

# Assessing Eligibility Guidance

## Higher Education Student Finance in England 2009/10 Academic Year

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

May 2011

Dear Colleague,

### HIGHER EDUCATION STUDENT SUPPORT IN ENGLAND IN 2009/10: ASSESSING ELIGIBILITY

Attached is the consolidated 'Guidance for Local Authorities and the SLC on the administration of Student Support 2009/2010'. The chapter contains guidance on assessing eligibility for support for students in 2009/10.

References to "the Regulations" mean the Education (Student Support) (No.3) Regulations 2008 and the Education (Student Support)(Amendment)(No.2) Regulations 2008.

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**The direct email address to the Home Office have been removed at the request of the Audit Department. Please refer to internal documents for details of the appropriate email address to contact the Home Office.**

**In this October edition further amendments have been made regarding Architecture courses and Intercalated study (paragraphs 279 and 283)**

**Additional changes in relation to unfitted for support and also contacting the Home Office are in red**

**The September 2009 edition has been updated to take into account additional guidance in determining the eligibility of EEA Migrant Worker cases. Changes to text are in green bold type.**

This guidance does not cover every aspect of student support. The full details are contained in the Education (Student Support) (No.2) Regulations 2008 as amended by the Education (student support) (Amendment) (No 2) Regulation 2008 and the Education (Student support) (Amendment) (No3) Regulations 2008 which are the legal basis of the student support arrangements for the academic year 2009/10. Nothing in this guidance can replace the Regulations and if there is any difference between this guidance and the Regulations, the Regulations prevail. This guidance is based on the Regulations as they stand at the time of publication. The Regulations may change in future.

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

### **ELQs and Previous study changes in academic year 2009/10**

From AY 2009/10, most students who already have an HE qualification from an institution in the UK or elsewhere will not be eligible for further student support (except targeted support) under the Regulations for a second equivalent or lower level HE qualification. This rule applies whether the previous qualification was:

- studied in the UK or elsewhere
- self-funded or publicly-funded
- studied on a full-time, full-time distance learning, compressed or part-time basis

An equivalent or higher level qualification from a UK or overseas University or College is an undergraduate HE qualification. The definition includes Integrated Masters Degrees which integrate a period of undergraduate study with a Masters degree leading to a single classified award at the end of the course (e.g. MChem, MEng, MMaths), but does not include stand-alone Postgraduate qualifications (e.g. PgDip, MA, MSc, MBA or equivalents).

However, new students taking courses in medicine, dentistry, veterinary science, architecture, social work and undergraduate Initial Teacher Training (ITT) will continue to be eligible for loans for living costs, though not fee loan or Maintenance Grant/ Special Support Grant, even if they already hold an equivalent or higher level qualification. Students eligible for a means-tested NHS bursary will continue to be eligible for a reduced rate loan whether or not they already hold an equivalent or higher level qualification.

New students starting postgraduate courses of ITT will be eligible to apply for the full package of fee and maintenance (grant and loan) support.

Where a student has achieved a lower level HE qualification on a full-time, part-time, full-time distance learning or compressed degree basis, wherever obtained and however funded, fee and maintenance support will be available to top-up to a qualification that is at a higher level than the one they already hold, but not to complete a full-length honours degree.

Where previous study was undertaken but no qualification attained, the new policy is to apply previous study rules (including compelling personal reasons) for fee support and Maintenance Grant / Special Support Grant to students who have previously studied on a full-time, part-time ITT, full-time distance learning or compressed degree basis at any publicly funded UK or overseas institution (including specifically designated courses). However, part-time previous study that did not lead to a qualification and previous study that was entirely self-funded but did not lead to a qualification (i.e. fees and maintenance support self-funded at a private institution) will not be taken into account for a second course.

## Table of Contents

Introduction.....	6
Gap year students.....	7
Policy.....	8
General exclusions.....	8
NHS bursaries.....	9
Applicants who breach any obligation to repay any previous student loan or who have reached the age of 18 and have not ratified a previous student loan made after they have been assessed under the age of 18.....	9
Applicants who breach any obligations to repay any previous student loan after they have been assessed.....	9
1998/99 starters.....	10
Ineligibility on grounds of unfitness to receive support.....	10
Devolution of student support to Wales.....	11
Personal eligibility.....	12
Students attending more than one course.....	12
Time limit for applying for student support.....	12
Documentation requirements.....	12
Residence and other eligibility conditions.....	13
Definitions: Regulation 2 – Interpretation.....	14
Ordinary Residence.....	15
Residence wholly or mainly for the purpose of receiving full time education.....	14
Students who move to England from elsewhere in the UK and Islands in order to attend a course.....	15
Temporary or occasional absences.....	15
Gap years.....	15
Temporary employment outside the UK and Islands.....	16
Emigrants.....	16
Children living in the UK (or EEA and Switzerland as appropriate) whose parents are temporarily employed abroad.....	16
Possible considerations when establishing temporary absence.....	16
Determining whether an applicant would have been ordinarily resident but for his temporary employment abroad.....	18
Persons who are settled in the UK.....	19
Settled status.....	21
British Overseas Territories.....	21
Persons who have a right of permanent residence in the UK.....	22
Asylum seekers who have been granted Refugee status.....	23
Persons granted leave to enter or remain.....	25
HP and DL terms and conditions.....	26
Home Office asylum clearance exercise.....	28
<i>Workers, employed persons, self-employed persons and their family members (Paragraph 6 of Part 2 of Schedule 1 to the Regulations).....</i>	29
Students who cease work before starting the course.....	32
Students who continue to work whilst studying.....	<b>Error! Bookmark not defined.</b>
Remuneration for work.....	32
<b>Effective and Genuine/</b> Marginal and ancillary employment.....	32
<i>Family members of EEA migrant workers, EEA frontier workers, EEA frontier self-employed persons, EEA self-employed and Swiss employed persons, Swiss frontier employed persons, Swiss frontier self-employed persons or Swiss self-employed persons.....</i>	34
<i>Children of EEA migrant workers.....</i>	34
<i>Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere (Paragraph 8 of Part 2 of Schedule 2).....</i>	34
EC nationals and their family members (Paragraph 9 of Part 2 of Schedule 1).....	36

EC Nationals with a 'Genuine Link' with the UK.....	36
Children of Swiss Nationals.....	37
Children of Turkish workers.....	37
EC Member States.....	37
Eligibility for fee and living costs support and determination of standard entitlement.....	39
Definition of a 'previous course'.....	47
Years of previous study.....	48
Compelling Personal Reasons (CPR) – Current and Old System Students.....	51
Evidence of compelling personal reasons: for both "current" and "old" system students.....	52
Self-funded Years – 'Current' and 'Old' System Students.....	52
Transferring Students – 'Old System'.....	54
Transferring Students – 'Current System' students.....	55
"Top Up" courses.....	55
1 Year Stand Alone ('Top Up') Course:.....	57
Students who attend a full-time course on a part-time basis.....	57
Students repeating whole or part years of a full-time course on a part-time basis - living costs and fee support.....	59
Students transferring courses.....	59
Eligibility for support for living costs.....	60
General.....	60
Students aged 60 and over.....	60
Other eligibility requirements.....	58
Designated courses.....	61
General criteria for automatic designation of courses.....	62
Schedule 2 courses.....	63
Interpretation of provisions on automatically designated courses.....	63
Courses in Schedule 2.....	64
PGDE Courses in Scotland Only.....	65
Flexible PGCE Courses (Old and Current System Students).....	66
Further Education ITT courses.....	67
Courses falling under Paragraphs 7 & 8 of Schedule 2.....	68
Definition of full-time course.....	68
Distance learning courses.....	<a href="#">70</a>
Learning in the workplace.....	<a href="#">70</a>
Sandwich courses.....	71
Architecture courses.....	74
Intercalated study.....	75
Foundation years as part of an extended course.....	76
Free standing Foundation and conversion courses.....	76
Access courses.....	77
Twin-track access courses.....	77
Franchising arrangements.....	77
Part-time courses.....	77
60 credit courses.....	78
Specific designation.....	78
Specific designation of postgraduate courses for the purpose of Disabled Students' Allowances.....	78
Foundation degrees.....	78
Students on a course in Scotland lasting four years or more.....	79
Annex 1.....	80
NHS BURSARY HOLDERS.....	80
NHS Secondees.....	81
Annex 2.....	84
MEMBER STATES OF THE EC AND THEIR DATES OF ACCESSION....	84
Annex 3.....	86
EXTRACT FROM LORD SCARMAN'S JUDGEMENT.....	86

Annex 4 .....	88
REGULAR MILITARY AND AIR FORCES AND ROYAL NAVY FORCES .....	88
Annex 5 .....	89
HOME OFFICE IMMIGRATION PASSPORT STAMPS .....	89
Annex 6 .....	90

## Introduction

1. This chapter looks at the eligibility requirements each applicant will need to satisfy in order to be considered eligible for support in connection with a course of higher education. It gives detailed guidance on the Regulations for 2009/10. However, it is not exhaustive and is not intended to be a substitute for reading the Regulations. Please note this guidance chapter focuses mainly on full-time courses.
2. The Regulations referred to throughout this chapter are the Education (Student Support) (No.3) Regulations 2008, as amended by the Education (Student Support) (Amendment)(No.2) Regulations 2008 and together govern the provision for support in AY 2009/10.
3. In 2009/10, students will be defined as either, an old system student, a current system student who is not 2008 or 2009 cohort, a 2008 cohort student or a 2009 cohort student (Regulation 2(1)), and as a result they will be eligible for different packages of support. Further information on the different support arrangements are set out in the chapter on 'Assessing Financial Entitlement'.

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

- started their current course before 1<sup>st</sup> September 2006 and is continuing on that course after 31<sup>st</sup> August 2009 ;
- is a gap-year student (as defined in regulation 2(6) of the Regulations);
- started an end-on course on or after 1<sup>st</sup> September 2006 from a course they started prior to 1<sup>st</sup> September 2006 (or in the case of a gap-year student, a course that started prior to 1<sup>st</sup> September 2007 ); or
- started their current course on or after 1<sup>st</sup> September 2006 after transferring from a course which they started prior to 1<sup>st</sup> September 2006 (or, in the case of a gap year student, a course which they started prior to 1<sup>st</sup> September 2007).

A 'current system student who is not 2008 or 2009 cohort' is an eligible student who:

- is not an old system student and
- either started their current course on or after 1<sup>st</sup> September 2006 and before 1<sup>st</sup> September 2008 and who is continuing on that course after 31<sup>st</sup> August 2009;
- Is starting their current course on or after 1<sup>st</sup> September 2008 and before 1<sup>st</sup> September 2009 who has studied on a previous designated course which began before September 2008.
- is starting their current course on or after 1<sup>st</sup> September 2009 and has studied which commenced before 1<sup>st</sup> September 2008. See 'Assessing Financial Entitlement' for more details.

A '2008 cohort' student is an eligible student who:

- is continuing on a course which began on or after 1<sup>st</sup> September 2008 and before 1<sup>st</sup> September 2009, and who has not undertaken a previous designated course which began before 1<sup>st</sup> September 2008; or
- is continuing on a course which began on or after 1<sup>st</sup> September 2008 and before 1<sup>st</sup> September 2009 and the course is an ITT course which is not an undergraduate degree, or a course which leads to a qualification as a medical doctor, dentist, veterinary surgeon, architect, landscape architect, landscape designer, landscape manager, town planner, town and country planner or social worker (regardless of whether or not the student has studied on a previous designated course which commenced before 1<sup>st</sup> September 2008).

A '2009 cohort' student is an eligible student who:

- began their current course on or after 1<sup>st</sup> September 2009 and who has not undertaken a previous course (as defined in Regulation 13) which began before 1<sup>st</sup> September 2008; or
- began an ITT course which is not an undergraduate degree, or a course in social work, medicine, dentistry, veterinary surgery or architecture on or after 1<sup>st</sup> September 2009 (regardless of whether or not the student has studied on a previous course (as defined in regulation 13) which commenced before 1<sup>st</sup> September 2008)

Gap year students

4. (NB)The definition of a gap year student is set out in Regulation 2(6) of the Regulations. Generally, there are two categories of gap year student:
  - Those who received an offer of a deferred place for 2006/07 on or before 1st August 2005 (Regulation 2 (7)) NB In order to qualify as a gap year student, a student must have taken up their deferred place in 2006/07 on the course for which they received the offer unless the exceptions covered in paragraphs 5 - 7 below apply); and
  - Those who received an offer of a deferred place for 2006/07 after having successfully appealed against their A-level results (Regulation 2(9)).

#### **Exceptions**

5. A student would have been considered a gap year student if they had taken up their deferred place on another course from the one they received the offer for. Only if that course was at the same institution and the institution considered the subject matter of the course to be similar, either in whole or in part to the course for which they had received the offer.
6. If the institution was no longer offering the course the student received their original offer for, then they would still have been considered a gap year student if they had to undertake that course (or a similar course) at another institution.
7. In determining whether a student qualified as a gap year student, LAs would need to be satisfied that they met the the criteria in the Regulations. As the student would have had confirmation of their deferred place from their institution this could have formed part of

the evidence they were required to provide. Where a student received an offer of a deferred place after 1 August 2005, they should have provided evidence that this had been a result of an A-level appeal. These rules apply irrespective of where the student is studying in the UK.

8. Where a student does not meet the criteria for being a gap year student, they will be a current system student (provided they meet the relevant criteria), and eligible for the new package of support. This is the case irrespective of whether the institution decides to charge them fees of up to £1,285 rather than up to £3,225.
9. Eligibility can be broken down into four main headings:
  - Personal eligibility
  - Eligibility for fee support
  - Eligibility for support for living costs
  - Designated courses

## Policy

### General exclusions

10. Paragraph (3) of regulation 5, provides that students are excluded from *any support* under the Regulations if they:
  - Hold a mandatory award under the old arrangements (i.e. those students who started their course in 1997/98 or earlier and those 1998/99 entrants who are exceptionally treated as though they had started in the 1997/98 academic year);
  - Are eligible for a loan in relation to an academic year of the course under the Education (Student Loans) Act 1990 or the Education (Student Loans)(Northern Ireland) Order 1990 (this means students eligible for a mortgage style loan under the previous arrangements);
  - Are in receipt of a non-means tested "healthcare bursary", (as defined in regulation 2 (1)) or other allowance referred to in regulation 5(3) - see paragraph 12 below for an explanation of what a "healthcare bursary" is;
  - Are in breach of any obligation to repay any student loan;
  - Have reached the age of 18 and have not ratified any student loan agreement made with them when they were under the age of 18; or
  - Have shown themselves by their conduct to be unfitted to receive support.

NB Where a person qualified as an eligible student for the previous academic year, it will not usually be necessary for the LA to go through all the steps again for the next AY to determine personal eligibility (see regulations 5(7) to 5(10)).

11. From 1<sup>st</sup> September 2008 students who have spent any time in prison (whether on remand or otherwise) within the AY will not be entitled to any maintenance support whilst they are in prison. Maintenance support should be calculated on a pro-rata daily basis excluding the time in prison.

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

A full-time student who is a prisoner during any part of the AY will be eligible for a fee loan (fee grant if he/she is eligible under the pre 2006 arrangements) and DSAs. For more information see Change of Circumstances and Overpayments Policy Guidance Chapters.

### **NHS bursaries**

12. NHS funded students on diploma level courses in nursing, midwifery and operating department practice receive support for fees and non means-tested bursaries via the NHS Bursary scheme. They are not eligible for any support under the Regulations. Further information about NHS bursaries is provided at Annex 1 to this chapter.

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

13. The Regulations provide that a person shall not be eligible for support if he is in breach of any obligation to repay any loan (as defined in regulation 5(4)) or he has reached the age of 18 and has not ratified any agreement for a loan made with him when he was under the age of 18.
14. The applicant is not eligible for support whether or not he has declared any such breach or non-ratification on his application form (see Paragraph (3)(d) and (e) of Regulation 5). LAs/SLC do not have any discretion in determining an applicant's eligibility in these circumstances. The only possible exception to this will be 1998/99 starters (see paragraph 18 for further guidance).
15. The single system has a record of students who are in breach and this is discovered when the assessment is sent for approval. The single system will trigger a letter at that point advising the student he is ineligible whilst remaining in default.
16. Once an applicant is no longer in breach, the SLC should advise the relevant LA to reassess his eligibility for the academic year in question. Any such reassessment is for the whole academic year, not from the date on which he ceased to be in breach of any such obligation or ratified any such agreement.

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

17. If an applicant has received a support notification letter but subsequently breaches any obligation to repay any previous student loan, he will remain eligible for support in the academic

year to which the notification applies. If the relevant LA or SLC become aware of this the LA should notify the SLC accordingly following the guidance in the 'General, Eligibility and Financial Assessment Administration' chapter.

### 1998/99 starters

18. When assessing whether 1998/99 starters are eligible for support, the LA/SLC should have regard to regulations 4(5) and (6).
19. For more detailed information on the administration process, please refer to guidance in the 'General, Eligibility and Financial Assessment Administration' chapter.

### Ineligibility on grounds of unfitness to receive support

20. A student does not qualify as an eligible student if, in the LA's/SLC's opinion, he has shown himself by his conduct to be unfitted to receive support (see regulation 5(3)(f)). The power may be used at any stage in the process of assessing a student's eligibility for support but once a student has been notified that he is eligible this power may not be used. However, a LA/SLC may terminate eligibility for similar reasons under Paragraph (5) of Regulation 7.
21. One example of when a local authority/the SLC might decide that a student is unfitted to receive support might be where it comes to light that the student has committed a fraud in applying for support, for example if they are discovered to have made applications to and received support from more than one authority, or presented fraudulent information in their applications in order to receive more support than they are entitled to. In such cases an LA/SLC should consider exercising the power to refuse the application (or terminate eligibility, depending on when the fraud comes to light) on the grounds that the students have shown themselves unfit by their fraudulent conduct to be considered for support. LAs/SLC may find *DIUS Audit Guidelines for the Administration of Student Finance* of help.
22. Other examples might include fraud against other government funds such as Jobseeker's Allowance, Income Support or Housing Benefit. Commission of a serious criminal offence might also be grounds for refusal in some circumstances, but LAs/SLC will need to consider such cases carefully, especially where the applicant is pursuing higher education as a means towards his rehabilitation. A student may argue that he has already been punished adequately by his sentence, but an LA/SLC should consider whether it is appropriate to support a student whose conviction casts doubt on his suitability for his intended career. (An obvious example is an offence against a child by someone who is, or may be, preparing for a career working with children.) It is important to bear in mind that the decision as to whether a student is suitable for or should be allowed to take a *course* rests with the institution; the decision as to whether the student is eligible for *funds* rests with the LA/SLC.
23. **LAs/SFE might also decide that a student is unfitted to receive support where he or she has made repeated applications for and received support for a number of different courses without completing those courses. This is most likely to**

**involve loans for living costs and targeted grants: Adult Dependant's Grant, Childcare Grant, PLA and DSAs, as entitlement for these loans and grants is not subject to previous study rules, but could also involve fee support.**

- 24. If a student has already received support for four courses, LAs/SFE should consider whether that student should be eligible for further support. For example the LA/SFE might decide that a student who has received support for four successive undergraduate courses and withdrawn from each is unfitted to receive support for a fifth course. There may be other similar cases where a student is unfitted for further support. LAs/SFE should deal with each case on its own merits. In the case of fee support, LAs/SFE should consider any additional years of fee support awarded due to compelling personal reasons when making their decision.**
25. There might be other instances where the LA/SLC would wish to consult the institution before exercising the power to refuse or terminate eligibility, where the institution's evidence might put the student's fitness to receive support into question. For example, the institution might provide evidence of attempted fraud against it which has not actually led to the student being expelled but which might lead the LA/SLC to consider whether the student, though being allowed to continue with the course, should continue to receive support for it.
26. The fact that a student is, or has in the past been, in dispute with the LA/SLC over a student support issue should not of itself be a reason for refusing or terminating support, even if the dispute was acrimonious. It may be a different matter however if the student has behaved criminally in pursuing his grievance, though the case should be considered on its own merits.
27. It is important to remember that the purpose of these provisions is to safeguard public funds, and to ensure that they are spent properly. An LA/SLC should always ensure that a decision to refuse or terminate support will stand up to examination in the event of a formal appeal or a court challenge. It may be a sensible precaution to seek advice from the LA/SLC's legal staff.

#### Devolution of student support to Wales

28. Following devolution of student support to the National Assembly for Wales (NAW), LAs/SLC will need to determine whether students who were ordinarily resident in England and Wales under the 2006/07 Regulations remain eligible for support under the Regulations for 2009/10. LAs/SLC will need to consult regulations 5 (7)-(10) of the Regulations and continuing students who are not eligible for support may wish to contact the NAW (contact details can be found in Annex 6).
29. Information on cross border issues is dealt with in the General, Eligibility and Financial Assessment Administration guidance chapter.

### Personal eligibility

30. The personal eligibility criteria for receiving support to attend a designated course are set out in Regulation 5 and Schedule 1. Provisions on designated courses are in Regulation 6 and Schedule 2 and are covered later in this chapter.
31. For 2009/10 the question "residing in a House of Religious Order" has been removed from student support application forms. Any continuing student who is categorised as "residing in a House of Religious Order" will retain independent status and therefore be granted transitional protection. The question will be removed from the customer portal and will be read-only within the LA portal.

### Students attending more than one course

32. A student can be eligible for support for only one course at any one time. This is not intended to prevent students from moving between courses during an academic year, but to prevent students from being eligible for support for more than one course where they take two (or more) courses concurrently. This applies to students who claim support for two courses from 2000/01 onwards.

### Time limit for applying for student support

33. Students must make their application to their LA/SLC within nine months of
  - The first day of the academic year; or
  - The date on which the course was designated, if that happens after the first day of the academic year; or
  - The date on which the student or their spouse/civil partner, parent or step-parent is recognised as a refugee, if that happens after the first day of the academic year; or
  - The date on which the student or their spouse/civil partner, parent or step-parent has been granted leave to enter or remain, if that happens after the first day of the academic year; or
  - The date on which the country of which they are a National gains accession to the European Community, if that happens after the first day of the academic year.

***(NB Please note that the above list is not exhaustive – see Regulation 18)***

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

### Documentation requirements

35. For all loans paid in AY 2009/10, the Secretary of State may make it a condition of entitlement to payment of any loan, that a student provides him with his UK national insurance number (NINO) (Regulation 107(1)). The Department of Work and Pensions (DWP) will issue NINOs to borrowers applying for student support (if they do not have one) and so in most circumstances, there will no longer be a valid reason for not providing a NINO and loan payments should not be released without a number being provided. In exceptional circumstances where a student has not

provided a NINO the Secretary of State will be able to release loan instalments (Regulation 107(3)). This will avoid hardship in the event that there are delays for students obtaining a NINO which are outside their control. It will also enable the Secretary of State to make payments to students who qualify for a loan but whom DWP will not issue a NINO – but this is only expected to arise in a very small number of cases. Ideally students will provide a NINO in their application form, however if they do not provide one SLC should process the application without it. The system will not hold up the application. The SLC will ask DWP to provide the NINO or liaise directly with the student to obtain their number and instruct them further as appropriate.

36. Regulation 108(3) states that the Secretary of State may request sight of a student's valid national ID card, his valid passport issued by the state of which he is a national or his birth certificate. Regulation 9(1) states that the applicant should provide such documentation as the Secretary of State may require with their application form. Regulation 9(2) states that the Secretary of State can make such enquiries as necessary to determine eligibility and this function has been transferred (or delegated) to the relevant bodies. See also Schedule 3.
37. Relevant documents are listed in the notes for completion for each application form. LAs/SLC may accept certified true copies of documents on an exception only basis where they consider it unreasonable to insist on originals; however every endeavour should be made to have sight of original identity documents, preferably a passport or identity card. A certified true copy is a photocopy of an original document which must have been stamped and signed as being a true copy of the original by an official such as a minister of religion, doctor, lawyer, civil servant, teacher/lecturer or police officer. The person certifying the copy must provide their name, address and contact number. The certifying person must not be a relative.
38. If a student chooses to submit his birth certificate then this must be accompanied by a fully completed Identity Declaration Form.
39. SLC should not require students to produce birth certificates where they are unwilling to do so, nor should they require students to provide reasons for not wanting to do so. In such cases, other forms of evidence such as a valid passport should be accepted. In exceptional cases a student may be unable to provide either a birth certificate or passport with valid reason, for example the Home Office is holding the passport and the student is not in possession of his birth certificate. SLC must not in these circumstances continue to request these items, but may accept other forms of evidence from external organisations such as the Home Office or the student's solicitor to ensure that they can satisfy themselves of the applicant's identity. Please note that in such cases SLC may suppress the system generated letters until the letter requesting eligibility evidence, including reference to a birth certificate or passport had been requested and not sent, then instead issue a manual letter excluding reference to these items.

#### **Residence and other eligibility conditions**

40. Students who are eligible to exercise the right of residency under Schedule 1 paragraph 8 'Persons who are settled in the United

Kingdom and have exercised the right of residence elsewhere' must satisfy the following

- Are settled in the UK;
  - Was ordinarily resident in England and settled in the UK immediately before leaving the UK to exercise a right of residence;
  - Is ordinarily resident in the UK on the day on which the first term of the first academic year begins'
  - Has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three year period preceding the the first day of of the first academic year of the course; and
  - In a case where the person's ordinary residence referred to in paragraph 8 (d) was wholly or for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph 8 (d).
41. SLC should remember to consider the facts of each case before reaching a decision with regard to an individual's immigration status and whether that individual meets the residence conditions in Schedule 1 to the Regulations.
42. The information contained in this guidance on nationality, immigration and asylum etc represents the Department's understanding of the situation but SLC should satisfy themselves that they have understood the applicable law and practice in making their assessments.

#### **Definitions: Regulation 2 – Interpretation**

43. The full definition of a "person with leave to enter or remain" can be found in Regulation 2. In summary, it is someone who has been informed by a person under the authority of the Secretary of State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right for him to allow him to enter or remain in the United Kingdom. He has therefore been granted leave to enter or to remain accordingly and has been ordinarily resident in the United Kingdom and Islands throughout the period since he was granted leave to enter or remain and whose period of leave to enter or remain has not expired.
44. The residence requirements of such a person are set out in Paragraph 5 of Part 2 of Schedule 1. The student must be either a person with leave to enter or the spouse, civil partner, child or step-child of a person with leave to enter or remain. The student must have been ordinarily resident throughout the three year period proceeding the first day of the first academic year of the course in the United Kingdom and Islands.
45. The definition of a "refugee" is contained in Regulation 2 for the purposes of the Regulations.

46. A definition of parent is included in Paragraph 1(2) of Part 1 for the purposes of the Schedule.
47. Further definitions can be found in Schedule 1 Part 1.

### **Ordinary Residence**

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

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

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

### **Students who move to England from elsewhere in the UK and Islands in order to attend a course**

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

### **Temporary or occasional absences**

53. When considering whether an applicant for support has been ordinarily resident throughout the prescribed three-year period

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

### **Gap years**

54. The Department is of the view that a student taking a gap year before starting a higher education course does not break his ordinary residence in the UK and Islands (or the EEA and Switzerland).
55. The Department is also of the view that such a student can potentially be considered to meet the requirement to be ordinarily resident in England (or EEA and Switzerland as appropriate) on the first day of the first academic year of the course, or on the day on which the first day of the first term of the first academic year actually begins (Paragraph 8 of Part 1 of Schedule 2) even if he is still abroad. SLC 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 England (EEA and Switzerland as appropriate) other than solely for the purpose of completing the relevant course.

### **Temporary employment outside of the United Kingdom and Islands**

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

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

### **Emigrants**

59. An absence from the United Kingdom because of emigration should generally not be considered to be a temporary absence but each case should be considered on its facts. Absences due to temporary employment overseas are discussed at paragraphs 54-56.

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

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

### **Possible considerations when establishing temporary absence**

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

he would be ordinarily resident in England or the United Kingdom and Islands (or the EEA, Switzerland and Turkey as appropriate).

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

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

The nature of the contract:

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

A right of return:

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

Periods between overseas postings:

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

Previous contracts:

- Is the present contract a first overseas posting of its type, or is it a continuation of previous similar contracts? Authorities may wish to bear in mind domestic employment case law; industrial tribunals have ruled that a succession of similar temporary contracts can be construed as permanent employment. A series of short contracts may be the result of a genuinely temporary posting, which is kept under review or may indicate a long-term posting with the contract being renewed as a matter of formality rather than a real review.
65. The list above is not exhaustive. Nor will all of the questions apply in every case. It emphasises however that each case must be dealt with individually and that decisions on whether employment abroad is permanent or temporary must not be decided solely on the length of period spent abroad, but in conjunction with the nature of the work and the employment pattern of the applicant. Again, SLC will wish to consider whether it would be confident that its decision would be upheld if it were challenged in Court.

#### **Determining whether an applicant would have been ordinarily resident but for his temporary employment abroad**

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

#### **Schedule 1 Part 2 - Categories**

Part 2 of Schedule 1 to the Regulations sets out the various categories of student and the residence and other conditions that they must satisfy in order to become an eligible student. Satisfying the requirements of one of the paragraphs in Part 2 of Schedule 1 does not automatically mean that a person is an eligible student. For example, a person may be prevented from being an eligible student by regulation 5(3).

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

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

- 67.** To fall within paragraph 2 of Schedule 1, the student must be able to satisfy three requirements relating to his residence and immigration status on the *first* day of the *first* academic year of his course (for example, for a course starting in the autumn this date is 1 September). On that date he must:
- Have been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding that date other than wholly or mainly for the purpose of receiving full-time education;
  - Be ordinarily resident in England;
  - Be settled in the United Kingdom within the meaning of section 33(2A) of the Immigration Act 1971, in other words ordinarily resident here without being subject to any restriction on the period for which he may remain.

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

- 68.** Paragraph 2(2) of Schedule 1 states that the requirement that the three years' residence in the UK and Islands should not contain any period which was wholly or mainly for the purpose of receiving full-time education does not apply to a person who is treated as ordinarily resident in the UK and Islands in accordance with paragraph 1(4) of Schedule 1. Paragraph 1(4) of Schedule 1 states that:
- A person is to be treated as ordinarily resident in England, the United Kingdom and Islands or in the territory comprising the EEA and Switzerland or the territory comprising the EEA, Switzerland and Turkey if he would have been so resident but for the fact that –
  - he; or
  - his spouse or civil partner; or
  - his parent; or
  - in the case of a dependent direct relative in the ascending line, his child or child's spouse or civil partner

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

### **British Citizen By Descent**

- 69.** 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 United Kingdom and so is not subject to immigration control, therefore, these students will meet the settled status requirement.

Parent means:

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 legitimate 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.

Children born on or after 1 July 2006

- The mother (i.e. the woman who gives birth to the child)
- The father if:
  1. he is married to the mother at the time of the birth: or
  2. he is treated as the father under section 28 of the Human Fertilisation and Embryology Act 1990: or
  3. (if neither (a) nor (b) apply) he can satisfy certain requirements as regards proof of paternity – i.e. he is named as the father on a birth certificate issued within 1 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).

### **Settled Status**

70. A person is free from any restriction on the period for which he may remain in the UK if:
- he 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
  - he is 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
  - he has the right of abode. The right of abode means that you are entirely free from United Kingdom immigration control. Holders of this status should have a 'certificate of entitlement to the right of abode' confirming this.

### ***British Overseas Territories***

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

territory or born outside a British overseas territory to a parent who is a British citizen.

The list of overseas territories is:

- Anguilla,  
Bermuda,  
British Antarctic Territory,  
British Indian Ocean Territory,  
Cayman Islands,  
Falkland Islands,  
Gibraltar,  
Montserrat,  
Pitcairn, Henderson, Ducie and Oeno Islands,  
St. Helena and Dependencies,  
South Georgia and the South Sandwich Islands,  
The Sovereign Base Areas of Akrotiri and Dhekelia (British citizenship cannot be obtained by virtue of a connection only with these bases),  
Turks and Caicos Islands,  
British Virgin Islands.
- Therefore, any British overseas territories citizen (BOTC) entering the UK from the above countries (provided they have not renounced or acquired their BOTC status by naturalisation as a British Overseas Territory Citizen 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 2003. \* British Dependant Territories Citizens.
- These students still have to meet the ordinary residence criteria.
- From 2007 students from BOTs are eligible for home fee status only. This is under The Qualifying Persons and Courses (QCP) Regulations and The Fees and Awards Regulations. Students may be asked to provide proof that they were EC nationals, when applying for places at colleges and universities in England, Wales and Northern Ireland.

Acceptable evidence might be:

- a British Citizen passport;
- a British overseas territories citizen passport or British dependant territories citizen 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 meet the eligibility criteria within the Student Support Regulations. The BOTs provision has also been extended to the overseas territories of other EU member states.

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

- Greenland & Faeroe Isles (Denmark)

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

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

- 72.** To fall within paragraph 3 of Part 2 of Schedule 1, the student must be able to satisfy four requirements. He must:
- Be ordinarily resident in England on the first day of the first academic year of the course;
  - Be settled in the United Kingdom by virtue of having acquired the permanent right of residence;
  - Have been ordinarily resident in the United Kingdom and Islands throughout the three year period preceding the first day of the first academic year of the course; and
  - Where the three years' residence referred to above was wholly or mainly for the purpose of receiving full-time education, have been ordinarily resident in the territory comprising the EEA and Switzerland immediately prior to the start of that period of residence.
- 73.** Whilst a student who has been awarded the right of permanent residence before the start of a course will be eligible for support for the whole of that course providing the other criteria are satisfied, a student who is awarded the right of permanent residence after their course starts, will potentially be eligible for:
- loans for living costs, Adult Dependants' Grant and Parents' Learning Allowance in any subsequent years of the course (and in the quarters following the award in the year of the award, except the quarter in which the longest vacation falls);
  - Other grants for living costs, such as Childcare Grant, for the whole year of the course in which the award is made and subsequent years of the course. See the guidance chapter, "Grants for living costs" – regarding the support available to students who become eligible during the course.
  - Tuition fee support in any subsequent years of the course (and in the academic year the status was acquired, if the status was acquired within three months of the first day of the academic year).

NB The amount of support available in individual cases is determined by the relevant sections in the Regulations. Family members of EC nationals can apply for tuition fee loan support under Paragraph 9 of Part 2 of Schedule 1.

- 74.** As far as the student support regulations are concerned only EU nationals and their family members who have acquired the right of permanent residence in the UK may become eligible students by virtue of coming within paragraph 3 of Part 2 of Schedule 1. Norwegian, Icelandic and Liechtenstein nationals cannot become eligible for support simply because they possess a permanent

residence card from the Home Office. They would also need to be an EU national or their family member (Schedule 1, Part 2, Paragraph 3), or have acquired settled status.

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

**75.** Those refugees and their family members claiming student support under this category must satisfy these criteria in order to potentially be eligible for support. The student must be:

- A refugee in his/her own right, ordinarily resident in the United Kingdom and Islands who has not ceased to be so resident since he was recognised as a refugee; and
- is ordinarily resident in England on the first day of the first academic year of the course.

Or the student must be:

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

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

Or the student must be:

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

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

**76.** SLC must satisfy themselves that all of the relevant Home Office documentation is valid.

**77.** Regulation 2(1) defines “refugee” as a person who is recognised by Her Majesty’s Government as a refugee under the 1951 United Nations Convention relating to the status of refugees. A refugee is defined, in the Convention, as someone who is outside their own country of origin owing to a well founded fear of returning there because they may be persecuted for reasons of race, religion, nationality, membership of a particular social group or political

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

78. 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.
79. 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 5 years limited leave to enter or remain in the UK (apart from those entering the UK under a resettlement scheme such as the Gateway Programme). At the end of the five year qualifying period, people with refugee status will be entitled to apply for ILR. For student support purposes the important question is whether the applicant is a recognised refugee under the 1951 United Nations Convention relating to the status of refugees or is the spouse, civil partner, child or step-child of such a person granted refugee status. Documentation from the Home Office will provide evidence of this fact.
80. For new students commencing their studies in 2009, Form PN1 requires students to enter the date of expiry of their or their family member's immigration status, if applicable. Before allowing student support to continue in the next academic year, LAs/SLC will be required to check whether the student is still entitled to student support. LAs/SLC should request revised documentary evidence of the student's or family member's immigration status from the Home Office.
81. If the student's (or family member's) case is still under review by the Home Office, or the Home Office are considering an appeal, student support should not be withdrawn. LAs/SLC will require evidence from the Home Office that this is the case before processing the student support application. **The process for requesting 'status checks' from the UKBA Home Office has changed. LEA's are now required to complete the attached proforma and forward to the Home Office. Responses will be given within 24/48 hours. Previously only named contacts could make enquiries via the helpline number, however, any assessing staff can now make enquiries using the proforma in Annex 7.**
82. Before allowing support to continue in the academic year following the expiry of the relevant immigration status, LAs/SLC will need evidence that the status, or a different qualifying immigration status has been confirmed by the Home Office, or that the Home Office is considering awarding an appropriate immigration status, or an appeal is pending. It is also possible that the student may qualify under another category, for example, as the child of the refugee.
83. Refugees arriving under Gateway Programme, the Mandate Refugee Scheme and the Ten or More Plan are granted immediate indefinite leave to enter.
84. The actual amount of support payable to the student will depend on the date the student (or family member) is granted refugee status. Whilst a person who was awarded refugee status before the start of a course, (or the family member of such a person) will

potentially be eligible for support for the whole of that course, a person who is awarded refugee status after the first day of the academic year (or the family member of a person) will be eligible for:

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

***Persons who have been informed by the Home Office that although they do not qualify as a refugee, they have been granted leave to enter or remain (in the UK), their spouse, civil partner, children or step-children (Paragraph 5 of Part 2 of Schedule 1 to the Regulations)***

85. Regulation 2 – Interpretation provides a definition of a "person with leave to enter or remain" for the purposes of the Regulations.
86. Prior to 1 April 2003 the Home Office granted 'exceptional leave to enter or remain' (ELE/ELR) to some unsuccessful asylum seekers. 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 as unsuccessful asylum seekers are nevertheless in genuine need of international protection or have other truly compelling reasons for not being removed from the UK. Paragraph 5 of Part 2 of Schedule 1 is *only* concerned with students;
  - who have been informed by the Home Office that they do not qualify for asylum but have been awarded ELE/ELR, HP or DL or ILR in certain circumstances; or
  - they were the spouse/civil partner, child or step-child of such a person at the time of the application to the Home Office, and in the case of the child or step child, who were under 18 years old at the time of the application to the Home Office.
  - the student has been ordinarily resident in the UK and Islands throughout the three year period preceding the first day of the first academic year of the course and is ordinarily resident on the first day of the first academic year of the course.
  - and whose leave to enter or remain has not expired. Please refer to Regulation 2 for a full definition of a person with leave to enter or remain.
87. ELE/ELR, HP or DL are not the same as asylum and do not constitute recognition as a refugee within the meaning of the United Nations Convention.

- 88.** ELE/ELR, HP or DL are not the same as indefinite leave to remain. They are normally granted to a set calendar date which can vary depending on which status has been granted. The applicant should have been sent a letter or Immigration Status Document by the Home Office confirming which status has been granted.

#### ***HP and DL terms and conditions***

- 89.** Since 30 August 2005, people qualifying for leave on grounds of Humanitarian Protection have been granted leave to enter or remain, as appropriate, for 5 years in the first instance with the possibility of ILR thereafter. Previously the initial period granted was 3 years. Humanitarian Protection status is not granted to people who qualify for asylum or to EC nationals exercising treaty rights.
- 90.** Discretionary Leave is not granted where a person qualifies for asylum or Humanitarian Protection, or where there is a category within the Immigration Rules under which they qualify. It is not granted to EC nationals who are exercising treaty rights.
- 91.** At the end of the five year qualifying period people with refugee and Humanitarian Protection status will be entitled to apply for ILR, together with people who have completed six years' Discretionary Leave or four years under the old exceptional leave policies.
- 92.** Form PN1 and the online application facility requires students to enter the date of expiry of their or their family member's immigration status if applicable. Before allowing student support to continue in the next academic year, LAs/SLC will be required to check whether the student is still entitled to student support. LAs/SLC should request revised documentary evidence of their immigration status from the Home Office.
- 93.** If the student's (or family member's) case is still under review by the Home Office, or the Home Office are considering an appeal, student support should not be withdrawn. LAs/SLC will require evidence from the Home Office that this is the case before processing the student support application. If LA's/ SLC have difficulty confirming the situation they should email: [ssin\\_queries@slc.co.uk](mailto:ssin_queries@slc.co.uk) who will pass the query to the relevant DIUS team who will provide further advice.
- 94.** Before allowing support to continue in the academic year following the expiry of the relevant immigration status, LAs/SLC 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.
- 95.** 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.

- 96.** The Home Office has issued guidance about the immigration position of persons whose current leave to enter or remain has expired or is about to expire. This guidance would cover persons who have been granted limited leave to enter or remain in the United Kingdom and who have to demonstrate that they have current leave to enter or remain in order to be eligible for student support.
- 97.** 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, then the applicant's leave may be extended by section 3C of the Immigration Act 1971. It is our understanding that, provided the application for further leave has not been withdrawn or the applicant does not leave the United Kingdom, the first period of leave is extended for the period it takes the Secretary of State to make a decision on the renewal application.
- 98.** Section 3C of the 1971 Act enables a person's limited leave to be extended where;
- (a) an application has been made to the Secretary of State to vary the limited leave to enter or remain,
  - (b) the application was made before the leave to enter or remain expired,
  - (c) the leave expires before the application for variation is decided.

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

- 99.** 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 regulation 2 of the Regulations. Whether such a person is an eligible student or qualifies for any particular type of support available for the 2009/10 academic year will of course need to be determined in accordance with the provisions of the Regulations, as will the amount of support, if any, payable to that person.
- 100.** The actual amount of support payable to the student will depend on the date the student is granted HP or DL. Whilst a person who was awarded ELE/ELR, HP or DL before the start of a course (or the family member of such a person) will potentially be eligible for support for the whole of that course, a person who is awarded HP or DL after the course starts (or the family member of a person) will be eligible for:
- Loans for living costs in any subsequent years of the course (and in the quarters following the award in the year of the award, except the quarter in which the longest vacation falls);
  - Other grants for living costs, such as Childcare Grant, Adult Dependents Grant and Parent's Learning Allowance for the whole year of the course in which the award is made and subsequent years of the course. See the guidance chapter, "Grants for living costs" – regarding the support available to students who become eligible during the course.

- Tuition fee support in any subsequent years of the course (and in the academic year of the award, if the award is made within three months of the first day of the academic year).

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

#### **Home Office asylum clearance exercise**

**102.** On 24 October 2003, the Home Secretary announced a family asylum backlog clearance exercise. This one-off exercise for families applies to those who sought asylum before October 2000, had children before that date and who have suffered from historical delays in the system. Students granted Indefinite Leave to Remain (ILR) under this exercise should be considered under Paragraph 5 of Part 2 of Schedule 1 of the Regulations in the same way as those granted Humanitarian Protection or Discretionary Leave following a claim for asylum. Although the exercise only applies to those who applied for asylum prior to October 2000 LAs/SLC should continue to check individual applications.

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

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

<b><i>Category of person</i></b>	<b><i>Definition of family member</i></b>
an EEA migrant worker, EEA frontier worker, EEA frontier self-employed person or an EEA self-employed person	His spouse or civil partner, his children or the children of his spouse or civil partner or dependent (see note 1 below) direct relatives in his ascending line (see note 2) or that of his spouse or civil partner
Swiss employed person, Swiss frontier employed person, Swiss frontier self-employed person or a Swiss self-employed person	His spouse or civil partner and his children or children of his spouse or civil partner

Note 1 – “dependent” may mean financially dependent, but dependency for reasons of health or other reasons should also be considered.

Note 2 – Direct relatives in his ascending line means parents, including adoptive or step-parents.

**105.** A student with “worker status” or their family member i.e. a person who satisfies the requirements to be treated as a person in the above table can become eligible for tuition fee and maintenance

loans and grants during an academic year. In these circumstances the student is eligible for;

- Loans for living costs, Adult Dependants' Grant and Parents' Learning Allowance **for any remaining** quarters following the acquisition of worker status, except the quarter in which the longest vacation falls);
- Childcare Grant, **Travel Grant and DSA** for the whole year of the course in which the acquisition of "worker status" is awarded and subsequent years of the course. See the guidance chapter, "Grants for Dependants and Travel Grants" – regarding the support available to students who become eligible during the course.
- Tuition fee support, **HE Grant, Maintenance Grant and Special Support Grant** for the academic year in which worker status is acquired if this is achieved within three months of the first day of the academic year).

**106.** The residence criteria that must be met by those who come within paragraph 6(1)(a) is as follows;

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

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

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

**107. A specialist support team in Darlington will carry out the assessment of support for all students whose eligibility for support falls under Paragraph 6 or 7 of Part 2 of Schedule 1 and not under any other Paragraph of Schedule 2 other than Paragraph 9 (EC nationals). Their contact telephone number is 0845 6020583.**

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

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

- 109. There are circumstances in which ‘worker status’ can be retained by a former worker or their family member. These are set out in Article 7, paragraph 3 of EC Directive 2004/38. (And may also be referred to as the ‘Lair’ conditions.)**
- 110.** If prior to the start of the course a person lost their migrant worker status or employed person status because:
- They left work voluntarily without good reason or
  - They left work to begin a course of study which had no link to their previous employment;
- They would not be eligible for support under this category.
- 111.** Where the status **of worker/employed person** is acquired before the start of the academic year the student will be eligible to be assessed for support for the entire year. **However, this is subject to the student remaining in employment throughout the academic year or, if the employment ends before the end of the academic year, the student being able to retain the status of worker by virtue of the provisions of Article 7, paragraph 3 of directive 2004/38.** However, where the relevant status is acquired in-year the level of support for that year is set out in the relevant sections of the main body of the Regulations.
- 112. The regulations do not require that migrant worker status is met on the first day of the first academic year of the course, only that the student was ordinarily resident in England on that day.**
- 113. Applications for support must be made no later than nine months after the first day of the first academic year for which support is being applied for, or within nine months of an event listed in Regulation 18 occurring, where the event occurs after the first day of the academic year. Obtaining eligibility under paragraph 6(1) of Schedule 1 is an event listed in Regulation 18.**
- 114. If an application for support is received within the initial nine month period and the student subsequently wishes to apply for a new or additional amount of loan then the loan application must be received no later than one month before the end of the academic year to which the application relates.**
- 115. Applications for fee support or maintenance grants should only be processed if received within the nine month time frame set out in Regulation 10 (see paragraph 111 above). This rule applies equally to applications for fee support and maintenance grant and applies irrespective of whether one or more applications are being submitted. Applications for support relating to previous academic years should only be processed if the applications for support were received within the timeframes.**
- 116. Where the relevant status is acquired in- year the level of support for that year will be as is set out in the relevant sections of the main body of the regulations.**

117. In some cases the **SFE** assessment of whether a potential worker, employed person, or self employed person is a migrant worker may need to be carried out once the course has started. This will apply in cases where the student becomes a migrant worker during their course; continues to work once their course has started, students have given up work to study, and therefore need to show a link between their studies and their previous employment. Given that students do not always attend the course for which they originally applied (for example because their exam grades are better, or worse, than expected), it will not be possible to establish with certainty whether there is the necessary link until the **SFE** knows which course is actually being attended.
118. In deciding whether an EEA national can be determined to be a worker or Swiss national can be determined to be an employed person, **SFE** should look closely at the EC law meaning.
119. In the *Lair* case the ECJ stated that 'where objective factors enable it to be established that a worker is entering a member state solely for the purpose of benefiting in that country, after a very brief period of employment, from the system of student grants, such abuses are not covered by the Community provisions at issue'. In the Department's view, this means that where it appears to SLC, having regard to all the circumstances that a person has taken up employment in the UK solely for the purpose of becoming eligible for student support it will be under no duty to bestow such support on him.

#### **Students who cease work before starting the course**

120. Students who voluntarily cease work before starting their course will retain their status as migrant workers if there is a link between their work and their studies. There has been little guidance from the European Court of Justice (ECJ) on what constitutes a sufficient 'link' between the course of study and the previous employment for these purposes. In the cases of *Lair* and *Bernini* the ECJ indicated that what was important was the relationship between the purpose or subject matter of the studies and the previous employment.
121. Article 7, Paragraph 3 of Directive 2004/38, sets out the circumstances in which an EEA or Swiss national who is no longer a worker or self-employed person, retains their status as a worker or as a self-employed person.
122. SFE should note that the Department has received advice that an EEA or Swiss national is not entitled to be classified as a Migrant worker for student support purposes, where they have arrived in the UK without work, are actively seeking employment but have not yet worked here.

#### **Remuneration for work**

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

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

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

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

### **Effective and genuine/ Marginal and ancillary employment**

- 124.** In trying to decide whether a person's employment is **Effective and genuine and not purely marginal and ancillary it may be relevant to consider, amongst other things, the following factors:**
- ***Whether the work is seasonal or temporary.*** In the case of *Raulin* the Court found that in assessing the effective and genuine nature of the activity in question account should be had to the irregular nature and limited duration of the services actually performed under a contract for occasional employment.
  - ***Whether, but for being accepted on the course of studies, the work would be undertaken at all.*** In the case of *Brown* the Court concluded that where the status of worker derived exclusively as a result of being accepted for admission to a course of study then the worker status is merely ancillary and the applicant would not be eligible for support. However, it is not the intention of the person concerned that is important but objective factors related to the employment.
  - ***Whether the sum paid is a market rate.*** For example, if a person is employed full-time at a market rate this would be an indication that their employment was not ancillary to their studies. This does not mean that a person must be employed full-time at a market rate in order to be a worker, but employment at less than market rate, or where the employer is a family member or friend for example, may be an indicator of whether the employment is genuine.
  - ***The number of hours worked/whether the work is the predominant activity.*** Whilst a worker can be employed on either a full-time or part-time basis and still be classed as a worker in cases where only a limited number of hours are worked this may be an indication that the employment activities are purely marginal and ancillary. In the opinion of the Advocate General in the case of *Grzelczyk*:  
  
"...the holding of occasional 'student jobs' will scarcely satisfy those criteria. It is indeed conceivable that a degree of alternation between study and occupational activity might be taken into account in assessing the criteria 'marginal and ancillary'. In those circumstances, the criterion against which the occupational activity would have to be measured might be whether the vocational training was predominant."

- 125. The Department is of the view that employment which is unlawful is unlikely to be able to satisfy the test of being affective and genuine employment. For example, A8 nationals who have not registered their employment in accordance with the Workers Registration Scheme will not be considered to be genuine and effective employment and thus will not be eligible for maintenance support for any period during which their employment has not been properly registered.**

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

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

***Children of EEA migrant workers***

- 127.** Children of EEA migrant workers are provided for in Paragraph 6, of Schedule 1. 'Parent' is defined as including a guardian, any other person having parental responsibility for a child and any person having care of a child - this includes a step-parent. To prove they are the child of a migrant worker who is entitled to obtain student support a student does not have to show that they are under 21 years old or dependent on their parents. They only need to demonstrate that they have lived with a parent in the UK and at the time the parent lived here as a migrant worker. In every case the parent must have established migrant worker status in this country and the child must meet the residence conditions set out in Paragraph 6 of Schedule 1.
- 128.** Persons who are entitled to support by virtue of Article 12 of Council Regulation 1612/68 on the freedom of movement as workers as extended by the EEA Agreement (Paragraph 7 of Part 2 of Schedule 1 of the Regulations).
- 129.** Article 12 states that "The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.
- 130.** The Department advises that this provision may apply to the children of EEA workers in the UK where that worker is no longer a worker here.

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

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

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

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

- a UK national exercises a right under Article 7 of Directive 2004/38 in another Member State (e.g. a UK national goes to work in France)
- a UK national exercises a right under the EEA Agreement or the Swiss Agreement that is equivalent to a right under Article 7 of the Directive (e.g. a UK national goes to work in Iceland)
- a family member of a UK national exercises a right under Article 7 of Directive 2004/38 in another Member State (N.B. family member has the meaning in Article 7 of Directive 2004/38) (e.g. the American wife of a UK national accompanies him when he goes to work in Germany)
- a family member of a UK national exercises a right under the EEA Agreement or the Swiss Agreement that is equivalent to a right under Article 7 of the Directive (N.B. family member has the meaning given in relation to the right being exercised under the EEA Agreement or Swiss Agreement) (e.g. the Chinese husband of a UK national accompanies her when she goes to work in Norway)
- a person who has acquired the right of permanent residence in the UK (as defined in the Regulations) exercises a right under Article 7 of Directive 2004/38 in a Member State other than the UK (e.g. the Moroccan civil partner of a Spanish national who has been working in the UK acquires the right of permanent residence in the UK and then goes to the Netherlands with his Spanish national civil partner who is taking up a job there);
- a person who has acquired the right of permanent residence in the UK (as defined in the Regulations) exercises a right under the EEA Agreement or the Swiss Agreement that is equivalent to a right under Article 7 of the Directive;
- a person who has acquired the right of permanent residence in the UK (as defined in the Regulations) goes to the state within the territory comprising the EEA and Switzerland of which he is a national or of which the person in relation to whom he is a family member is a national (e.g. the Moroccan national and his Spanish national civil partner from the example above go to Spain instead of the Netherlands. They would not be exercising rights under Article 7 of the Directive but paragraph 8 of Schedule 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 as follows. The applicant must:

- be ordinarily resident in UK on the day on which the first term of the academic year actually begins;
- have been ordinarily resident in the territory comprising the EEA and Switzerland for the three-year period preceding the first day of the first academic year of the course; and

- where the three-year residence period referred to above was wholly or mainly for the purpose of receiving full-time education, have been ordinarily resident in the EEA and Switzerland immediately before that period of residence.

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

- 132.** An example of when paragraph 8 of Schedule 1 might be relevant is where a family of UK nationals who are ordinarily resident in the UK then leave England to move to 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.
- 133.** New students in September 2008 who are settled in the UK and exercise a right of residence anywhere in the EEA or Switzerland for a period in excess of 3 months then return to the UK and apply for support within 3 years of their return, should apply to the UK territory that they were resident in before they left the UK, regardless of the territory they are resident in once returned to the UK.

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

- 134.** EC nationals and their family members must satisfy the residence conditions in Paragraph 9 of Part 2 of Schedule 1 in order to potentially be eligible for support. However, this category of student may only qualify for tuition fee support.
- 135.** The relevant family members of EC nationals are set out in the table below:

EC national who falls within Article 7(1)(c) of Directive 2004/38 (Not self-sufficient)	His spouse or civil partner and direct descendants of his or of his spouse or civil partner who are under the age of 21 or dependents of his or his spouse/civil partner
EC national who falls within Article 7(1)(b) of Directive 2004/38 is self-sufficient	His spouse or civil partner, direct descendants of his spouse or civil partner who are under the age of 21 or dependents of his spouse/civil partner or dependent direct relatives

- 136.** The table above refers to 'self-sufficient' (although this is not a term used in the Regulations). The Regulations refer to article 7(1)(b) of Directive 2004/38. This provides that a person has a right to reside in a host Member State if :
- the person has sufficient resources for 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 [has] comprehensive sickness insurance cover in the host Member State.
- 137.** 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 SLC must remain flexible in their assessment.
- 138.** Students who become EC nationals within three months of the start of the academic year, because their State joins the EU, may be eligible for fee support for that academic year. They may also be eligible for fee support for any subsequent year (regulations 2 and 17).
- 139.** Under Paragraph 9(3) of Part 2 of Schedule 1 where a state accedes to the EC after the first day of the first academic year of the course and a person is a national of that state, the requirement that he is an EC National on the first day of the first academic year of the course or a family member of such a person would be treated as being satisfied. Where a person is claiming under paragraph 9, on the basis that he is the family member of an EC national and the state of which his relative/spouse/civil partner is a national accedes to the EC after the first day of the first academic year of the course, the relative/spouse/civil/partner is treated as having been an EC national on the first day of the first academic year of the course.
- 140.** Students who fall within Paragraph 9 of Part 2 of Schedule 1 will not be required to have settled status in the UK or to be ordinarily resident in England on the first day of the first academic year of the course but as with EEA migrant workers, they should have been resident in the EEA and Switzerland for the three years preceding that day. The SLC European Team in Darlington will carry out the administration of all EU students and their family members falling under Paragraph 9 of Part 2 of Schedule 1. Their telephone number is 0141 243 3570.

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

- 141.** EC 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 satisfy the following;
- Has been ordinarily resident in the UK and Islands throughout the three year period immediately prior to this date;
  - Is ordinarily resident in England;

- Where the period of ordinary residence above was wholly or mainly for the purpose of receiving full-time education, the student was resident in the EEA and/or Switzerland prior to the three year period above.

To come within paragraph 10, a person must be an EC national on the first day of the first academic year of the course. Where his state joins the EC after that date, he is treated as if he were an EC national on the first day of the first academic year of the course.

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

**142.** A student is potentially able to qualify for support where:

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

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

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

**143.** A student is potentially able to qualify for support where:

- he is the child of a Turkish worker. – regulations 2 defines such a worker as a Turkish national who is ordinarily resident in the United Kingdom and Islands, and is, or has been lawfully employed in the United Kingdom, this includes periods of self employment;
- he is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
- he has been ordinarily resident in the EEA, Switzerland and Turkey throughout the three year period preceding the first day of the first academic year of the course.

#### **EU Member States**

**144.** The following countries are EC Member States:

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

**145.** From the date of accession, a state that has joined the EC or the EEA is considered to have always been part of the EEA

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

- 146.** Regulation 17 provides that a student may qualify for fee support during the course of the academic year in which the state of which they are a national or one of their family members (as defined in Part 1 of Schedule 1) is a national accedes to the EC. A student will only qualify for fee support for the academic year in which that event occurs if it occurs within the first three months of the start of the academic year. For example a country joins the EC on 1 January 2008. Students who are nationals of that country or family members of nationals of that country and whose academic start date was 1 September 2007 would not qualify for fee support for the 2007/08 academic year. They may, however, qualify for fee support for the 2008/09 academic year onwards.

Eligibility for fee and living costs support and determination of standard entitlement

- 147.** The personal eligibility requirements covered earlier in this guidance (Regulation 5) apply both to support for fees and support for living costs. Additional eligibility requirements are described in this section for grants for fees and fee contribution loans for old system students (Regulations Part 4, Chapters 4 and 5) and fee loans for current system students (Part 4, Chapter 3 - regulation 20 covers the general criteria which determine the availability of fee support for current system students).
- 148.** The term 'fees', for this purpose, has the meaning given in section 41(1) of the Higher Education Act 2004 (available at [www.opsi.gov.uk/acts/acts2004/20040008.htm](http://www.opsi.gov.uk/acts/acts2004/20040008.htm)). Section 41(1) provides that fees means fees in respect of, or otherwise in connection with, undertaking the course including admission, registration, tuition and graduation fees other than:
- fees payable to an institution for awarding or accrediting any qualification where the institution does not provide the whole or part of the course and it is not a publicly funded institution (within the meaning of section 41(2) of the 2004 Act);
  - fees payable for board or lodging;
  - fees payable for field trips (including any tuition element of such fees);
  - fees payable for attending any graduation or other ceremony;
  - such other fees as are prescribed by regulations made by the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales).
- 149.** Eligibility requirements are set out separately for grants for living and other costs under Part 5 of the Regulations and for loans for living costs under Part 6. Provided that students meet those eligibility requirements and the general eligibility requirements in

Part 2 of the Regulations, they will be eligible for grants and loans for living costs in respect of attendance on the course.

- 150.** Broadly speaking, a student who started his course before 1st September 2006 may be eligible for a tuition fee grant, fee contribution loan, loan for living costs, disabled students' allowance, grants for dependants, grant for travel and higher education grant (eligibility for HE grant includes criteria that they would not have started the course prior to 1<sup>st</sup> September 2004); while a student who started his course on or after 1st September 2006 may be eligible for a tuition fee loan, loan for living costs, long courses loan, disabled students' allowance, grants for dependants, grant for travel and either the maintenance grant or the special support grant. There are exceptions to these principles.
- 151.** A student will not qualify for fee support in an academic year which is a bursary year (defined in regulation 2(1)), an ERASMUS year (defined in regulation 2(1)) or when the student is on a flexible postgraduate ITT course (defined in regulation 2(1) which lasts less than six weeks). Also students are not eligible for grants for living costs for any academic year which is a bursary year (as defined in Regulation 2(1)).
- 152.** Current system students starting their current course from 1st September 2009 will generally not be eligible for fee support for a further course if that course is equivalent or lower in level than their previous course (taken in the UK or overseas). Current system students who started their current course before 1st September 2009 will generally not be eligible for fee support for a further course if they already have an Honours degree from a UK institution (See also ELQ changes on pages 1 and 2 of this guidance)
- 153.** Where a student is ruled out of tuition fee support due to their previous study (see paragraphs 165-171) or because they already have an Honours degree from a UK institution (for those who started their current course prior to 1<sup>st</sup> September 2009) or they already hold an equivalent or higher level qualification from a UK or overseas institution (for those who started their current course on or after 1<sup>st</sup> September 2009), they will not qualify for some grants for living and other costs. This affects the Maintenance Grant (regulation 56(3)), Special Support Grant (regulation 59(3)) and the Higher Education Grant (regulation 62(3)).
- 154.** The loan for living costs is available to eligible students who do not already have a UK Honours Degree for those who started their current course before 1<sup>st</sup> September 2009 or do not hold an equivalent or higher level qualification from an institution in the UK or elsewhere for those who started their current course on or after 1<sup>st</sup> September 2009. Where a student has already achieved an Honours Degree or an equivalent or higher level qualification, they will not qualify for the loan for living costs unless one of the exceptions listed in regulation 65(2) (current system students) or 66(3) (old system student) applies.
- 155.** All students will continue to have access to *supplementary grants* (e.g. *Disabled Students Allowances, Childcare Grant*) provided that they meet the other eligibility criteria applicable.

General principles for determining standard entitlement and the allocation of fee support (References are to provisions of the Regulations).

NB Regulation 13 sets out what is a previous course for the purposes of Part 4 of the Regulations (fee support).

**156.** The standard entitlement is the maximum number of years' worth of fee support that a student can qualify for whilst completing their course. This maximum entitlement remains constant for the duration of the course. A student will only qualify for fee support for a particular year of the course if fee support is allocated to it in accordance with the relevant provisions of the Regulations (regulations 20 - 35).

**157.** (A) Current system students (CSS)

Relevant provisions the Regulations:

- regulation 20 – availability of fee loans to CSS
- regulation 21 – standard entitlement of CSS who have not studied on a previous course
- regulation 22 – standard entitlement of CSS who have transferred from or otherwise studied on a previous course
- regulation 23 – standard entitlement of CSS on end-on courses and certain degree courses.
- regulation 13 – definition of previous course
- regulation 2(1) – definitions of bursary year, ordinary duration, preliminary course, qualifying year of study and standard academic year.

Steps to take to determine standard entitlement and allocation of fee support:

- (1) Determine in accordance with regulation 21, 22 or 23 (as relevant) the standard entitlement of the eligible CSS.
- (2) Allocate a fee loan from that standard entitlement: (a) to the final standard academic year of the course; and (b) then to each preceding standard academic year of the course until either the standard entitlement is exhausted or a fee loan has been allocated to each standard academic year of the course.

Regulation 2(1) explains that a standard academic year (SAY) is an academic year of a designated course that-

(a) is not a bursary year or an Erasmus year;

(b) would be taken (in whole or in part) by a person who: (i) does not repeat any part of the course as from 1 September 2006; and (ii) enters the course at the same point as the eligible student.

- (3) Has a fee loan been allocated to the relevant academic year? If so, the student qualifies for a fee loan for that year.
- (4) If the answer to (3) is no, is the relevant academic year a year of "repeat study"?
- (5) If the answer to (4) is yes, can a fee loan be allocated to that year under regulation 20(7) or (9)? (compelling personal reasons)

- (6) If the answer to (5) is no, can a fee loan be allocated to that year under regulation 20(10)? (repeat study for reasons other than compelling personal reasons)

A student can qualify for a fee loan for a year of study that he is repeating other than for compelling personal reasons if-

- (a) the year he is repeating was a qualifying year of study – i.e. it was: (i) a bursary year; (ii) a year in respect of which he qualified for a fee loan (even if the amount was nil); or (iii) a year in respect of which he would've qualified for support (even if the amount would have been nil) if he had been an eligible student or his course had been designated at the beginning of that year;
- (b) the academic year of repeat study is not a bursary year; and
- (c) the number of repeat years the student has completed on the current course (including the proposed year of repeat study but disregarding any year of repeat study for compelling personal reasons) does not exceed the number of additional years support.

Generally, *number of additional years support = standard entitlement (SE) – the number of standard academic years.*  
Regulation 20(11) sets out the exception to this general rule.

#### 158. (B) Old system students (OSS)

Relevant provisions of the Regulations:

- regulation 25 – continuing OSS
- regulation 26 – transferring OSS
- regulation 27 – OSS on end-on courses
- regulation 28 – OSS who are gap year students who have not studied on previous courses
- regulation 29 – OSS who are gap year students who have studied on previous courses
- regulation 30 – availability of fee grant to OSS for years of repeat study
- regulation 13 – definition of previous course
- regulation 2 – definition of bursary year, ordinary duration, preliminary course, qualifying year of study and standard academic year

Steps to take to determine standard entitlement and allocation of fee grant:

- (1) Determine in accordance with regulation 25, 26, 27, 28 or 29 (as relevant) the standard entitlement of the eligible OSS.
- (2) Allocate a grant for fees from that standard entitlement: (a) to the final standard academic year of the course; and (b) then to each preceding standard academic year of the course until either the standard entitlement is exhausted or a grant for fees has been allocated to each standard academic year of the course.

Regulation 2(1) explains that a standard academic year is an academic year of a designated course that-

- (a) is not a bursary year or an Erasmus year; and
  - (b) would be taken (in whole or in part) by a person who: (i) does not repeat any part of the course as from 1 September 2006; and (ii) enters the course at the same point as the eligible student.
- (3) Has a grant for fees been allocated to the relevant academic year? If so, the student qualifies for a grant for fees.
- (4) If the answer to (3) is no, is the relevant academic year a year of “repeat study”?
- (5) If the answer to (4) is yes, can a grant for fees be allocated to that year under regulation 30(1)? (compelling personal reasons).
- (6) If the answer to (5) is no, can a grant for fees be allocated to that year under regulation 30(2)? (year of repeat study for reasons other than compelling personal reasons)

An OSS can qualify for a grant for fees for a year of study that he is repeating other than for compelling personal reasons if-

- (a) the year he is repeating was a qualifying year of study – i.e. it was: (i) a bursary year; (ii) a year in respect of which he qualified for a grant for fees (even if the amount was nil); (iii) a year in respect of which he would've qualified for a grant for fees (even if the amount would have been nil) if he had been an eligible student or his course had been designated at the beginning of that year;
- (b) the academic year of repeat study is not a bursary year; and
- (c) if the number of repeat years the student has completed on the current course (including the proposed year of repeat study but disregarding any repeated for compelling personal reasons) does not exceed the number of additional years support.

*Generally, the number of additional years support = standard entitlement – the number of standard academic years.* Regulation 30(3) sets out the exception to this general rule.

Repeat study position for old system students who have already repeated a year for reasons other than compelling personal reasons - Clarification of Regulation 30(2)

Example:

Student started a three year course on 1st September 2005: this was his first HE course. He failed year 2 and repeated it in 2007/08. He completed year 2 of the course and then takes year 3 of the course in 2008/09. He fails and has to repeat that year too. There are no bursary or Erasmus years in the course. His failure of years 2 and 3 is not for compelling personal reasons. He qualified for a grant for fees in 2006/07 and 2007/08.

2005/06 – Year 1  
2006/07 – Year 2  
2007/08 – Year 2 (Repeat)  
2008/09 – Year 3

2009/10 – Year 3 (Repeat)

REGULATION 25

2008/09 academic year (Yr 3)

Step 1 –  $SE = (SAY - X) + 1 = 2 - 0 + 1 = 3$

Step 2 – Allocation

2008/09 (yr 3): Yes

2007/08 (yr 2 repeat): Yes

2006/07 (yr 2): Yes

Step 3 – is a grant for fees allocated to 08/09? Yes

2009/10 academic year (Yr 3 Repeat)

Step 1 –  $SE = (SAY - X) + 1 = 2 - 0 + 1 = 3$

Step 2 – Allocation

2009/10 (yr 3 repeat): No

2008/09 (yr 3): Yes

2007/08 (yr 2 repeat): Yes

2006/07 (yr 2): Yes

Step 3 – is a grant for fees allocated to 09/10? No

Step 4 – is 2009/10 a repeat year? Yes

Step 5 – is it a repeat year for compelling personal reasons? No

Step 6 – can a grant for fees be allocated under regulation 27(2)?

qualifying academic year? Yes

is repeat year a bursary year? No

does number of repeat years exceed number of additional years (NAY)?

Yes

no of repeat years = 2

$NAY = SE - \text{no of standard academic years} = 3 - 2 = 1$

Therefore, student cannot have a grant for fees in 2009/10

Previous study: general principles

**159.** The previous study rules, introduced with effect from the 2006/07 academic year, are intended to:

- be more flexible and transparent, giving students greater scope to complete their degrees through a 'hop on, hop off' approach; and
- target resources more effectively at those students who have not had a chance to experience higher education and gain a qualification.

Previous study rules have been amended for students starting their course on or after 1<sup>st</sup> September 2009 to include non-UK previous study, so that greater emphasis is given to allocating HE places to students without an HE qualification.

- 160.** The general principle is that students will be eligible for fee support for the standard length of the HE course plus an additional year if needed. The number of years support available for their current course will however generally be reduced if the student has studied on a previous HE course. Students who commence study in the 2009/10 academic year who (a) do not have an equivalent or higher level qualification and (b) have studied on a previous full-time, part-time, compressed degree, distance learning or initial teacher training course at a publicly funded UK or overseas institution where a qualification was not achieved, will have the number of years of support available to them reduced by the number of years of study on the previous course. Previous part-time study which did not lead to a qualification and self-funded study which did not lead to a qualification are not taken into account for previous study purposes. Students who commenced a new period of study prior to 2009/10 and do not have a UK Honours Degree only have years of study on previous full-time (or part-time ITT) courses at publicly funded UK institutions taken into account.
- 161.** The previous study rules apply to fee loans and the £2,906 Maintenance Grant / Special Support Grant for current system students, and to the fee grant and £1,000 Higher Education grant and to any fee contribution loan taken out by old system students to cover the balance of their fee contribution for old system students. The rules do not apply to supplementary grants such as the Disabled Students' Allowances or Childcare Grants.
- 162.** Students who commenced their current course prior to 1<sup>st</sup> September 2009 and already have a UK Honours Degree, and students who commenced their course on or after 1<sup>st</sup> September 2009 who have previously gained an equivalent or higher level qualification from an institution in the UK or elsewhere will not generally be eligible for *support for fees* for a further course (but see also para 149).
- 163.** Students who intend to take a full time course of initial teacher training (ITT) of not more than two years (or a part time course the duration of which is not more than two years full time) are exempt from the previous study rules unless they have already gained Qualified Teacher Status (QTS) (regulation 13(5)).

### **Sub-degrees and “top up” courses**

- 164.** Prior to the 2006/07 academic year where a student completed a sub-degree or non-honours degree course they would need to continue on to their ‘top up’ course the following year without a break (i.e. “end-on”) in order to qualify for student support for their second course. This provision no longer applies and even though ‘top up’ courses are still referred to as “end-on” courses or are undertaken end-on to another course, they can now be undertaken at any time.
- 165.** The following basic principles will apply for AY 2009/10:
- (a) a student who started a full-time HND/HNC or Dip HE course before 1 September 2006 (or 1 September 2007 if he is a gap year student in relation to that course) and goes end-on to a full-time first degree course (other than an ITT course) whether before or after 1 September 2006 will be eligible for the *old package* of fee support

[(refer to the Assessing Financial Entitlement section of this guidance for details of the “old” and “current” (“new”) packages)];

- (b) a student who started a full-time foundation degree course before 1 September 2006 (or 1 September 2007 if he is a gap year student in relation to that course) and goes end-on to an Honours degree course on or after 1 September 2006 will be eligible for the *old package* of fee support;
- (c) a student who started a first degree course before 1 September 2006 and goes end-on to an ITT course before 1 September 2006 will be eligible for the *old package* of fee support;
- (d) a student who started a first degree course before 1 September 2006 and goes end-on to an ITT course on or after 1 September 2006 will be eligible for the *new package* of fee support;
- (e) a student who is currently an old system student and goes on to top-up but not end-on (i.e. not immediately after ceasing the first course - so, for example, a student who completed his foundation degree in 2006/07 and starts his Honours degree course in 2009/10) will be treated as a *current* system student and thus be eligible for the *new package* of fee support; and
- (f) a student who is a current system student and who “top-ups”- whether end-on or otherwise - will be eligible for the *new package* of fee support.

Students starting their courses from 1<sup>st</sup> September 2009 will be able to top-up to a higher level qualification regardless of where in the world the lower level qualification was gained, and regardless of whether the lower level qualification was studied on a part or full time basis and was publicly or privately funded. Regulation 23(5) provides for the amount of fee support available to ‘top-up’ to a higher level qualification.

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

1 Year Stand Alone (‘Top Up’) Courses (i.e. students who qualify for fee support under regulations 23 or 27(3))

- 166.** There may be certain circumstances where a student wishes to enrol on a stand alone, 1 year ‘top up’ course. The basic principle of course length plus one should apply. Where the student’s first course had an ordinary duration of 2 or more years, the top-up course should be treated as a 3 year course to put these students on a comparable ‘playing field’ to their peers with regard to the support available for achieving a first or an honours degree.

Bursary Years

- 167.** Regulations 25(4), 26(6), 27(5), 28(3) and 29(3) exclude eligible old system students from receiving a grant for fees for a bursary year (defined in regulation 2(1)) that is any year in relation to which they are eligible for either:

- An income assessed “healthcare bursary” (such students will have their tuition fee paid in full by the Department of Health) (see definition of “healthcare bursary” in Regulation 2); or
- An income assessed Scottish Healthcare Allowance (Scottish Healthcare Allowance is defined in Regulation 2).

**168.** If an old system student is excluded from a fee grant for the reasons above they will not be eligible for a fee contribution loan.

**169.** Regulation 20(2) excludes eligible current system students from receiving a fee loan for any year in relation to which they are eligible for either:

- An income assessed “healthcare bursary” (such students will have their tuition fee paid in full by the Department of Health) (see definition of “healthcare bursary” in Regulation 2); or
- An income-assessed Scottish Healthcare Allowance (Scottish Healthcare Allowance is defined in Regulation 2).

**170.** Students in receipt of non income assessed healthcare bursaries are disqualified entirely from receiving any support under Regulation 5(3)(c). For further information on NHS bursaries see Annex 1.

#### ERASMUS Years

**171.** There are special arrangements for fee support where a student spends the entire year on an ERASMUS exchange. In that case both old and current system students will not be eligible for any fee support (see regulations 20(2), 25(4), 26(6), 27(5), 28(3) and 29(3)). Instead, HEFCE will fund the institution directly, as an incentive for students to take part in ERASMUS. Students undertaking a period of study abroad under the ERASMUS scheme are assessed in the usual way for living cost support, in that they qualify for overseas rates of loan for living costs and long courses loan, and if eligible, grants for living and other costs. For detailed information on ERASMUS students please refer to the ‘ERASMUS’ guidance chapter.

#### Definition of a ‘previous course’

**172.** Regulation 13 sets out what is a previous course for the purposes of Part 4 of the Regulations (fee support). Generally a course is a “previous course” if:

- (a) where the current course began before 1<sup>st</sup> September 2009, paragraph (b) does not apply any full-time higher education course, part-time course for the initial training of teachers or a specifically designated course which the student attended or, in the case of a compressed degree course or a designated distance learning course, undertook before the current course and which meets one or both of the conditions below:
  - (i) the course was provided by an institution in the United Kingdom which was publicly funded for some or all of the academic years during which the student attended or undertook the course; or

- (ii) 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.
- (b) where the current course begins on or after 1<sup>st</sup> September 2009, and the student's status as an eligible student has been transferred to the current course from a designated course which began before the 1<sup>st</sup> September 2009, a full-time, higher education course, part-time course for the initial training of teachers or a specifically designated course, which the student attended or, in the case of a compressed degree course or a designated distance learning course, undertook before the current course and which meets one or both of the conditions below:
- (i) The course was provided by an institution in the United Kingdom which was publicly funded for some or all of the academic years during which the student attended or undertook the course; or
- (ii) 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 fund
- (c) where the current course begins on or after 1<sup>st</sup> September 2009, and paragraph (b) does not apply, a full-time, part-time higher education course, part-time course for the initial training of teachers or a specifically designated course, which the student attended or, in the case of a compressed degree course or a designated distance learning course, undertook before the current course.
- (d) Where the current course begins on or after 1<sup>st</sup> September 2009, and paragraph (b) does not apply, a full-time higher education course, part-time course for the initial training of teachers or a specifically designated course which the student attended, or in the case of a compressed degree course or a designated distance learning course, undertook before the current course where the student studied but did not achieve a qualification and which meets one or both of the conditions below:
- (i) the course was provided at a publicly funded institution whether or not in the United Kingdom for some or all of the academic years during which the student attended or undertook the course; or
- (ii) 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.

Previous part-time study where the student did not achieve a qualification or self-funded study where the student did not achieve a qualification will not be taken into account when fee support for a student's current course is calculated.

### **Years of previous study**

- 173.** Once it has been determined that the student has been on a previous course, paragraphs (7) to (11) of Regulation 13 set out which years of that previous course count as previous study for the purposes of regulations 22 and 29.

The general rules are:

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

an academic year that the student started but did not complete or began part way through the year is treated as one academic year (regulation 13(7)).

Despite these general rules:

where a student who started their current course before 1<sup>st</sup> September 2009, did not qualify for fee support for an academic year of the previous course (the 'relevant year') other than as a result of the relevant year being a bursary or Erasmus year and he qualified for fee support for some but not all of the academic years of the previous course, the relevant year is not to be treated as a year spent on the previous course (regulation 13(8) of the Regulations)

where the student repeated a year of the previous course for compelling personal reasons, that year is not to be treated as a year spent on a previous course (regulation 13(9));

where the student qualified for fee support for an academic year of the previous course (the 'relevant year') because he failed to complete a previous course for compelling personal reasons, the relevant year is not to be treated as a year spent on a previous course (regulation 13(9));

where the student transfers from one course (first course) to another before completing the academic year from which he is transferring, the time spent on the first course during that academic year is not counted as a year spent on a previous course (regulation 13(10));

where the student undertook a previous course but was not in attendance because of a reason relating to his disability, the relevant year is only to be treated as a year spent on the previous course if it began on or after 1<sup>st</sup> September 2006 (regulation 13(11)).

- 174.** The remainder of this chapter set out - through some basic illustrations - how the previous study rules might apply in certain circumstances. The examples are based on the provisions in the Regulations but are neither definitive nor exhaustive. Therefore, when determining standard entitlement and the allocation of fee support you are advised to refer to the guidance at paragraph 151 which, more importantly, guides you to the appropriate regulation(s).

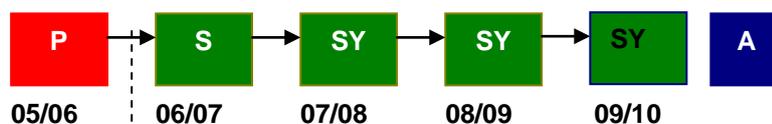
	<b>Key</b>
<b>A</b>	<b>Additional year support</b>

<b>P</b>	<b>Previously supported HE (as of 01 September 2006)</b>
<b>SY</b>	<b>Standard academic year (from 01 September 2006)</b>
<b>C</b>	<b>Compelling Personal Reasons</b>
<b>S</b>	<b>Self-funded years</b>

Standard entitlement of 'old system' students who are continuing students

- 175.** Regulation 25 makes provision for an old system student who began a designated course before 1 September 2006 and is continuing on that course in the 2009/10 academic year.
- 176.** The standard entitlement to fee support of a continuing student is the number of years remaining on his course after 31<sup>st</sup> August 2006 plus one, minus any academic years that begin after 31<sup>st</sup> August 2006 for which it was determined the student does not qualify for a grant for fees in the course of assessing an application for support in respect of an academic year of the designated course that began before 1<sup>st</sup> September 2006. \*

**EXAMPLE 1:** An existing student started a 5 year course in September 2005. He applies for support for the 2009/10 academic year which is the fifth year of his course. The student's standard entitlement is 5 years' fee support (i.e. the number of academic years of the course remaining after 31st August 2006 + 1).



Standard entitlement of 'current System' Students who have not studied on a previous course or a preliminary course

- 177.** Regulation 21 makes provision for students applying for student support in 2009/10 who have not studied on a previous course. Their standard entitlement is the ordinary duration of their course (ordinary duration is defined in regulation 2) plus one. For example, standard course length is 3 years:



Standard entitlement of 'current system students' who have studied on a previous course

- 178.** The standard entitlement of a current system student returning to HE in September 2009 will be determined in accordance with either regulation 22 or 23. Local Authorities /SLC will need to determine which of these regulations applies to a student who has studied on a previous course.
- 179.** The standard entitlement of a student falling within regulation 22 is the ordinary duration of the current course plus one, minus the number of years spent on previous courses.

Example 2: Student A started a three year course in 2008/09 and is applying for support in 2009/10. The student has in the past completed a year of study on a previous course. His standard entitlement is 3 years (i.e. the ordinary duration of the current course plus 1 less the year spent on the previous course)



The following paragraphs and simple examples deal with the allocation of fee support from the standard entitlement to the remaining academic years of the course (see also paragraph 154 which includes some general principles for the allocation of fee support).

#### Compelling Personal Reasons (CPR) – Current and Old System Students

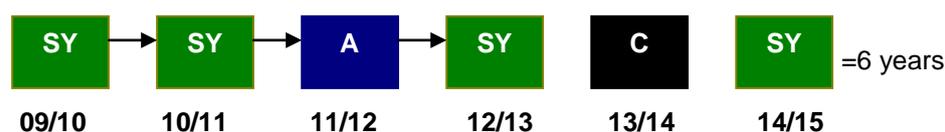
- 180.** Regulations 20(9) and 30(1) make provision for a year of fee support - in addition to the standard entitlement to be allocated - in certain circumstances where students need to repeat a year of the current course for compelling personal reasons. In the Secretary of State's opinion, academic performance alone would not normally be deemed a compelling personal reason but LAs/SLC should consider all cases carefully.
- 181.** A student cannot be allocated an additional year for compelling personal reasons unless the year to be repeated was a qualifying year of study (as defined in regulation 2) and the year of repeat study is not a bursary or Erasmus year.

Additionally, Regulation 20(7) provides that where a current system student to whom regulation 22 applies did not complete the most recent previous course because of compelling personal reasons, fee support is available in respect of the first year that the student takes of the current course that is not a bursary or Erasmus year. Provided that it was the most recent course that the student withdrew from for compelling personal reasons, it does not matter how long ago he withdrew from that course.

- 182.** The student will need to apply for fee support for any year for which they wish to claim support due to compelling personal reasons. Only one such year can be awarded at a time.

- 183.** Where a student has failed a year for compelling personal reasons, an additional year will need to be added to the current course and the CPR year taken as the repeat year. In these circumstances, if the student fails the repeat year and the LA/SLC determines that the CPR criteria have been met then a further CPR year may be awarded. However, if CPR does not apply, then the LA/SLC will need to assess whether the student has sufficient standard entitlement remaining to complete the course with fee support for all remaining years of the course (including the possibility of allocating fee support to a year of repeat study where the year is repeated for reasons other than CPR) or whether self funding is required for some of them.

Example 3: Student B is a new student in September 2009. He starts a four year honours degree course. The standard entitlement is support for four years plus an additional year. The student fails the second year of the course which he successfully repeats using up the additional year and enters the third year of the course in September 2012. Support is available for years 3 and 4 of the course. He fails the third year due to compelling personal reasons. The SLC 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.



Evidence of compelling personal reasons: for both "current" and "old" system students

- 184.** 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 a HEI's student support advisory service could (with the student's permission) attest to a personal or family crisis. Other possible sources might include social services or the clergy. (However, the Department would not reimburse any costs incurred by the student in obtaining such evidence.) This guidance is not exhaustive and LAs/SLC should look at all cases carefully.
- 185.** SLC will be able to identify potential cases of this kind from Section 5 of the PN1 application form (no equivalent on PR1) and from the Eligibility, Continuing Course section from the online application form.

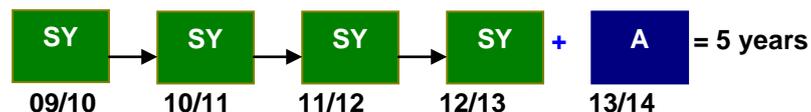
Self-funded Years – 'Current' and 'Old' System Students

- 186.** When allocating fee support from the standard entitlement to the remaining standard academic years of the course, it may be the case that there is insufficient standard entitlement to allocate fee support to all of those years. The student will need to self-fund his tuition fees in the years to which support has not been allocated.

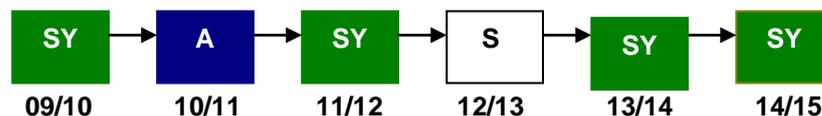
- 187.** The standard entitlement cannot be allocated to non-standard academic years of the course. However, a student who is required to repeat a year of the course for reasons other than compelling person reasons may still be eligible for fee support for that academic year. A student who is not will need to self-fund his tuition fees for the relevant repeat year.

Example 4: Student C is a current system student who starts a four year degree course in September 2009 (he has not attended a previous course). The standard entitlement of the student is four years' support plus an additional year. Tuition fee support is allocated to each standard academic year in accordance with Regulation 20. Student C fails year one of the course for reasons other than CPR. The student is allocated fee support for the repeat year in accordance with regulation 20(10). 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 from the standard entitlement: support from this entitlement is allocated to the later standard academic years of the course. Fee support cannot be allocated under regulation 20(10) to this second repeat year. The student will need to self-fund the repeat of year two of the course.

**188. Pattern of support expected as of September 2009**

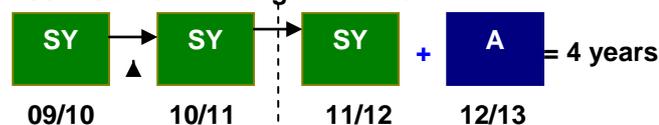


**Actual pattern of support**



- 189.** Student D is a current system student who starts a three year degree course in 2009 (course A). Following the second year of course A he transfers into year one of a five year degree course (course B). He received tuition fee support in both years of course A. His standard entitlement for support on course B is calculated in accordance with regulation 22. His standard entitlement to fee support would be 6 years (5+1) less the two years spent on course A. That is, 4 academic years. Fee support from the standard entitlement has to be allocated to course B in accordance with regulation 20. The standard entitlement is exhausted before fee support can be allocated to the first year of course B. Student D will need to self-fund the first year of course B.

**190. Course A – original course**



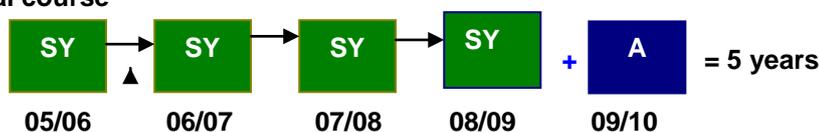
**Course B**



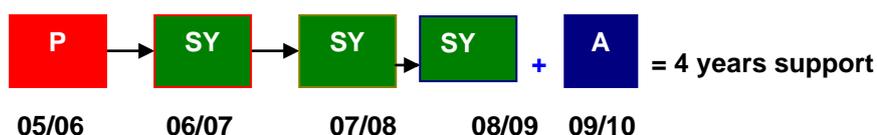
Transferring Students – ‘Old System’

191. Regulation 26(8) provides that old system students transferring on or after 1 September 2006 onto a course that began before 1st September 2007 and is not listed in regulation 26(11) will have their standard entitlement determined by reference to the number of academic years remaining on the course that the student was undertaking as at 31 August 2006. For example, a student who was on a 4 year course and completed the first year on 31 August 2006 and transferred on 1 September 2006 to another course that began on 1 September 2006 should have standard entitlement of 3 years (the number of years remaining on the first course) plus one additional year. No account is taken of the amount of support received on the course from which they are transferring.

Original course



On transfer @ 1 September 2006



192. Regulation 26(9) provides for old system students transferring where the course begins on or after 1st September 2007 and to whom regulation 26(11) does not apply:

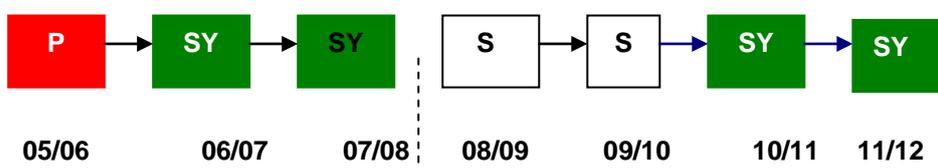
Student E starts a 4 year degree course in September 2005 (course A) and completes years 1, 2, and 3.

Course A



He transfers to the first year of a 4 year course on 1 September 2008 (course B). His standard entitlement is the number of academic years remaining on course A after 31 August 2006 less the number of academic years on course A taken from and including 1 September 2006 for which he qualified for fee support plus 1 – i.e.  $3 - 2 + 1 = 2$ . He will therefore need to self-fund his fees for the first two years of course B before receiving fee support for years three and four of course B.

Course B



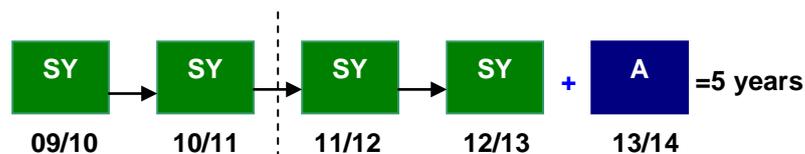
Transferring Students – ‘Current System’ students

- 193.** Where a student transfers courses, the basic principle still applies i.e. course length plus an additional year but less any years spent on previous courses (regulation 22). It is the length of the course that the student is transferring to which should be taken into account when determining the student’s standard entitlement to fee support in respect of the second course.

Examples:

- a) Student F starts a four year degree course in 2009 (course A). Having completed the second year of the four year course she transfers into year one of a five year degree course (course B). Both of the years spent on course A count as years spent on a previous course. Student F applies for support for the 2011/12 academic year. Her standard entitlement is four years (i.e. five years plus one year minus two years on a previous course). The standard entitlement is exhausted before fee support is allocated to the first year of course B. She will need to self-fund her first year of course B but should then receive support to complete the remainder of the course.

Course A – Original course

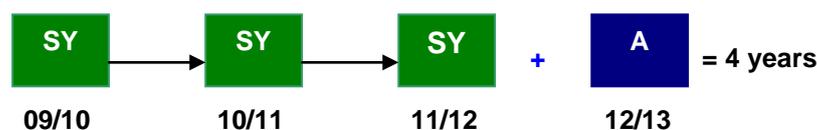


Course B – Transferred course

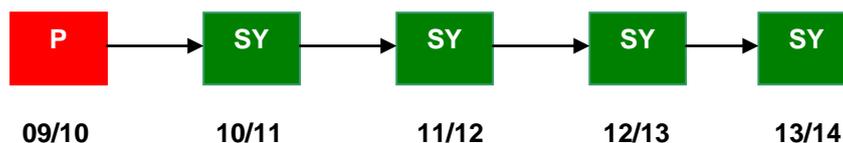


- b) Student G starts a 3 year degree course in September 2009 (course A). The standard entitlement is three years support plus an additional year. Having passed the first year he decides to transfer onto a 4 year course in September 2010 (course B). The year spent on course A counts as a year spent on a previous course. The standard entitlement for course B is 4 years – i.e. 4 years plus an additional year less the year spent on course A. Assuming there is no repeat study, there is sufficient standard entitlement to complete the course with fee support allocated to each year.

Course A – original course

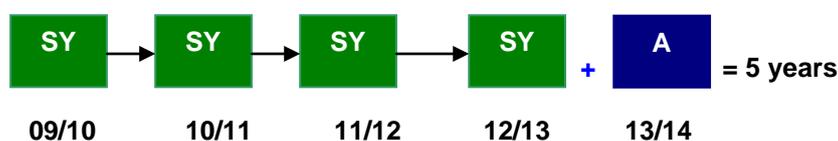


Course B – transferred course

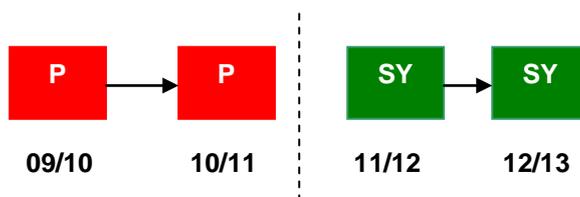


- c) Student H enrolls on a 4 year course in September 2009 (course A). Standard entitlement is 4 years support plus an additional year. Having completed 2 years of course A, the student transfers to the 2nd year of a 3 year course (course B). Both years on course A count as years spent on a previous course. Student H's standard entitlement for course B is ordinary course length (course B) plus an additional year less the 2 years spent on course A (i.e.  $3+1-2 = 2$ ). The standard entitlement therefore is 2 years support which, assuming no repeat study, is sufficient to complete the course.

Course A – Original course

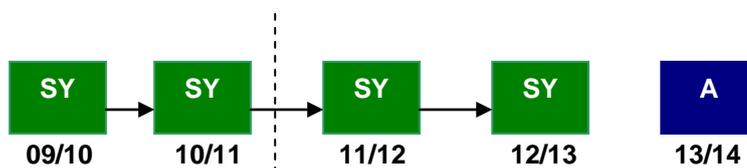


Course B - Transferred course

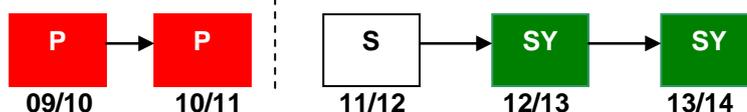


- d) Student J is also on a 4 year course starting in September 2009 (course A) and also completes the first two years but then transfers onto year 1 of a 3 year course (course B) Both years spent on course A count as years spent on a previous course. The student's standard entitlement for the course B will be 2 years (i.e.  $3+1-2 = 2$ ). The student will need to self-fund the fees for the first year of the second course. Assuming no repeat study, fee support should be available for the remainder of the course.

Course A – Original course



Course B – Transferred course

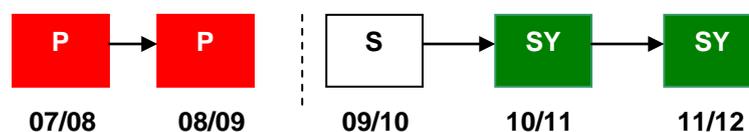


"Top-Up" courses

Previous overseas study will apply for current system students starting their current course from 1<sup>st</sup> September 2009. There is therefore a possibility that the student may be topping up from a lower level course that was more than three years in length, if that course was taken at an overseas institution or on a part-time basis. The formula in regulation 23(5) has been amended to take account of this.

Example:

A current system student completed a 2 year sub-degree course that was studied overseas in August 2009. They went onto a 3 year standard course to top up to an honours degree – the honours degree course is an end-on course and Regulation 23(2) applies. The student's standard entitlement is two years support. (i.e.  $3 + 1 - 2 = 2$  years) (Regulation 23(5)) so he 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 for CPR.



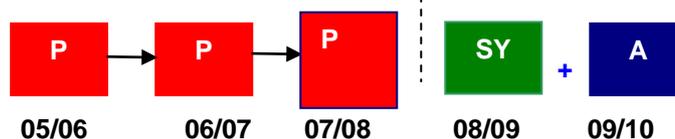
1 Year Stand Alone ('Top Up') Course:

- 194.** Where a student has completed a 3 year sub-degree course (course A), intends to 'top up' their degree on a 1 year stand alone degree course, and regulation 27(6) – (10) applies, the standard entitlement will be calculated as follows under Regulation 27(7):  $(3+2) - 3 = 2$ , i.e. support for 1 year plus an additional year if needed (course B).

Course A – sub-degree course



Course B - Top up course



Students who attend a full-time course on a part-time basis

- 195.** When a student is deemed eligible for support on a designated course he is generally eligible for the duration of the course, subject to the rules on tuition fee and living costs support and regulations 4 and 6. The fact that the student attends part of the

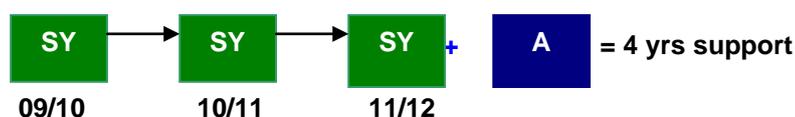
course on a part-time basis does not render the course itself part-time. As long as the course is a full-time one the student should remain eligible for full time support. A possible scenario might be a student who is unable to continue in full-time attendance because of some unforeseen circumstance such as ill health. The student might request to undertake a particular year of the course on a part-time basis over two years and their entitlement to fee support will be determined in accordance with Regulation 14(5).

- 196.** Students who attend a full-time course on a part-time basis are subject to new previous study provisions.

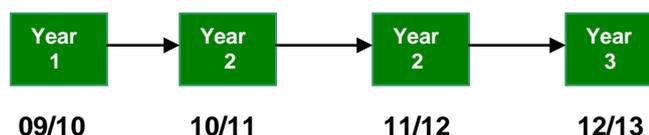
Examples:

A 'current system' student on a 3 year course having successfully completed year 1 of their course, is unable to attend their course full-time. It is agreed with their HEI that the student can complete year 2 of their course over the next two years. The second half of year 2 which is being completed in 2011/12 is treated as a standard academic year. Fee support is allocated from the standard entitlement first to year 3, then the second half of year 2. Fee support can only be allocated to the first half of year 2 if the conditions in regulations 20(10) are satisfied. The additional year of support is allocated to the first half of year 2 which is being completed in 2010/11 and is treated, under regulation 14(5) as a year of repeat study for reasons other than CPR.

**Original allocation of fee support**

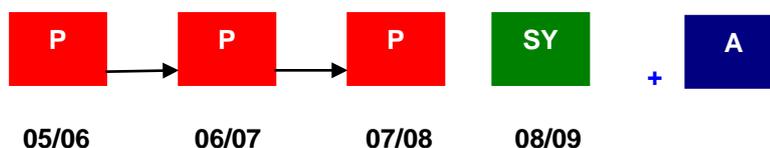


Allocation based on studying year 2 of full-time course on a part-time basis

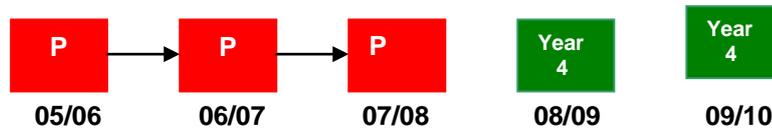


- 197.** An old system student who is a continuing student completes the third year of a four year course in August 2008. Their standard entitlement as of 31 August 2006 is 4 years' fee support (regulation 25 (6)). The student agrees with their HEI that they will complete their 4<sup>th</sup> year over 2 years. Fee support from the standard entitlement is allocated to the second half of year 4 and the additional year of support is allocated to the first half of year 4 which is being completed in 2008/09 and is treated, under regulation 14(5), as a year of repeat study for reasons other than CPR only if the conditions in regulation 20(10) are satisfied.

**Original allocation of fee support**



### Allocation based on studying year 4 of full-time course on a part-time basis



### Students repeating whole or part years of a full-time course on a part-time basis - living costs and fee support

The examples below assume that the first day of the academic year is 1 September and should be adapted accordingly for students whose academic year starts at a different time.

#### Example 1 - old system student

Student A failed the third year of his full-time course and is repeating term 1 only, for the first time. Therefore the student only attends term 1 of the repeated year and is absent for terms 2 and 3. Living costs support is automatically payable for term 1. There is no automatic entitlement to living costs support for terms 2 & 3 although the LA/SLC may exercise its discretion in the student's favour, where it considers it appropriate to do so (Regulation 111(12)). The amount of tuition fee support to be taken into account in the financial assessment is the amount actually charged by the institution up to the maximum full-time fee rate of £1,285.

#### Example 2 - current system student

Student B failed the first year of his full-time course and is repeating term 2 of first year for the first time. Therefore the student only attends term 2 of the repeated year and is absent for terms 1 and 3. Living costs support is automatically payable for term 2. There is no automatic entitlement to living costs support for terms 1 & 3 although the LA/SLC may exercise its discretion in the student's favour, where it considers it appropriate to do so (Regulation 111(12)). The amount of tuition fee support to be taken into account in the financial assessment is the amount actually charged by the institution up to the maximum full-time fee rate of £3,225.

### Students transferring courses

#### *Criteria for transferring eligibility*

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

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

**The grounds for transfer are -**

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

**Receiving institutions should notify course details to the LA/SLC so that the LA/SLC can check, and if necessary reassess, support. The notification will be taken as the receiving institution's consent to the transfer.**

Eligibility for support for living costs

**General**

- 199.** Support for living costs covers both loans and supplementary grants for living costs. Details of the general additional eligibility criteria for these are set out below.

**Students aged 60 and over**

- 200.** In order to qualify for a loan for living costs, eligible students will need to be (or have been) below the age of 60 on the relevant date. "Relevant date" is defined under Regulation 64. In most cases it will be the first day of the first academic year of the current course. Please refer to the 'Assessing Financial Entitlement' Guidance Chapter for further details.
- 201.** If a student becomes eligible part way through their course as a result of the increase in the age limit to 60 (which was introduced in the 2006/07 Regulations), only loan payments in respect of 2006/07 onwards will be made; no loan for living costs will be payable in respect of previous years of their course.

- 202.** The age criterion does not apply to fee loans for current or old system students, nor does it apply to dependants' grants, including childcare grants and travel grants and DSA.

### **Other eligibility requirements**

- 203.** The following old and current system students will not be entitled to *grants for living and other costs* (Regulation 38):
- EU students who fall within Paragraph 9 of Part 2 of Schedule 1 to the Regulations and in no other paragraph of Part 2 will not be eligible for *any support* towards living costs (regulations 38(2), 65(3) and 66(5).
  - Students in receipt of an income assessed "healthcare bursary" (see definition of "healthcare bursary" in Regulation 2 and paragraph 11/Annex 1 of this Chapter); or
  - Students in receipt of an income assessed Scottish Healthcare Allowance (as defined in Regulation 2)
  - Students on part-time courses of initial teacher training (ITT) during which the periods of full-time attendance, including attendance for the purposes of teaching practice, are in aggregate less than 6 weeks; except that they are eligible for Disabled Students' Allowance (see the 'DSAs' Guidance' chapter);
  - Students on sandwich years where the periods of full-time study are in aggregate less than 10 weeks, and the periods of work experience are not:
    - Unpaid service in a hospital or in a public health service laboratory or with a primary care trust in the UK;
    - Unpaid service with a local authority in the UK acting in the exercise of its functions relating to the care of children and young persons, health or welfare or with a voluntary organisation providing facilities or carrying out activities of a like nature in the UK;
    - Unpaid service in the prison or probation and aftercare service in the UK;
    - Unpaid research in an institution in the UK or, in the case of a student attending an overseas institution as part of his course, in an overseas institution; or
    - Unpaid service with a Health Authority, a Strategic Health Authority or Special Health Authority or Local Health Board in England or Wales, or their Scottish or Northern Irish equivalents.
- 204.** 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' chapter of this guidance.

### Designated courses

- 205.** Only designated courses will attract support. Regulations 6 (full-time), 134 (part-time), 117 (distance learning) and Schedule 2 of the Regulations set out provisions in relation to the designation of courses for tuition fee support, living cost support and

supplementary grants. A first degree course that begins on or after 1 September 2009 is not a designated course where it leads to the award of a professional qualification, or where a first degree (or equivalent qualification) would normally be required for entry to a course leading to the award of that professional qualification. Mixed mode courses are not supported, e.g. 3 year course with years 1 & 2 part-time and the final year full-time. A separate set of Regulations covers courses designated for dance and drama awards, which also attract loans, fee support and supplementary grants.

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

### **General criteria for automatic designation of courses**

- 207.** A course will automatically be designated under Regulation 6 if it is:
1. Of a type which is listed in Schedule 2 of the Regulations. This list is set under para 205 below;
  2. A full-time course, a part-time course of initial teacher training (ITT) (including one leading to a first degree) or a sandwich course;
  3. not a designated distance learning course;
  4. (i) Of at least one academic year's duration or;  
(ii) six weeks' duration in the case of a flexible postgraduate course for the initial training of teachers
  5. Wholly provided by a publicly funded UK educational institution or institutions, or by such an institution in conjunction with an overseas institution;
  6. Part-time courses (other than part-time courses of ITT which are designated for full-time student support under Regulation 6) are designated for part-time support under Regulation 134 if they are at least one academic year's duration and do not exceed twice the period normally required to complete a full-time course leading to the same qualification and are wholly provided by a publicly funded UK educational institution or institutions, or by such an institution in conjunction with an overseas institution;
  7. A postgraduate course (designated under Regulation 151) (for Postgraduate Disabled Students' Allowance only) the course entry requirements for which are normally a first degree (or equivalent qualification) or higher. It must be at least one academic year's duration and in the case of a part-time course, should not exceed twice the period normally required to complete a full-time course leading to the same qualification. It must be wholly provided by a publicly funded UK educational institution or institutions, or by such an institution in conjunction with an overseas institution. Courses for the initial training of teachers or a course taken as part of an employment based teacher training scheme are not designated postgraduate courses.
  8. Please also refer to Regulation 6 (and Regulation 134) for exceptions.

## Schedule 2 courses

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

1. A first degree course (e.g. a BA or BSc).
2. A course for the Diploma of Higher Education (DipHE).
3. A course for the Higher National Diploma (HND) or Higher National Certificate (HNC) of;
  - (a) The Business and Technician Education Council; or
  - (b) The Scottish Qualifications Authority
4. A course for the Certificate of Higher Education.
5. A course of initial training for teachers.
6. A course for the further training of youth and community workers.
7. A course in preparation for a professional examination of a standard higher than that of:
  - (a) the examination at advanced level for the General Certificate of Education or the examination at the higher level for the Scottish Certificate of Education; or
  - (b) The examination for the National Certificate or the National Diploma of either of the bodies mentioned in paragraph 3

not being a course for entry to which a first degree (or equivalent qualification) is normally required.

8. A course -:
  - (a) providing education (whether or not in preparation for an examination) the standard of which is higher than that of courses providing education in preparation for any of the examinations mentioned in Paragraph 7(a) or (b) above but not higher than that of a first degree course; and
  - (b) for entry to which a first degree (or equivalent qualification) is not normally required (e.g. an NVQ level 4 where this is awarded along with a first degree, Dip HE or HND).

## Interpretation of provisions on automatically designated courses

**209.** The Department does not normally maintain any lists of courses which are automatically designated under regulations 6 (full time) and 134 (part-time). All of these courses should appear on the SLC HEI database. However not all of the courses which appear there will meet the criteria. It will be for LAs/SLC to decide which of them are eligible for support. LAs/SLC may find that the information they need to establish whether a course is within one of these paragraphs (for example, the entry qualification required, if any, and the qualification it leads to) should be relatively easy to obtain, for example from the student or from the institution. Institutions will in many cases be familiar with these qualifications and with the provisions in Paragraphs 6, 7 and 8 of Schedule 2 as they have certified eligibility for loans for students on these courses in the past and continue to do so for existing mandatory award students.

## Courses in Schedule 2

- 210.** LAs/SLC will wish to note that the courses in Paragraph 5 of Schedule 2 will include courses on the School Centred Initial Teacher Training (SCITT) scheme. The list of approved SCITT courses can be found on the DIUS website at [http://www.dfes.gov.uk/studentsupport/des\\_.shtml](http://www.dfes.gov.uk/studentsupport/des_.shtml).
- 211.** As a general principle, courses which may be designated under Paragraph 6 of Schedule 2, will lead to a specific qualification related to youth and community work. LAs/SLC 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
- 212.** Courses for the *further* training of teachers are not in the list of courses at Schedule 2.

## Compressed Degree Courses

- 213.** These courses are pilot courses delivered by higher education institutions supported by HEFCE as Flexible Learning Pathfinders. The number of students on these courses is small: less than 100 in 2006/07 at three HEIs; and approximately 500 in 2007/08. Regulation 2(2) defines a “compressed degree course” as a course meeting certain specific criteria that has been determined to be a compressed degree course by the Secretary of State
- 214.** A list of courses which started in 2006/07 and are currently determined to be compressed degree courses for the purposes of the Regulations is shown below. The courses listed are undergraduate honours degree courses delivered over two long academic years (twenty four months) at HEIs funded by HEFCE as Flexible Learning Pathfinders.
- 215.** Regulation 2(2) defines a “compressed degree student”. LAs/SLC will wish to note the criteria that a student must satisfy in order to be treated as a compressed degree student for the purposes of the Regulations. In particular, LAs/SLC should note that, unless he is a disabled student who cannot attend the course for a reason connected to his disability, a student can only be treated as a compressed degree student for the 2009/10 academic year if he is required to be in attendance on the course for part of that year.
- 216.** Full details are given in SSIN 03/07 <http://www.dfes.gov.uk/studentsupport/administrators/doc/SSIN%2003%2007.doc> .
- 217.** Courses determined to be compressed degree courses for the purposes of the Regulations:

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

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

Further compressed degree courses starting in 2009/10 will be listed at:  
[http://www.dfes.gov.uk/studentssupport/des\\_.shtml](http://www.dfes.gov.uk/studentssupport/des_.shtml)

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

### PGDE Courses in Scotland Only

- 218.** Teaching in Scotland has confirmed that the PGCE course run in Scottish universities has been renamed to PGDE (Professional Graduate Diploma in Education). This is an ITT course and therefore eligible for student support. This is not the same as the

PGDE (Post Graduate Diploma in Education) in England which is not ITT and therefore not eligible for student support. Refer to paragraph 226, there is also a Professional Graduate Diploma in Education which is eligible for support. LAs should satisfy themselves that the PGDE course they are being asked to support is the Professional rather than the Postgraduate course. A full list of endorsed courses can be found at [http://www.lifelonglearninguk.org/svuk/tables\\_of\\_qualifications.html](http://www.lifelonglearninguk.org/svuk/tables_of_qualifications.html)

### **Flexible PGCE Courses (Old and Current System Students)**

- 219.** In 2007/08, the Training and Development Agency for Schools (TDA) paid the tuition fees directly to HEIs for all students on flexible PGCE courses which were recognised and funded as meeting the TDA's flexible modular criteria. Old and existing current system students on these courses are therefore not eligible for any fee support (regulations (20(1)(c), 25(3), 26(5), 28(2)(b) and 29(2)(b)).
- 220.** Since Academic Year 2008/09, students starting flexible PGCE courses of at least one academic year in length have been eligible to receive tuition fee support in addition to living costs support.
- 221.** Since Academic Year 2008/09, students starting flexible PGCE courses lasting between six weeks and less than one academic year in length have been eligible for tuition fee support as these courses are designated under the Regulations. They remain ineligible for living cost support.
- 222.** Flexible PGCE courses are designed for students who choose not to follow the traditional 1 year PGCE course. At the start of the training there will be an initial assessment of the candidate's training needs. That assessment will last several weeks. It will be used to design a training programme to meet the individual's needs. In cases where candidates already have appropriate teaching experience, no further training may be necessary for the award of Qualified Teacher Status (QTS) for school teachers. Other candidates will be told how much longer they need to study to gain QTS.
- 223.** Most students on flexible PGCE courses will be employed, or be in receipt of a training salary, or both. It is likely therefore that few students, if any, will apply to SLC for support. However, such students on courses of at least one academic year in duration will be eligible for loans and grants for living costs (subject to applicable means-testing provisions) should they apply for support.
- 224.** Applicants for student support are advised to complete the appropriate application form or online application facility only when they know how long their flexible PGCE course will last. Section 4 of the PN1 application form and section 3 of the PR1 application form ask the student for details of course start date, expected finish date and length of course. Section 4(d) on the PN1 form and 3(d) on the PR1 form ask the student to indicate which course they are on, one of the options that can be chosen is 'flexible postgraduate initial teacher training (ITT)' course. If this box is ticked the student is then asked to 'give the number of weeks you will be studying full-time and the number of weeks you will be on full-time teaching practice in 2009/10'. The notes for guidance on the PN1 application form tell the student to provide a letter from the

HEI to confirm the number of weeks they will be on full-time study and full-time teaching practice. The Personal Entitlement, Course Details section on the online application asks for the same information as above. LAs/SLC should decide their own arrangements for confirming course details.

- 225.** SLC will also need to determine whether the periods of full-time attendance on the course (including periods of attendance for the purpose of teaching practice) are in aggregate less than 6 weeks. Old and current system students on ITT courses of less than 6 weeks will not qualify for grants for living and other costs (Regulation 38(3)(b)). They will only qualify for the reduced rate of loan for living costs (Regulation 72(1)(b)) plus Disabled Students' Allowance where appropriate.

#### **Further Education ITT courses**

- 226.** Regulations were introduced in September 2007 (The Further Education Teachers' Qualifications (England) Regulations 2007) (SI 2007/2264) to reform the training and qualifications of all teachers, tutors, trainers, lecturers and instructors in the Further Education Sector from September 2007. The reformed ITT pathways will see all new Further Education teachers working towards either Associate Teacher Learning and Skills (ATLS) status or Qualified Teacher Learning and Skills (QTLS) status.
- 227.** Qualified Teacher Learning and Skills (QTLS) in the Further Education Sector is the equivalent of Qualified Teacher Status (QTS) in schools (but does not lead to QTS).
- 228.** When a prospective teacher enters the FE sector from now on, the onus is on the employer to assess the role they will play and to specify the qualification needed. If they need to be trained, the Department would expect the employing colleges to ensure that contracts of employment cover their legal obligations within the Regulations.
- 229.** Teachers will achieve ATLS status by studying a Certificate in Teaching in the Lifelong Sector (CTLLS) and QTLS by studying a Diploma in Teaching in the Lifelong Learning Sector. Courses may continue to be badged as CertEd or PGCE course or given new titles e.g. Professional Diploma in Education (PDE) and Professional Graduate Diploma in Education (PGDE) courses at Bolton University. ITT courses provided by higher education institutions can attract student support under the Regulations. However from Academic Year 2008/09, courses validated by awarding bodies can also be designated for student support. This means that students enrolling on such courses will be eligible to apply for fee and living costs support under the Regulations. LAs should ensure that courses meet the criteria set out in Regulation 6.
- 230.** If a student was undertaking an ITT course at a privately funded institution, then they would not be eligible to apply for funding, unless the course was specifically designated. If a student is employed by a private institute and undertaking an ITT course at a publicly funded institution, then they can apply to the LA/SLC for funding.

## Courses falling under Paragraphs 7 & 8 of Schedule 2

- 231.** Paragraph 7 of Schedule 2 specifies courses leading to professional examinations, i.e. above A-level/Scottish Higher/NC/ND and not higher than first degree and for which a first degree or equivalent qualification is not normally required.
- 232.** In establishing whether a course is within either of Paragraphs 7 and 8 of Schedule 2, LAs/SLC 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.
- 233.** NVQ level 4 courses may in some cases be below first degree or HND level and NVQ level 5 courses may not be post-graduate. If there are any doubts about a particular NVQ course consideration should be given to: the course entry requirements (if these are set at degree level or equivalent, the course is probably postgraduate; the fee payable for the course, and whether it is set at a level appropriate for a post-graduate course; guidance from the relevant professional or award making body, if the course is vocational; the view of other colleges running the same or similar courses; and how the course is generally regarded in the college).
- 234.** The provision under Paragraph 8 of Schedule 2 is a very general one. It has the effect of designating any course which meets the other requirements of Regulation 6 and:
- Which is at a standard higher than GCE A levels, Scottish Highers, the National Certificate and National Diploma; but
  - Which is at a standard not higher than a first degree course; and
  - For which a first degree or equivalent qualification is not normally required.
- 235.** SLC 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 3 or 4.

### Definition of full-time course

- 236.** Although “full-time” is not defined in the Regulations, the following guidance may be used to decide whether a course is full-time. ‘Full-time’ courses should require that:
- Students are normally required to undertake the course for a period of a minimum of 24 weeks in each academic year, and for courses of two years or more, for a minimum of eight weeks in the final year;
  - That a whole year full-time fee is chargeable by the institution for the current year of the programme of study (exceptions to this will be made for students who are repeating part of a year);

- Full-time means that students are required to undertake their course on most days of the week and for most weeks of the academic year for its duration, excluding weekends and the usual vacations
- 237.** SLC will need to satisfy themselves that the student's course is either full-time (see above), a sandwich course (see below) or a part-time course of ITT (see Regulation 6(1)(b)(iii)), before determining whether the student is eligible for support.
- 238.** Study at premises outside the institution (for example at another institution) should be taken into account in determining whether it is a full-time course. Such study outside the institution need not necessarily be at another higher education institution or, indeed, at an institution in the United Kingdom. Therefore, a student who is required to attend the institution providing the course for 16 weeks in the academic year, and to attend another institution for a further eight weeks, would be considered to have been required by the institution to attend the course for 24 weeks.
- 239.** When determining whether the course is full-time, the number of weeks that a student undertakes a course for are those which the student would normally be required to undertake, rather than those which he actually undertakes.
- 240.** Additionally, such courses at publicly funded institutions which meet the criteria set out above would be subject to the tuition fee cap and should have an OFFA (Office for Fair Access) agreement.

#### **Distance learning courses**

- 241.** 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.
- 242.** Most colleges and universities offer some distance-learning programmes now, from language courses to full undergraduate degrees, postgraduate programmes and MBAs. Some even offer courses or programmes entirely over the Internet, often called e-courses or online courses. They provide a mode of delivery for students who do not attend traditional on-campus courses, although there may be some short periods of attendance.
- 243.** For the purposes of this guidance, we are only concerned with undergraduate study.
- 244.** A distance learning course may be deemed full-time by the HEI because of the number of hours of study but only courses which meet all of the criteria below would in our view be a full-time course for the purposes of regulation 6(1) of the Regulations;
- Students are normally required to undertake the course for a period of a minimum of 24 weeks in each academic year, and for courses of two years or more, for a minimum of 8 weeks in the final year;
  - That a whole year full-time fee is chargeable by the institution for the current year of the programme of study (exceptions to this will be made for students who are repeating part of a year);

- Full-time means that students are required to undertake their course on most days of the week and for most weeks of the year.
  - Additionally, such courses at publicly funded institutions which meet the criteria set out above would be subject to the tuition fee cap and should have an OFFA agreement.
- 245.** Only those distance learning courses specifically designated by the Secretary of State under regulation 117 will be designated distance learning courses. Details of these courses will be kept on the Department's website, and they include courses offered by publicly funded institutions.. Authorities, HEIs and students should note, if a course is a full-time distance learning course and it is not specifically designated, students undertaking that course will not be able to qualify for support under Part 11.
- 246.** Students undertaking full-time distance learning courses in England that are not specifically designated will not be eligible for support under Parts 4-7 of the Regulations.
- 247.** The exception to this rule is disabled students who are undertaking their course but not in attendance on it because they are unable to attend for a reason which relates to their disability. Such students are treated as if they were in attendance. Disabled students who are undertaking full time distance learning courses but not treated as being in attendance on their course are potentially eligible for DSAs at the full time rate.
- 248.** Students who are unable to attend an HEI for a reason related to their disability but who are able to undertake the course by distance learning will, however, remain eligible for the full time student support package. This will be the case even if the course they are undertaking has been specifically designated under regulation 117(2). They will continue to apply for student support via the full time student support application form.
- 249.** Full time distance learners, in addition to being potentially eligible for full time rates of DSAs, are also potentially eligible for a package of support equivalent to the fee and course grant available to to part time students who study at a level of 75% or more of the full- time equivalent (FTE).
- 250.** Students on full time distance learning courses who are not covered by the disability exemption above will receive funding under Part 11 provided that they meet the various eligibility and qualifying criteria. This group of students will include disabled students who are electing to study on a distance learning basis.
- 251.** For the 2009/10 academic year students will complete the shorter part-time student support application form to apply for support in connection with a full-time distance learning course (see paragraph 246), using part- time application form PTG 1.
- 252.** However in the majority of cases, students on such courses will not currently qualify for the full time student support package. This is because even though they may be eligible students, they are not in attendance on the relevant course. The Regulations currently provide for the payment of the full-time support package to students who are in attendance on designated courses only.

**253.** The package of support offered to eligible distance learning students in connection with their undertaking designated distance learning courses is similar to that offered to eligible part-time students. Authorities, HEIs and students will, however, wish to be aware of the following key differences:

- (a) Regulation 115 sets out the criteria that a student must satisfy in order to be an “eligible distance learning student”. These criteria are not identical to those found in regulation 132 (eligible part-time students). The criteria in regulation 115 take into account that DSA will be payable to distance learning students (other than those who are treated as in attendance) under Part 11 of the Regulations and not Part 4 of the Regulations.
- (b) Support is only payable to eligible distance learning students in connection with their undertaking designated distance learning courses. A “designated distance learning course” is a full-time distance learning course which has been specifically designated by the Secretary of State under regulation 117(2). If a full-time distance learning course is not specifically designated under regulation 117(2) then students on that course will not be eligible for the distance learning support package;
- (c) The support payable to eligible distance learning students is set out in regulations 119 (covering fee grant and course grant) and 122 (covering disabled distance learning students’ allowances);
- (d) The maximum amount of fee grant payable to eligible distance learning students will be £1,210, which is the maximum payable to part-time students, and the maximum amount of course grant will be £260. LAs/SLC do not need to calculate a student’s intensity of study to determine the maximum fee grant payable to be a particular student. In all cases, this will be the lesser of; (a) the fees actually payable by the student; and (b) £1,210. The means test that applies to the fee and course grants is, however, identical to the part-time means test;
- (e) All full-time distance learning students who are currently eligible for DSAs and are not treated as in attendance for the purposes of the Regulations will be paid DSA under regulation 122. DSAs are payable under regulation 122 at the full-time rates provided for in regulation 41 to reflect the position prior to 1 September 2007. Regulation 126 makes provision for the transfer of status of these students from eligible student to eligible distance learning student;
- (f) Provision is also made for the transfer of status of students who were previously deemed to be eligible students but who did not qualify for support solely because they were not in attendance on a designated course (regulation 126).

### **Learning in the Workplace**

**254.** 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, which were introduced in 2001/02. It may also occur in courses other than foundation degree courses.

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

- 256.** 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.
- 257.** Learning in the workplace should, in the Department's view, be a substitute for learning that would normally take place within an institution.
- 258.** The actual machinery (whether lectures, tutorials, examinations or other means) is not crucial in identifying learning in the workplace, so long as knowledge and skills can be shown to be effectively imparted and assessed.

#### **Sandwich courses**

- 259.** Regulation 2(10) defines a sandwich course. A course is a sandwich course if it is not a course for the initial training of teachers, it consists of alternate periods of full-time study in an institution and periods of work experience; and taking the course as a whole, the student attends the periods of full-time study for an average of not less than 18 weeks in each year.
- 260.** Regulation 2(10)(b) provides that, for the purposes of calculating the student's attendance, the course shall be treated as beginning with the first period of full-time study and ending with the last such period.
- 261.** Regulation 2(10)(c) provides that where periods of full-time study and work experience alternate within any week of the course, the days of full-time study shall be aggregated with each other and with any weeks of full-time study in determining the number of weeks of full-time study in each year.
- 262.** Only *full* days of full-time study (not part days) should be counted. Also, when counting days of study to make up a number of weeks of study, the divisor should be 5 rather than 7 – see the following example.
- 263.** 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.
- 264.** Conversely, a course would not attract support as a sandwich course if it required 2 days' study and 3 days' work experience per week over 30 weeks, in each academic year of the course,

because the number of days of full-time study would add up to less than 18 weeks in each year (and thus less than 18 weeks a year on average). It could however attract part-time support if it met the definition of a part-time course in Regulation 134.

**265.** 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.

**266.** Where students will be undertaking weeks which alternate periods of full-time study in an institution and periods of work experience, the term dates from the HEI course database provided by the SLC will not provide sufficient information for LAs to determine the appropriate level of support (including extra weeks of support where appropriate). LAs will need to refer to the information provided by students in their applications; and they may also need to contact HEIs to ascertain attendance patterns.

**267.** Full-time study in an institution does not in our view include *learning in the workplace*. Such learning is a feature of some foundation degree courses. It may also occur in courses other than foundation degree courses. There is further guidance and a definition of learning in the workplace in paragraphs 250 - 254 of this chapter.

**268.** Provisions relating to the support available for old system students on sandwich placements are in regulations 31(2) and 32(2) (Amount of grants for fees), Regulation 38(5) (General qualifying conditions for grants for living and other costs), regulation 35(2)(a) (Amount of the Fee Contribution Loan) and regulation 72(1)(b) (Maximum amounts of loans for living costs).

**269.** Provisions relating to the support available for current system students on sandwich placements are in the appropriate parts of regulation 38(5) (General qualifying conditions for grants for living and other costs), regulations 24(2) & (3) (Amount of the fee loan) and regulation 72(1)(b) (Maximum amounts of loans for living costs).

**270.** Further guidance on support available for sandwich placements is in the 'Assessing Financial Entitlement' chapter of this guidance, which explains how the principle of aggregating days of study applies also to determining levels of support.

**271.** The intention of the definitions of full-time and sandwich courses is to distinguish those courses which consist entirely of full-time study from courses which involve work experience. Courses involving periods of study and of work experience, even if the work experience placements are very short and amount to only weeks or parts of weeks (as they often do in the case of full-time HNC courses), should be treated as sandwich courses, and whether

they are designated for student support will depend, among other things, on whether they meet the definition at Regulation 2(10).

- 272.** LAs/SLC will need to be observant of the difference between a sandwich course with periods of work experience and a part-time course. Regulation 2(10) specifies that the periods of experience must form part of the course and that they must be associated with full-time study at an institution.
- 273.** 'Periods of work experience' are defined in Regulation 2(1) and may include periods during which modern language students spend living and working in a country whose language they are studying on their course.

### **Architecture courses**

- 274.** The Department'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.
- 275.** Regulations 6(7) and 6(8) of 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 Department 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 Department is also of the view that the two Parts can still be treated as a single course even if a student takes a break of more than one year between them provided it is clear that the student had not withdrawn from the overall course at the end of Part 1. So, for example, if a student completes Part 1 and a year of practical experience and then decides to take a year out before starting Part 2, he can still be treated as attending the same single course provided the facts of his case do not show that he withdrew from the course at the end of Part 1.
- 276.** The Regulations do not require a student to declare, before starting or completing Part 1, his 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 SLC in determining how to treat a student who does not follow the typical pattern of study.
- 277.** The Department is of the view that a student who takes more than a single year out between Parts 1 and 2, and notifies his LA/SLC of this and his intention to resume his studies at a later date, should be treated in the same way as any other student who has temporarily suspended his studies. For example, if after completing his year of practical experience a student decides to take a year out, then provided that he has notified his LA/SLC that he is doing so, he should normally remain eligible for full support for Part 2 of the course. This would apply equally if a suspension of study notice was received from the student's HEI.

- 278.** If a student does not follow the typical study pattern and the LA/SLC has not received a notification from the student or the relevant HEI, the Department is of the view that an LA/SLC should only treat that student as having temporarily suspended his studies 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 Department is of the view that where a period of three years has elapsed since the student completed Part 1 (in other words two years after one would expect the period of practical experience to have been completed), it may be reasonable to determine that the student has withdrawn from the single course. However, LAs/SLC will need to satisfy themselves, on a case by case basis, that such a decision would be appropriate.
- 279.** **If a student applies to LA's/SFE for support in respect of part 2 of the architecture course where this is not being undertaken in conjunction with a part 1 course, and thus cannot be treated as part of a single course, the student is not likely to be eligible for fee support or maintenance grant for Part 2 of a course. The reason for this is that the student will probably already hold a first degree or equivalent qualification and as a result they will be ruled out of any further fee support, and consequently maintenance or special support grant by Regulation 20(1)(a).**
- 280.** It should be noted that there is also a Part 3 to an architecture course but the Department is of the view that this is of a standard higher than a first degree and as such is not covered by the Regulations.
- 281.** Students who are on courses covered by regulation 6(8) that meet the definition of a sandwich course in regulation 2(10) are potentially eligible for support during their year of practical experience. They may only be eligible for reduced amount of fee support if their periods of full-time study are below certain levels (under regulation 24(3)(b) if they are current system students or under regulation 31(2) if they are old system students). Any student whose periods of full-time study in the relevant academic year are in aggregate are less than 10 weeks and whose periods of work experience do not constitute periods of unpaid service will qualify only for the reduced loan for living costs under regulation 72(1)(b) in that year (because regulation 38(5) will apply). This is of course subject to the student satisfying the other eligibility criteria for the loan.
- 282.** 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 Department's view that he or she cannot be said to be on a sandwich course as defined in regulation 2(10). Consequently, such a student will not be eligible for support during the year of practical experience.

#### **Intercalated study**

- 283.** 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 6(7) and (8)). These are:
- Medical, dental and veterinary science courses which include

an intercalated first degree such as a BSc;

- Courses in architecture, landscape architecture, landscape design, landscape management, town planning and town and country planning where qualifications are awarded both at an intermediate point in the course and at the end. However, LAs should note that where the second part of a course leads to a postgraduate degree, that part should not attract support.
- **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 (such as MArch) as long as the content of the course is undergraduate level and undergraduate level fees are charged. However LA's/SLC should note that Part 2 should only be funded when taken by a student who has already taken Part 1 (or is exempted from Part 1)**

### **Foundation years as part of an extended course**

- 284.** 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.
- 285.** Foundation years are not the same as Foundation Degrees and the two should not be confused (see paragraph 295 for guidance on Foundation Degrees).

### **Free standing Foundation and conversion courses**

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

### **Access courses**

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

### **Twin-track access courses**

- 288.** 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 Department's view, such courses should properly be regarded as access courses for the purposes of the Regulations. A twin-track course should be treated as part of a designated course only if it meets the criteria set out for foundation years above.

### **Franchising arrangements**

- 289.** Many institutions of higher education have entered or are considering franchising arrangements for their courses with other institutions of higher and of further education (including private institutions). Franchising arrangements take a number of forms. For example, the parent institution may determine to a varying degree the course content, may provide some or all of the course materials and may provide some or all of the lecturers. The parent institution may also enrol the students itself and receive grant from its Funding Council in respect of them, and be responsible to its Funding Council for the quality of the teaching on the course.
- 290.** Where a whole course is franchised, it should be regarded for the purposes of the Regulations as being provided by the franchisee, as long as the franchisee is providing the training and supervision. A course is provided by the institution which provides the teaching and supervision of the course (Regulation 6(6)(a)). If the franchisee is a publicly funded institution, and the course is one which is capable of designation under Regulation 6, it will be automatically designated. However, if it is a private institution, specific designation for it will have to be sought from the Department. The public rate of fees would apply to a franchised course.
- 291.** Courses which have been partly franchised should be regarded as courses which are being jointly provided by both institutions. Courses which are jointly provided by two publicly funded institutions satisfy Regulation 6(1)(e). Courses which are jointly provided by a publicly funded institution and a private institution may be specifically designated by the Secretary of State.

### **Part-time courses**

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

## **60 credit courses**

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

### **Specific designation**

- 294.** The Secretary of State has the power to designate courses which are not automatically designated under the Regulations (Regulation 6(9)) for full-time courses, Regulation 117 for full time distance learning courses, Regulation 134(7) for part-time courses and Regulation 151(4) for postgraduate courses. The Department considers applications for designation for courses of HE at private institutions and NHS colleges. These can be for full-time or sandwich courses, part-time courses, or part-time courses of ITT, as well as Postgraduate courses for the purpose of awarding DSAs. These courses would need to be satisfactorily validated by a recognised UK awarding body. LAs/SLC will be informed of any newly designated courses in "Update" as usual. An up-to-date list of designated courses is on the DIUS website at [http://www.dfes.gov.uk/studentssupport/des\\_.shtml](http://www.dfes.gov.uk/studentssupport/des_.shtml) . This list will be updated as soon as a new course is specifically designated, so will always be up-to-date.
- 295.** The list of designated courses for dance and drama awards can be found in the 'HE Dance and Drama Courses chapter.

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

- 296.** Postgraduate courses can be specifically designated solely so that students can receive the Disabled Students' Allowance. This includes courses such as the Legal Practice and Bar Vocational course. A list of these courses can be found on the DIUS website at [http://www.dfes.gov.uk/studentssupport/des\\_.shtml](http://www.dfes.gov.uk/studentssupport/des_.shtml).

### **Foundation degrees**

- 297.** Foundation degrees are vocational higher education qualifications that frequently combine academic study with learning in the workplace. They are designed to address the skills gap at the associate professional and higher technician level. The first foundation degrees began in autumn 2001. Foundation degrees are being developed and delivered by consortia consisting of HEIs with degree awarding powers, further education colleges, relevant professional bodies and employers. They are designed to be flexible to suit different situations, and courses will be completed in two years if studied full-time. Foundation degrees constitute 240 credits, and should enable the student to graduate to honours degree level with up to 1.3 years of further study.
- 298.** Many foundation degree courses are automatically designated for support, provided they meet all parts of Regulation 6(1). However, HEIs have been encouraged to be flexible in their provision of foundation degrees, and consequently a number may be organised so that days of learning in the workplace and days of study are combined in the same week. We do not want students on these courses to be penalised relative to those doing a similar amount of study but via a more traditional route.

- 299. Foundation degree courses may be full-time courses (as described at paragraph 233) or sandwich courses. Some may be part-time in that (a) they do not contain enough full-time study per year on average to meet the definition of a sandwich course, and (b) they meet the definition of a part-time course at Regulation 134.
- 300. Some foundation degree courses feature learning in the workplace, which should be treated as full-time study in an institution for the purposes of the definition of a sandwich course and of determining levels of support.

### **Students on a course in Scotland lasting four years or more**

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

## Annex 1

### NHS BURSARY HOLDERS

1. NHS Bursaries are available to students on full or part-time courses leading to professional registration in:
  - Audiology (for courses recognised by the British Association of Audiological Technicians (BAAT), the British Association of Scientists (BAAS) and the British Society of Hearing Therapists (BSHT));
  - Chiropody;
  - Dental hygiene;
  - Dental therapy;
  - Dietetics;
  - Nursing (including courses to convert from second to first level registration);
  - Midwifery;
  - Occupational therapy;
  - Operating department practice (Dip HE only);
  - Orthoptics;
  - Physiotherapy;
  - Prosthetics and orthotics;
  - Radiography;
  - Speech and language therapy.
2. NHS-funded students on diploma level courses in nursing, midwifery and operating department practice receive support for fees and non-means tested bursaries via the NHS Bursary Scheme. They are not eligible for any support under the Regulations.
3. Those on other courses receive support for fees and are eligible to apply for means-tested bursaries under the terms of the NHS Bursary Scheme. They are also eligible to apply, under the Regulations for the minimum amount of loan for a student with reduced entitlement.
4. Students in receipt of NHS bursaries (whether means-tested or not) are not eligible for support for fees or supplementary grants under Regulation 5(3)(c).
5. Students on the standard medical and dental courses are eligible, under the Regulations, for support on the same terms as other students for the first four years of their courses. Students on a medical and dental course which is their second degree course will not be eligible for fee support or the Maintenance Grant or Special Support Grant, but they will still be eligible for loans for living costs. For the fifth and subsequent years of their courses they are eligible for the means-tested NHS Bursary and the minimum amount of loan for living costs for a student with reduced entitlement, which again is not means-tested. There are some exceptions to this rule: students who intercalated in the first four years of their course will

only be in the fourth year of their medical or dental course when they reach their fifth year of study, but will still be eligible for the NHS bursary. Similarly, any students who undertook a foundation year as an integral part of their medical course will be eligible for the NHS bursary in the fifth year of *study*. Students who repeat a year, however, will not be eligible for a NHS bursary until the fifth year of their *course*.

6. Students on the shortened 4-year medical degree for graduate entrants are covered by the Regulations in the first year of their courses. Subject to meeting the usual eligibility conditions and income assessment, they are entitled to the full loan for living costs and certain grants for living costs (Dependants' Grants and non-means tested DSAs). Graduate entrants on the 4 year medical degree will not be entitled to fee support (see Regulation 14(1)) or the Maintenance Grant (Regulation 56(3)) or Special Support Grant (Regulation 59(3)) if they hold an Honours Degree (for pre-2009/10 starters) or an equivalent or higher level qualification (for students starting their course in 2009/10).
7. In years 2-4 of the course, they become eligible for NHS bursaries, comprising of fee support and a means-tested bursary. They are also eligible to apply for the minimum amount of loan for living costs for a student with a reduced entitlement on the same terms as other NHS means-tested bursary students. The 4 year courses are at Birmingham, Bristol, Cambridge, Leicester, Warwick, Newcastle, Nottingham, Oxford and Queen Mary's University College (London) Universities and also at St George's and Southampton Medical Schools, The Royal Free and University College Medical School and London and Liverpool Medical School.
8. Most of the information needed for dealing with applications from students who hold, or expect to hold, an NHS bursary for the 2009/10 year of their course is covered by the questions set out in the application form and most of that information will be relevant to the student's eligibility.
9. LAs/SLC will need to determine, in particular, the course subject and qualification, to determine whether it is a pre-registration course, whether it leads to a diploma in nursing, midwifery or operating department practice, and whether it is a medical or dental course. They will also need to note the year of the course, in the case of a medical or dental course. Students who have been offered an NHS or DOH income-assessed bursary should send the letter which confirms this. It will be in order for LAs/SLC, if they wish, to ask the student for supplementary information about the bursary (such as a letter from the appropriate NHS grants unit) before determining their eligibility for the minimum amount of loan for a student with reduced entitlement. Such students will be subject to the same eligibility criteria for loans as other students. They will therefore need to be under 60 on the relevant date (see regulations 65(1) and 66(1)).
10. It will not be necessary to go through the financial assessment process if the student is eligible only for the minimum amount of loan for a student with reduced entitlement. Where an applicant has indicated that they have applied for or will be receiving an income assessed NHS or DOH Bursary, the system will calculate their entitlement to living costs support at the reduced rate. For

further information see the General Administration eligibility and Assessment chapter.

11. Responsibility for handling student applications for bursaries is dependent on where the student studies, but the student should apply to the LA/SLC where he is ordinarily resident for a loan. For example, a student ordinarily resident in England who is studying at an institution in Wales would apply to Wales for an NHS bursary and to his LA/SLC in England for a loan. Further information on NHS eligibility rules can be found on the NHS website at: [www.nhs.uk](http://www.nhs.uk)
12. The following are details of the bodies providing NHS bursaries to students in the United Kingdom.

**England**

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

Tel: 0845 358 6655  
email : [nhs-sgu@ukonline.co.uk](mailto:nhs-sgu@ukonline.co.uk)

**Wales**

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

Tel: 029 2019 6167  
[www.wales.nhs.uk](http://www.wales.nhs.uk)

**Northern Ireland**

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

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

**Scotland**

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

Tel: 0845 111 0243  
[www.saas.gov.uk](http://www.saas.gov.uk)

**NHS Secondees**

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

when approving the application LAs/SLC should manually override the tuition fee amounts and set them to zero. Setting the 'public contribution to fees' box to zero will ensure the HEI is not paid a fees contribution by the SLC. Setting the 'student contribution to fees' box to zero will ensure the HEI does not invoice the student for a contribution to fees.

## Annex 2

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

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

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

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

Cyprus  
Czech Republic  
Estonia  
Hungary  
Latvia  
Lithuania  
Malta  
Poland  
Slovakia  
Slovenia

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

Bulgaria  
Romania

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

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

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

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

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

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

**UK:** The Channel Islands and Isle of Man are not part of the EC (although many EC provisions relating to trade are applied there). Gibraltar on the other hand is part of the territory of the EC and the EEA (even though exempt from many EC rules). Depending on their circumstances, Gibraltarians may be eligible for a fees-only award or maintenance support as well. The Sovereign Bases on Cyprus, the Falklands and other UK Dependent Territories are not part of the EC.

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

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

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

#### **Member states of the EEA as from 1 January 2007**

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

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

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

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

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

**Gibraltar:** Gibraltar is part of the territory of the EEA

Dependent territories

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

Norway: Svalbard

## Annex 3

### EXTRACT FROM LORD SCARMAN'S JUDGEMENT

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

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

At page 27 B-G:

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

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

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

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

## Annex 4

### REGULAR MILITARY AND AIR FORCES AND ROYAL NAVY FORCES

### CERTIFICATE OF TEMPORARY EMPLOYMENT OUTSIDE THE UNITED KINGDOM

### ELIGIBILITY FOR STUDENT SUPPORT

I certify that:

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

Rank .....

Unit.....

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

(date).....

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

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

Signed.....

Name.....

Rank.....

Unit Records Officer

Date.....

Telephone Number.....

Unit Address

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



Unit Stamp

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

## Annex 5

### HOME OFFICE IMMIGRATION PASSPORT STAMPS

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

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

## Annex 6

### ORGANISATION CONTACT DETAILS

National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

Tel: 0845 0105500  
[www.wales.gov.uk](http://www.wales.gov.uk)

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

Tel: 0845 111 1711  
[www.student-support-saas.gov.uk](http://www.student-support-saas.gov.uk)

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

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

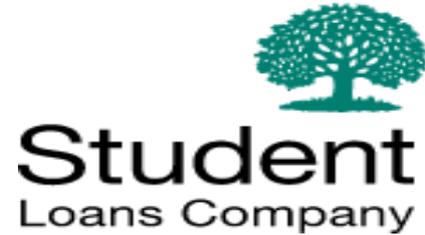
Student Loans Company  
European Team  
SLC  
Memphis Building  
Lingfield Point  
McMullen Road  
Darlington  
County Durham

Tel: 0141 243 3570  
<http://www.studentfinancedirect.co.uk>

SLC  
Memphis Building  
Lingfield Point  
McMullen Road  
Darlington  
County Durham

Student Support Information Line: 0845 6020583  
<http://www.studentfinancedirect.co.uk>

Annex 7



Students Finance Check proforma  
CLASSIFICATION

Information source requesting check							
Name:							
Contact Tel:							
Date:							
<i>Reasons for requiring this check</i>				<i>To verify the identity &amp; immigration status for Students Loan applicants, ensuring eligibility.</i>			
Details of check requested							
Name:							
Date of birth:				Nationality:			
Alias:							
Passport/ID document number/type:							
Visa/UK Entry stamp details:							
Check results							
Outstanding Asylum Claim		FAS (Failed Asylum Seeker)		EEA/EU National		Deportation Order Pursued	
Outstanding application or appeal		Illegal Entrant/Offender under the Immigration Act		Suspect Offender/No Evidence of Lawful Entry to the UK		Extant Leave to:	
UKBA Ref:							
<i>DPA justification</i>				<i>29. (3) Prevention and Detection of crime</i>			
Details of Command & Control officer who completed the check							
Name:							
Date:				Time:			

Email the completed form to the Home Office.