^{2*}	N	N
Germany	01/01/1958	Y	Y	Heligoland	Y	Y
Greece	01/01/1981	Y	Y			
Hungary	01/05/2004	Y	Y			
Ireland	01/01/1973	Y	Y			
Italy	01/01/1958	Y	Y			
Latvia	01/05/2004	Y	Y			
Lithuania	01/05/2004	Y	Y			
Luxembourg	01/01/1958	Y	Y			
Malta	01/05/2004	Y	Y			
Netherlands	01/01/1958	Y	Y	Netherlands Antilles*	N	N
				Aruba*	N	N
Poland	01/05/2004	Y	Y			
Portugal	01/01/1986	Y	Y	Madeira	Y	Y
				Azores	Y	Y
				Macau	N	N
Romania	01/01/2007	Y	Y			
Slovakia	01/05/2004	Y	Y			
Slovenia	01/05/2004	Y	Y			
Spain	01/01/1986	Y	Y	Baleric Islands	Y	Y
				Canary Islands	Y	Y
				Ceuta	Y	Y
				Melilla	Y	Y
Sweden	01/01/1995	Y	Y			
United Kingdom	01/01/1973	Y	Y	Channel Islands	N	N
				Isle of Mann	N	N
				Gibraltar	Y	Y
				UK Sovereign Bases (inc Cyprus)	N	N
				British Overseas Territories ³	N	N

Iceland	N/A	N	Y			
Liechtenstein	N/A	N	Y			
Norway	N/A	N	Y	Svalbard	N	Y
Switzerland	N/A	N	N			
Turkey	N/A	N	N			

*These territories are subject to the same provisions as BOTs as per section 3.1.3

¹French Overseas

Departments

Guadeloupe

Martinique

French Guyana

Réunion

Mayotte

Saint-Martin

²French Overseas Territories

New Caledonia

French Polynesia

Wallis and Futuna

St Pierre et Miquelon

St Barthelemy

French Southern and

Antarctic

Territories

³ British Overseas Territories

Anguilla

Bermuda

British Antarctic Territory

British Indian Ocean

Territory

British Virgin Islands

Cayman Islands

Falkland Islands

Pitcairn, Henderson, Ducie

and Oeno Islands

Montserrat

St. Helena and

Dependencies

South Georgia and the

South Sandwich Islands

Turks and Caicos Islands

The Sovereign Base Areas of

Akrotiri and Dhekelia

6.4 Annex D – 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/>

6.5 Annex E - 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

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

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

Student Loans Company

European Team
Memphis Building
Lingfield Point
McMullen Road
Darlington
County Durham
DL1 1RW Tel: 0141 243 3570

<http://www.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>

6.6 Annex F - Welsh Student Support Cohorts

Student Cohort	Eligibility period (first day of study)	2017/18 Fee Liability and Support	2017/18 Maintenance Support*
Continuing 2010 cohort (new system)	Started on or after 1 September 2010 and before 1 September 2011. Includes eligible gap year students who started on or after 1 September 2011.	£3,465 (or £4,030 if HEP in NI) – can self fund or take out a non-income assessed tested tuition fee loan.	Welsh Government Learning Grant of up to £5,161 (household income up to £50,020).
Continuing 2011 cohort (new system)	Started on or after 1 September 2011 and before 1 September 2012. This does not include eligible gap year students who start on or after 1 September 2012.	£3,465 (or £4,030 if HEP in NI) – can self fund or take out a non-income assessed tested tuition fee loan.	Welsh Government Learning Grant of up to £5,780 (household income up to £50,020).
2012 cohort (new system)	Started on or after 1 September 2012	£9,250 – first £4,296 can self fund or take out a non-income assessed repayable tuition fee loan. A non-income assessed new fee grant of up to £4,954 is available for eligible students.	Welsh Government Learning Grant of up to £5,161 (household income up to £50,020)
2018 cohort (new system)	Started on or after 1 August 2018	£9,250 can self fund or take out a non-income assessed repayable fee loan	Welsh Government Learning grant of up to £8,100 Elsewhere, £6,885 Parental Home and £10,149 London. £1,000 WGLG at incomes of £59,200 or higher.

* continuing 2010, 2011 and 2012 can apply for a partially means-tested loan for living costs of between £5,358 and £9,697 (full-year loan rates) depending if they are living in the parental home or outside the parental home in London, overseas or elsewhere.

New 2018 cohort students can access additional loan for living cost to make up to the support maximum based on the student living in the parental home, outside the parental home in London or elsewhere.

The SSG may be payable as an alternative to the WGLG to those eligible 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: DSAs, CCG, ADG, PLA and TGs.

6.7 Annex G – Updates Log

Date	Updates
Version 0.1 09/11/18	Relevant academic years updated throughout Section 3.6 - Section 67 leave explanation added to provide background on new Dubs children residency category <ul style="list-style-type: none"> • Previous section 3.6 now at 3.7 Section 4.12.3 – Accelerated degrees explanation added to provide background on student support arrangements for Welsh students studying Accelerated degrees in England from AY 19/20 <ul style="list-style-type: none"> • Previous section 4.12.3 now at 4.12.4 **OfS, JACS/HECOS updates still to be added as at 09/11/18**
Version 0.2 07/01/2019	Section 4.12.3 – updated Accelerated Degree information to confirm standard package of support available from AY 19/20. ***Section 4.2, 4.7, 4.10 will require updates once sight of regs received ***
Version 0.3 05/03/2019	Updated Course eligibility section. Accepted minor grammar changes and agreed tracked changes from WG.
Version 1.0	Updated distance learning section to reflect information given by WG.
Version 3.1	Corrected in error in Annex C.
Version 4.0	Accessibility updates.
Version 5.0	Minor accessibility updates.