

# Assessing Eligibility

**Higher Education Student Finance in England 20/21  
Academic Year – Version 1.0 February 2020**

## Summary

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

## Disclaimer

This guidance is designed to assist with the interpretation of The Education (Student Support) Regulations 2011 (as amended) (the Regulations) as they stand at the time of publication. It does not cover every aspect of student support nor does it constitute legal advice or a definitive statement of the law. Whilst every endeavour has been made to ensure the information contained is correct at the time of publication, no liability is accepted with regard to the contents and the Regulations remain the legal basis of the student support arrangements for the academic year (AY) 20/21. In the event of anomalies between this guidance and the Regulations, the Regulations prevail. Please note the Regulations are subject to amendment.

Please note this guidance is for SFE students only.

## Further Information

Annex	Content
A	Events under regulation 17
B	Extract from Lord Scarman's judgement
C	EU/EEA Member States and Overseas Territories
D	Exit award examples
E	Organisation contact details
F	List of applicable regulations
G	Updates log

## Abbreviations

Abbreviation	Full
ADG	Adult Dependants Grant
AHP	Allied Health Profession(al)
AY	Academic year
BOT	British Overseas Territory
BOTC	British overseas territories citizen
CCG	Childcare Grant
CMS	Courses Management Service
DET	Diploma in Education and Training
DfE	Department for Education
DSAs	Disabled Students' Allowances
DWP	Department of Work and Pensions
EEA	European Economic Area
ELQ	Equivalent or Lower level Qualification
EU	European Union
FD	Foundation degree
FE	Further education
FT	Full-Time
GFDs	Grants for Dependants
HE	Higher education
HEP	Higher Education Provider
HO	Home Office
NCTL	National College for Teaching and Leadership
NHS	National Health Service
NINO	National Insurance number
ILE	Indefinite Leave to Enter
ILR	Indefinite Leave to Remain
IPS	Identity and Passport Service
ITT	Initial Teacher Training
OR	Ordinary residence
PLA	Parental Learning Allowance
PT	Part-Time
QTS	Qualified Teacher Status
SFE	Student Finance England
SoS	Secretary of State
SSG	Special Support Grant
TRA	Teaching Regulation Agency
OfS	Office for Students

## TABLE OF CONTENTS

<b>1</b>	<b>GENERAL ELIGIBILITY.....</b>	<b>5</b>
1.1	TIME LIMIT FOR APPLYING FOR STUDENT SUPPORT.....	5
1.2	DOCUMENTATION REQUIREMENTS.....	6
1.3	STUDENTS INELIGIBLE FOR FUNDING.....	7
1.4	PRISONERS.....	9
1.5	STUDENTS ATTENDING MORE THAN ONE HE COURSE.....	10
<b>2</b>	<b>GENERAL RESIDENCY.....</b>	<b>10</b>
2.1	ORDINARY LAWFUL RESIDENCE.....	10
2.2	STUDENTS WHO MOVE TO ENGLAND FROM ELSEWHERE IN THE UK AND ISLANDS IN ORDER TO ATTEND A COURSE.....	11
2.3	TEMPORARY OR OCCASIONAL ABSENCES.....	12
2.4	TEMPORARY EMPLOYMENT OUTSIDE OF ENGLAND, THE UK AND ISLANDS (OR EEA, SWITZERLAND AND TURKEY).....	12
2.5	CHILDREN LIVING IN ENGLAND, THE UK AND ISLANDS (OR EEA, SWITZERLAND AND TURKEY) WHOSE PARENTS ARE TEMPORARILY EMPLOYED OUTSIDE THESE AREAS.....	13
2.6	CONSIDERATIONS WHEN ESTABLISHING TEMPORARY EMPLOYMENT.....	13
2.7	DETERMINING DUAL RESIDENCE.....	15
2.8	ARMED FORCES PERSONNEL.....	16
<b>3</b>	<b>RESIDENCY CATEGORIES (SCHEDULE 1 PART 2).....</b>	<b>17</b>
3.1	PARAGRAPH 2 – PERSONS WHO ARE SETTLED IN THE UK BUT NOT BY VIRTUE OF HAVING ACQUIRED A PERMANENT RIGHT OF RESIDENCE IN THE UK.....	18
3.2	PARAGRAPH 3 – PERSONS WHO HAVE A RIGHT OF PERMANENT RESIDENCE IN THE UK.....	21
3.3	PARAGRAPH 4 – REFUGEES AND THEIR FAMILY MEMBERS (SPOUSES, CIVIL PARTNERS, CHILDREN OR STEP-CHILDREN).....	22
3.4	PARAGRAPH 4A – STATELESS PERSONS.....	23
3.5	PARAGRAPH 5 – PERSONS WHO HAVE BEEN GRANTED HUMANITARIAN PROTECTION IN THE UK, THEIR SPOUSES, CIVIL PARTNERS, CHILDREN OR STEP-CHILDREN.....	24
3.6	PERSONS GRANTED LEAVE TO REMAIN UNDER SECTION 67 OF THE IMMIGRATION ACT.....	26
3.7	PERSONS GRANTED LEAVE TO REMAIN UNDER CALAIS LEAVE.....	27
3.8	PERSONS GRANTED LEAVE TO REMAIN AS A VICTIM OF DOMESTIC VIOLENCE (DVILR).....	28
3.9	REVIEW OF IMMIGRATION STATUS FOR RETURNING STUDENTS.....	28
3.10	PARAGRAPH 6 – WORKERS, EMPLOYED PERSONS, SELF-EMPLOYED PERSONS AND THEIR FAMILY MEMBERS.....	29
3.11	PARAGRAPH 7 – CHILDREN OF FORMER EEA MIGRANT WORKERS.....	34
3.12	GIBRALTAR NATIONALS WORKING IN THE UK.....	35
3.13	PARAGRAPH 8 – UK SETTLED PERSONS WHO HAVE EXERCISED A RIGHT OF RESIDENCE ELSEWHERE.....	35
3.14	PARAGRAPH 9 – EU NATIONALS AND THEIR FAMILY MEMBERS.....	37
3.15	PARAGRAPH 10A – EU NATIONALS WITH A GENUINE LINK WITH THE UK (EFFECTIVE FROM 25/03/2016).....	39
3.16	PARAGRAPH 10 – EU NATIONALS WITH A GENUINE LINK WITH THE UK (PRIOR TO 25/03/2016).....	40
3.17	PARAGRAPH 11 – CHILDREN OF SWISS NATIONALS.....	40
3.18	PARAGRAPH 12 – CHILDREN OF TURKISH WORKERS.....	41
3.19	PARAGRAPH 13 – LONG RESIDENCE.....	41
3.20	STUDENTS WHO BECOME ELIGIBLE UNDER PARAGRAPHS 3-6, 11 AND 12 AFTER THE START OF THE COURSE.....	43
<b>4</b>	<b>COURSE ELIGIBILITY.....</b>	<b>44</b>
4.1	DESIGNATED COURSES.....	44
4.2	AUTOMATIC DESIGNATION OF FULL-TIME COURSES (REGULATION 5).....	45
4.3	AUTOMATIC DESIGNATION OF PART -TIME COURSES (REGULATION 139).....	48
4.4	AUTOMATIC DESIGNATION OF POSTGRADUATE COURSES DISABLED STUDENTS’ ALLOWANCE (REGULATION 161).....	49
4.5	AUTOMATIC DESIGNATION OF COURSES (SCHEDULE 2).....	51
4.6	INTERPRETATION OF PROVISIONS ON AUTOMATICALLY DESIGNATED COURSES.....	52
4.7	THE OFFICE FOR STUDENTS (OFS).....	52
4.8	SPECIFIC DESIGNATION (REGULATIONS 5(10), 139(7), 161(4)).....	53
4.9	DESIGNATION OF SCHOOL CENTRED INITIAL TEACHER TRAINING (SCITT) SCHEMES.....	53

4.10	FRANCHISING ARRANGEMENTS.....	53
4.11	SCHEDULE 2 COURSES - FURTHER INFORMATION.....	54
4.12	FULL-TIME ITT COURSES.....	56
4.13	PART-TIME ITT COURSES.....	56
4.14	SCHOOL CENTRED INITIAL TEACHER TRAINING (SCITT) SCHEME.....	57
4.15	COURSES FALLING UNDER PARAGRAPH 7 OF SCHEDULE 2 (PART 2).....	59
4.16	NON-STANDARD COURSES.....	60
4.17	GUIDANCE FOR DETERMINING MODE OF STUDY.....	66
<b>5</b>	<b>STANDARD ENTITLEMENT TO FEE SUPPORT.....</b>	<b>72</b>
5.1	PREVIOUS STUDY.....	73
5.2	DEFINITION OF A PREVIOUS COURSE.....	73
5.3	YEARS OF PREVIOUS STUDY.....	75
5.4	EXCEPTION FOR ITT COURSES.....	76
5.5	COMPELLING PERSONAL REASONS (CPR) – CURRENT SYSTEM STUDENTS.....	76
5.6	SELF-FUNDED YEARS.....	77
5.7	TRANSFERRING STUDENTS.....	78
5.8	REGULATION 20 - STUDENTS WITH NO PREVIOUS STUDY.....	79
5.9	REGULATION 21 - STUDENTS WITH PREVIOUS STUDY.....	80
5.10	REGULATION 22 - STUDENTS WITH LOWER LEVEL QUALIFICATIONS TOPPING UP TO A DEGREE.....	80
5.11	HONOURS DEGREES AND PREVIOUS STUDY PRIOR TO ACADEMIC YEAR 09/10.....	81
5.12	ELQS AND PREVIOUS STUDY CHANGES FROM ACADEMIC YEAR 09/10.....	81
5.13	INTEGRATED MASTER'S.....	83
5.14	ORDINARY DEGREE TO HONOURS DEGREE.....	83
5.15	EXIT AWARDS.....	83
5.16	MEDICINE, DENTISTRY, VETERINARY SCIENCE, ARCHITECTURE, SOCIAL WORK, AND INITIAL TEACHER TRAINING (ITT) COURSES AS A SECOND DEGREE.....	84
5.17	NURSING, MIDWIFERY AND ALLIED HEALTH PROFESSIONS (AHP) AS A SECOND DEGREE.....	85
5.18	ELQ AND PART-TIME STUDY IN STEM SUBJECTS AS A SECOND DEGREE.....	85
5.19	POSTGRADUATE QUALIFICATIONS.....	85
5.20	STUDENTS WHO ATTEND A FULL-TIME COURSE ON A PART-TIME BASIS.....	86
<b>6</b>	<b>ELIGIBILITY FOR SUPPORT FOR LIVING COSTS.....</b>	<b>87</b>
6.1	GENERAL.....	87
6.2	STUDENTS WHO ARE NOT ELIGIBLE FOR SUPPORT FOR LIVING COSTS.....	88
6.3	STUDENTS AGED 60 AND OVER.....	89
<b>7</b>	<b>ANNEXES.....</b>	<b>89</b>
7.1	ANNEX A – EVENTS UNDER REGULATION 17 OF THE REGULATIONS.....	89
7.2	ANNEX B – EXTRACT FROM LORD SCARMAN'S JUDGEMENT.....	90
7.3	ANNEX C – EU/EEA MEMBER STATES AND OVERSEAS TERRITORIES.....	91
7.4	ANNEX D – EXIT AWARD EXAMPLES.....	93
7.5	ANNEX E – ORGANISATION CONTACT DETAILS.....	95
7.6	ANNEX F – LIST OF APPLICABLE REGULATIONS.....	96
7.7	ANNEX G – UPDATES LOG.....	97

## 1 General eligibility

An eligible student qualifies for support if they are studying on a designated course and in accordance with The Education (Student Support) Regulations 2011 (as amended).

Within these Regulations, regulation 4 and Schedule 1 outline the personal eligibility criteria. The provisions on designated courses are in regulation 5 and Schedule 2 and are discussed in a later section of this chapter (section 3.1).

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

### 1.1 Time limit for applying for student support

---

There is a general rule that a student must make their application to Student Finance England (SFE) within nine months of the first day of the academic year in respect of which the student is applying for (regulation 9(1)). SFE has the discretion to extend this deadline where they consider it is appropriate to do so, with consideration to the individual's situation (regulation 9(2)(e)).

The general rule does not apply when an event as described in regulation 17 occurs. Examples of these events include:

- the date on which the course was designated, if that happens after the first day of the academic year,
- the date on which the student or their spouse/civil partner, parent or step-parent is recognised as a refugee, if that happens after the first day of the academic year,
- the date on which the student or their spouse/civil partner, parent or step-parent has been granted humanitarian protection (HP) in the UK, if that happens after the first day of the academic year, or
- the date on which the country of which they are a national gains accession to the European Union, if that happens after the first day of the academic year.

It is important to note that the above list is not exhaustive. See Annex A for the full list of events.

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

## 1.2 Documentation requirements

---

The Regulations stipulate that a student must present documentation as required by the Secretary of State (SoS) with their application (regulation 8(1)). Regulation 8(2) provides that the SoS, or the relevant bodies to which this function has been delegated (SFE), may take such steps and make such enquiries as it deems necessary to determine eligibility.

For all loans paid in academic year (AY) 19/20, the SoS may make it that a student provides them with their United Kingdom (UK) National Insurance number (NINO) as a condition of entitlement to payment of any loan (regulation 111(1)). The Department of Work and Pensions (DWP) will, in most cases, issue NINOs to applicants applying for student support (if they do not have one).

Regulation 112(3) states that the SoS may request sight of a student's valid national ID card, their valid passport issued by the state of which they are a national, or their birth certificate. Relevant documents are listed in the supporting notes available when completing each application.

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

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

If a student chooses to submit their birth certificate then this must be accompanied by a fully completed Birth or Adoption Certificate Form.

SFE should not require students to produce birth certificates where they are unwilling to do so, nor should they require students to provide reasons for not wanting to do so. In such cases, other forms of evidence such as a valid passport should be accepted.

In exceptional cases a student may, with valid reasoning, be unable to provide either a birth certificate or passport. This may occur where the Home Office (HO) is holding the passport and the student is not in possession of their birth certificate. SFE must not in these circumstances continue to request these items. SFE may accept other forms of evidence from external organisations such as the Home Office or the student's solicitor in so that they can satisfy themselves of the applicant's identity.

### 1.3 Students ineligible for funding

---

Whilst regulation 4 outlines who qualifies as an eligible student, it also makes provision for students that are excluded from any support under the Regulations (regulation 4(3)). A student is ineligible for support from SFE if they:

- are in receipt of a non-means tested 'healthcare bursary', (as defined in regulation 2(1)) or other allowance referred to in regulation 4(3) (see section 1.3.1 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,
- have shown themselves by their conduct to be unfitted to receive support, or
- are a prisoner who is not an eligible prisoner.

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

#### 1.3.1 NHS bursaries

Since 1 August 2018, new Dental Hygiene and Dental Therapy (DH/DT) students on designated undergraduate pre-registration courses ceased to be eligible to receive NHS bursaries when studying in England, Scotland or Northern Ireland but instead are able to apply for full support under the Regulations. For students studying these courses in Wales, a bursary remains available subject to the 2-year post-graduation employment requirement introduced in AY 17/18. This brings them into line with undergraduate pre-registration nursing, midwifery and allied health professional (AHP) students who came under the remit of the Regulations in AY 17/18.

Please note that students on non-designated DH/DT courses at certain Health Trusts will still attract an NHS bursary. For more information on these courses and the support available please see the AY 20/21 NHS guidance chapter.

From 1 August 2018, new eligible pre-registration postgraduate nursing, midwifery and allied health professions have been able to apply for full support under the Regulations.

Please note that NHS Wales has introduced a two-year post-graduation employment eligibility requirement, which students can opt-out of and therefore becoming ineligible to apply for the NHS Bursary in Wales. These students will be able to apply for full support under the Regulations.

Most students who started nursing, midwifery or AHP courses before 1 August 2017 or a DH/DT course before 1 August 2018 will be in receipt of income-assessed NHS bursaries. They will continue to receive these bursaries until completion of their course. For detailed guidance on the support available to students studying on these courses, please see the AY 20/21 NHS guidance chapter.

### **1.3.2 Applicants who breach any obligation to repay any previous student loans (arrears)**

The Regulations provide that a person shall not be eligible for support if they are in breach of any obligation to repay any loan (regulation 4(3)(d)).

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

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

Once an applicant is no longer in breach, SFE should reassess their eligibility for the academic year in question. Any such reassessment is for the whole academic year, not from the date on which they cease to be in breach of any such obligation or ratified any such agreement.

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

### **1.3.3 Applicants who have reached the age of 18 and have not ratified a previous student loan**

The Regulations provide that a person shall not be eligible for support if they have reached the age of 18 and have not ratified any agreement for a loan made with them when they were under the age of 18 (regulation 4(3)(e)).

From AY 14/15 and onwards, a ratification form has no longer been required. The new wording added to the student declaration form covers previously borrowed loans where the student was under the age of 18. By signing a new declaration, the student acknowledges and agrees that they are automatically ratifying all student loans that they borrowed before reaching the age of 18.



### 1.3.4 Unfitness to receive support

A student does not qualify as an eligible student if, in SFE's opinion, they have shown themselves by their conduct to be unfitted to receive support (regulation 4(3)(f)). This power may be used at any stage in the process of assessing a student's eligibility for support but once a student has been notified that they are eligible, this power may not be used. SFE may however terminate a student's period of eligibility for similar reasons under paragraph (5) of regulation 6.

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

- Where it comes to light that the student has committed fraud in applying for support. If a student has their eligibility terminated as a result of committing fraud on their Student Finance application, this could lead to their details being registered with UK fraud prevention service CIFAS. Their details will be held with CIFAS for a period of 6 years. Students would remain ineligible for student support during this period.
- Where the student has made repeated applications for support and received support for a number of different courses without completing those courses.
- Where evidence from the Higher Education Provider (HEP) calls a student's fitness to receive support into question:

Fraud against other government departments (such as the DWP) might be grounds for refusal of support in some circumstances. SFE will need to consider such cases carefully.

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 SFE.

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

## 1.4 Prisoners

---

Prisoners are ineligible for support from SFE (regulation 4(3)(g)) unless they meet the definition of an eligible prisoner.

An eligible prisoner under the regulations is one who begins their current course on or after 1 September 2012 and is serving their sentence of imprisonment in the UK. They must have an earliest release date within six years of the first day of the first academic year. The appropriate prison authority must have approved the student to study the current course.

The student must not have transferred to the current course from a course beginning before 1 September 2012.

A full-time (FT) '2012 cohort' or '2016 cohort' student who is an eligible prisoner will be eligible for tuition charge support only for those periods when they are imprisoned.

A FT student who is not a '2012 cohort' or '2016 cohort' student will be eligible for tuition fee loan and DSAs for those periods when they are imprisoned. For more information see the AY 20/21 Change of Circumstances and Overpayments guidance chapter.

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

### **1.5 Students attending more than one HE course**

---

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

## **2 General residency**

The following information on matters of residency represents the Department for Education's (DfE's) understanding on such matters. DfE is of the view that SFE should satisfy itself that it has understood, and applied correctly, the current law and practice in relation to residency when carrying out assessments.

### **2.1 Ordinary lawful residence**

---

Although not defined in the Regulations, 'ordinarily resident' has been interpreted by the courts as lawful habitual and normal residence from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences. Extracts

from the judgment (Lord Scarman's) in the case of *Shah v Barnet London Borough Council* can be found in Annex B. The ruling did not define what might constitute a temporary or occasional absence, but did indicate that it might be possible for an individual to establish ordinary residence (OR) in two countries simultaneously.

Paragraph 1 (3A) of Schedule 1 of the Regulations (as amended) provides that a person is not to be treated as ordinarily resident in a place unless that person lawfully resides in that place. Therefore, periods where an applicant has not been lawfully resident in the UK or European Economic Area (EEA)/Switzerland at any time within the three years prior to the first day of the first academic year of the course cannot be treated as ordinary lawful residence.

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

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

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

For considerations when assessing the ordinary residence of armed forces personnel please see section 2.8 below.

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

---

Under Paragraph 1(3) of Schedule 1 where a student has moved to England from Scotland, Northern Ireland, Wales, the Channel Islands, or the Isle of Man for the purpose of

undertaking study they should be regarded as being ordinarily resident in the place from which they have moved.

To apply for support the student should contact the responsible authority in the area they moved from as they are assessed for support under the rules that apply there. Only those students ordinarily resident in England apply to SFE.

## **2.3 Temporary or occasional absences**

---

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

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

The applicant's place of birth or nationality should not be considered. Additionally, whilst the duration of the absence must be taken into account, it must not be the only factor evaluated. SFE will wish to consider whether it would be confident that their decision would be upheld if it were challenged in court.

### **2.3.1 Gap years**

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

SFE 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.

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

### **2.3.2 Emigrants**

Absence from the UK because of emigration should generally not be considered to be of a temporary nature yet each case should be considered on its own merits.

## **2.4 Temporary employment outside of England, the UK and Islands (or EEA, Switzerland and Turkey)**

---

Paragraph 1(4) of Schedule 1 provides that a person may be treated as being or having been ordinarily resident in England or the UK and Islands (or the EEA, Switzerland and Turkey as appropriate) if they would have been so resident but for the fact that:

- They,
- their spouse or civil partner,
- their parent ,
- or in the case of a dependent relative, their child or child's spouse or civil partner

is or was temporarily employed outside of England or the UK and Islands (or the EEA, Switzerland and Turkey) during the three year period.

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

Information on temporary absence where armed forces personnel are posted outside of the UK or the EEA, Switzerland or Turkey can be found in section 2.8.

## **2.5 Children living in England, the UK and Islands (or EEA, Switzerland and Turkey) whose parents are temporarily employed outside these areas**

---

Children whose parents are temporarily employed outside England, the UK and Islands (or EEA, Switzerland and Turkey) but who remain in England, the UK and Islands (or EEA, Switzerland and Turkey) will normally retain the relevant connection with these areas and therefore be eligible for support.

DfE 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 FT education simply because they are still here and receiving education while their parents are temporarily employed abroad. Paragraph 2(2) of Schedule 1, which states that the three years residence in the UK and Islands was not wholly or mainly for the purpose of receiving FT education, does not apply to a person who is treated as ordinarily resident in the UK and Islands in accordance with paragraph 1(4) of Schedule 1.

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

## **2.6**

---

### **2.6 Considerations when establishing temporary employment**

---

When determining if a break in ordinary residence is a result of temporary employment abroad, SFE should be satisfied that the period abroad arises from employment. They

should then assess whether the absence is temporary and decide whether, except for the temporary employment of the applicant (or parents or spouse/civil partner etc), the applicant would have been ordinarily resident in the relevant place.

In making their decision, SFE 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 the country, and
- whether a residence has been maintained in England or the UK and Islands (or the EEA, Switzerland and Turkey).

The onus is on the applicant to provide evidence that:

- their absence was due to employment abroad,
- that the employment was temporary,
- and that were it not for temporary employment abroad they would be ordinarily resident in England or the UK and Islands (or the EEA, Switzerland and Turkey as appropriate).

In determining whether the absence was for purposes of employment in circumstances where the applicant was not in employment immediately after moving overseas, SFE may wish to consider:

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

Holding temporary residency visas and/or temporary employment contracts are insufficient grounds on their own as different countries have different immigration systems. In determining whether the employment was temporary or permanent, SFE should consider:

- if the contract included liability for the UK and Islands (or EEA, Switzerland and Turkey) tax on earnings,

- if the posting was for a specified period (if it is for an unspecified period, what is the reason for this),
- how long the contractual period was,
- if the contract is renewable, has it been renewed or is it one of a succession of contracts abroad,
- if the contract conveys automatic rights of return to this country from time to time,
- how long the employee has 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 their organisation (or a related one) in their home country 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 in the UK and Islands (or EEA, Switzerland and Turkey) offices?

SFE may wish to bear in mind domestic employment case law, industrial tribunals have ruled that a succession of similar temporary contracts can be construed as permanent employment. A series of short contracts may be the result of a genuinely temporary posting that is kept under review. They may also indicate a long-term posting with the contract being renewed as a matter of formality rather than a real review.

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

## **2.7 Determining dual residence**

---

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

DfE is of the view that it is possible for a person to be ordinarily resident in two countries at the same time. Evidence must be provided to enable SFE to make a judgment if there are significant and continued ties to the UK. SFE must consider the following factors alongside the evidence:

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

## **2.8 Armed forces personnel**

---

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

To ensure applications for support from former members of the UK Armed Forces or family members of UK Armed Forces personnel are processed by the administration in the appropriate UK territory, from AY 13/14 onwards all UK administrations have agreed a unified policy. They will apply a consistent approach to the responsibility of processing such applications.

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

The Regulations state that eligible FT and part-time (PT) students undertaking a distance learning course provided by a UK institution have to be undertaking the course in England



on the first day of the first academic year of that course in order to qualify for fee loans and, where applicable, DSAs for their course. Additionally, eligible students undertaking a distance learning course outside the UK cease to qualify for support.

However, there is an exception to the above rule for students who are studying in the UK but outside of their home domicile on a distance learning course as a result of their disability. Please see section 4.17.3 for more information.

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

- UK Armed Forces personnel serving overseas, or
- family members living with UK Armed Forces personnel serving overseas,

became eligible for fee loans, and where applicable DSAs for a FT or part-time distance learning course.

From AY 18/19, DfE extended support for distance learning courses to:

- UK Armed Forces personnel serving outside their domicile on the first day of the first academic year of their course but within another country within the UK, and
- family members living with UK Armed Forces personnel serving outside their domicile on the first day of the first academic year of their course but within another country within the UK .

Paragraph 1(5) of Schedule 1 states that members of

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

who serve any period outside these areas are considered to be temporarily employed overseas for any such period. The effect of this is that a person may be treated as being or having been ordinarily resident in England, the UK and Islands or the territory comprising the EEA, Switzerland and Turkey if they would have been so resident but for the fact that they, their spouse or civil partner, their parent, or, in the case of a dependent relative, their child or child's spouse or civil partner, was serving overseas or in another country within the UK. This group of people are in a special situation because of the unique nature of their employment they are bound by military law to accept overseas postings. The provision is only intended for service personnel's families who follow them on postings. A Student who has been living overseas but not with the parent who is on active service, would not be able to take advantage of this provision.

### 3 Residency categories (Schedule 1 Part 2)

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

A student's eligibility is not solely derived from satisfying the requirements of one of the categories, and they must meet the other conditions as prescribed under regulation 4.

#### 3.1 **Paragraph 2 - Persons who are settled in the UK but not by virtue of having acquired a permanent right of residence in the UK**

---

To fall within paragraph 2 of Schedule 1, the student must be able to satisfy the requirements relating to their residence and immigration status on the first day of the first academic year of their course. For a course starting in the autumn, 1 September. On that date, the applicant must:

- be settled in the UK within the meaning of section 33(2A) of the Immigration Act 1971, which is to be ordinarily resident here without being subject to any restriction on the period for which they may remain,
- have been ordinarily resident in the UK and Islands throughout the three year period preceding that date other than wholly or mainly for the purpose of receiving FT education, and
- be ordinarily resident in England

As per paragraph 2(2) of Schedule 1, the requirement that a student has been ordinarily resident in the UK & Islands for the three year period preceding the first day of the first academic year of the course not wholly or mainly for the purpose of receiving FT 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, the territory comprising the EEA and Switzerland or the territory comprising the EEA, Switzerland and Turkey if they would have been so resident but for the fact that:

- a) they,
- b) their spouse or civil partner,
- c) their parent, or,
- d) in the case of a dependent direct relative in the ascending line, their child or child's spouse or civil partner,

is or was temporarily employed outside the areas mentioned."

### 3.1.1 Settled status

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

- they are 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),
- they are a person who has been granted indefinite leave to enter/remain (ILE/ILR), or
- they have the right of abode.

The immigration status of applicants with ILE/ILR may be evidenced by reference to the stamp(s) in their passports or travelling documents.

The right of abode means that you are entirely free from UK immigration control. Applicants with this status should have a 'certificate of entitlement to the right of abode' confirming this.

### 3.1.2 British citizen by descent

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

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

Parent means:

For children born before 1 July 2006:

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

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

For children born on or after 1 July 2006:

- the mother (the woman who gives birth to the child)
- the father if:
  - he is married to the mother at the time of the birth,
  - he is treated as the father under section 28 of the Human Fertilisation and Embryology Act 1990, or
  - (if neither (1) nor (2) apply) he can satisfy certain requirements as regards proof of paternity – 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)

### 3.1.3 British Overseas Territories

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

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

- any BOTC entering the UK from the relevant countries (provided they have not renounced or acquired their BOTC status by naturalisation as a BOTC in an overseas territory after 21 May 2002) will be doing so as a British citizen and will not be subject to immigration control. They also have the same rights as any other EEA national
- holders of BDTC/BOTC passports were allowed to present their BDTC/BOTC documents as evidence of right of abode in the UK prior to obtaining full British citizen passports until 21 May 2002
- these students still have to meet the ordinary residence criteria
- students from BOTs are eligible for home fee status only (under The Higher Education (Fee Limit Condition) (England) Regulations 2017 (as amended) and The Education (Fees and Awards) (England) Regulations 2007 (as amended))

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

Acceptable evidence might be:

- a British citizen passport
- a BOTC passport or BDTC passport issued before 21 May 2002
- a BOTC 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 Regulations. The BOTs provision has also been extended to the overseas territories of other EU member states, as per the Higher Education (Fee Limit Condition) (England) Regulations 2017 (as amended).

Overseas territories of other EU Member states can be found in Annex C.

Except for Gibraltar, BOTs are not members of the EU, the main body of EU law does not apply to them. Certain provisions of EU law are applied to those territories however, as part of the EU's Association of Overseas Countries and Territories (OCT Association).

#### 3.1.4 Gibraltar

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

#### 3.1.5 Residence wholly or mainly for the purpose of receiving FT education

In order to be eligible for support, persons who are settled in the UK must not have been resident in the UK and Islands during the three-year period preceding the first day of the first academic year of their course wholly or mainly for the purposes of receiving FT education.

SFE should determine on a case-by-case basis whether an applicant has been resident in the UK wholly or mainly for the purpose of receiving FT education.

DfE is of the view that a student is not prevented from qualifying for support simply because they have been receiving FT education during some or all of the three year prescribed period. For example, the child or spouse/civil partner of a foreign business person or diplomat ordinarily resident in the UK and Islands may be receiving FT education, but may be here mainly to be with their parent or spouse/civil partner (and not wholly or mainly for the purpose of receiving FT education) and so be entitled to support if the time requirements are met.

### **3.2 Paragraph 3 – Persons who have a right of permanent residence in the UK**

---

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

Retired EEA migrant workers and their family members may acquire permanent residence subject to Home Office guidance and relevant regulations. Upon acquiring permanent residence, in order to receive student support EEA migrant workers and their family members will be subject to eligibility requirements in The Education (Student Support) Regulations 2011 (as amended).

To fall within paragraph 3 of Schedule 1 (Part 2), the student must be able to satisfy four requirements. They must:

- be settled in the United Kingdom by virtue of having acquired the permanent right of residence
- be ordinarily resident in England on the first day of the first academic year of the course
- 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 FT education, have been ordinarily resident in the territory comprising the EEA and Switzerland immediately prior to the start of that period of residence

Details of the countries and territories that make up the EEA can be found in Annex C.

As acquiring the right of permanent residence is classified as an event under regulation 17, an applicant may become eligible after the start of the course. Please see [Section 3.20](#) below for the support they may be entitled to.

### **3.3 Paragraph 4 – Refugees and their family members (spouses, civil partners, children or step-children)**

---

Those granted refugee status by the Home Office and their family members claiming student support under this category must satisfy the criteria below in order to potentially be eligible for support. The student must be:

- a refugee in their own right, ordinarily resident in the United Kingdom and Islands who has not ceased to be so resident since they were recognised as a refugee, or
- the spouse or civil partner of a refugee who was also the spouse or civil partner of the refugee on the date on which the refugee made their application for asylum to

the Home Office, and is ordinarily resident in the UK and Islands and has not ceased to be so resident since the leave to enter or remain status was awarded, or

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

In cases where the spouse, civil partner or child arrived after the date refugee status was awarded, they must have indefinite leave to enter or remain or refugee status in their own right. SFE must satisfy itself that all of the relevant Home Office documentation is valid.

Regulation 2(1) defines 'refugee' as a person who is recognised by Her Majesty's Government as a refugee under the 1951 United Nations Convention relating to the status of refugees. A refugee is defined in the Convention as someone who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of their nationality and is unable or, owing to such fear, is unwilling to avail themselves of the protection of that country.

A person who has been successful in their application for refugee status will have been given a letter or Immigration Status Document from the Home Office stating that they have been granted this status.

Prior to 30 August 2005 recognised refugees were awarded indefinite leave to enter or remain (ILE/R) in the UK. Since this date those recognised as refugees have been awarded 5 years limited leave to enter or remain in the UK (apart from those entering the UK under a resettlement scheme such as the Gateway Protection Programme). At the end of the five year qualifying period, people with refugee status are entitled to apply for ILR. For student support purposes the important question is whether the applicant is a recognised refugee under the 1951 United Nations Convention relating to the status of refugees or is the spouse, civil partner, child or step-child of such a person granted refugee status. Documentation from the Home Office will provide evidence of this fact. Refugees arriving under the Gateway Protection Programme, the Mandate Refugee Scheme and the Ten or More Plan are granted immediate indefinite leave to enter.

As being recognised as a refugee, or the spouse, civil partner or parent of a refugee is an event under regulation 17, an applicant may become eligible under this category after the start of the course. Please see Section 3.20 below for the support they would be entitled to.

### 3.4 Paragraph 4A – Stateless persons

---

From the AY 18/19 onwards, a person granted stateless leave by the Home Office (HO), because they have no right to residence in their country of former habitual residence, or any other country, may fall under a new category of eligible students under paragraph 4A of Schedule 1 of the Regulations.

To be eligible under this category, students must:

- be a person granted stateless leave status by the HO,
- have been ordinarily resident in the United Kingdom and Islands throughout the period since being granted such leave;
- be ordinarily resident in England on the first day of the first academic year of their course, and
- have been ordinarily and lawfully resident in the UK and Islands throughout the three year period preceding the first day of the first academic year of their course.

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

If the student is the:

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

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

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



The new category only applies to new students that started a course in AY 18/19 onwards.

The Regulations provide that where a student or their eligible family member acquires stateless leave during an AY of their course, they can become eligible partway through that course. This means that students who have already commenced their eligible course, where the course starts on or after 1 August 2018, and who acquire this status are potentially eligible. Please see Section 3.17 below for the support they would be entitled to.

### **3.5 Paragraph 5 – Persons who have been granted humanitarian protection in the UK, their spouses, civil partners, children or step-children**

---

Paragraph 5 of Schedule 1 (Part 2) is only concerned with students who;

- are granted humanitarian protection and have been ordinarily resident in the United Kingdom and Islands throughout the period since being granted such leave,
- are 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 are under 18 years old at the time of the application to the Home Office,
- are ordinarily resident in England on the first day of the first academic year of the course,
- have been ordinarily resident in the UK and Islands throughout the three year period preceding the first day of the first academic year of the course, and
- whose leave to enter or remain has not expired.

Please refer to regulation 2(1) for a full definition of a person granted HP.

Humanitarian protection is not the same as asylum and does not constitute recognition as a refugee within the meaning of the 1951 United Nations Convention. Persons granted this status are nevertheless in genuine need of international protection. Those granted Discretionary or Limited Leave to Remain, with restrictions on the time they can remain in the UK, may be eligible for support if they satisfy the requirements of the long residency category (paragraph 13 of Schedule 1 of the Regulations).

#### **3.5.1 Humanitarian protection terms and conditions**

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 Indefinite Leave to Remain (ILR) thereafter. Previously the initial period granted was 3 years. Humanitarian protection status is not granted to people who qualify for asylum or to EU nationals exercising treaty rights. At the end of the five year qualifying period people with refugee and humanitarian protection status are entitled to apply for ILR.

A student, or the spouse, civil partner, parent or step-parent of a student, does not need to have been granted humanitarian protection by the first day of the first academic year of the course for the student to be able to study (provided they are lawfully resident). The student or the student's spouse, civil partner, parent or step-parent being granted humanitarian protection is considered an 'event' under the Regulations however, and so where this occurs and the student is already in study, could become eligible for support during the academic year. The 'event' must also have occurred within the first three months of the academic year. Please see [Section 3.20](#) below for the support they may be entitled to. 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.

DfE understands that if a person with HP 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. Providing the application for further leave has not been withdrawn or the applicant does not leave the United Kingdom, the first period of leave is extended for the period it takes the Secretary of State to make a decision on the renewal application.

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

- an application has been made to the Secretary of State to vary the limited leave to enter or remain,
- the application was made before the leave to enter or remain expired,
- the leave granted expires before the application for variation is decided,

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

In DfE's view a person whose humanitarian protection has been extended under section 3C of the 1971 Act could still, potentially, satisfy the definition of a "person granted humanitarian protection" 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 20/21 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.

### **3.6 Persons Granted Leave to Remain under Section 67 of the Immigration Act**

---

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

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

- Those who are awarded refugee status in line with the 1951 Refugee Convention, or humanitarian protection leave. Residency categories already exist in the Regulations for these persons.
- Those who are not awarded refugee status or humanitarian protection leave and are instead awarded the new form of leave) under section 67 of the Act. This new form of leave will allow those awarded it to study, work, access public funds (including student support) and healthcare and apply for settlement after five years.
- Note that dependent children of those granted leave to remain under Section 67 will be granted leave to remain for the same duration as their parent, provided that the requirements specified in the Immigration Rules are met. Under the Immigration Rules a child means an individual who is under 18 years of age on the date the application was made and for whom the person granted Section 67 leave has parental responsibility.

The Section 67 leave residency category only applies to new students from AY 19/20 onwards, i.e. those who start a course on or after 1 August 2019.

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

- Be ordinarily resident in England on the first day of the first academic year of the course,
- have been ordinarily resident in the United Kingdom and Islands throughout the

period since the person was granted such leave;

- Have been ordinarily resident in the UK and Islands throughout the three year period preceding the first day of the first academic year of the course, and
- whose leave to enter or remain has not expired.

### **3.7 Persons Granted Calais Leave**

---

A new form of Leave to Remain has been introduced by The Home Office in the form of “Calais Leave”. Calais Leave status is awarded to a person who transferred to the UK as part of the Calais camp clearance between October 2016 and July 2017 as unaccompanied children who were to be reunited with qualifying family.

From AY 20/21, new students who hold this Leave to Remain status will be eligible for Student Support in England. This is also extended to dependent children of a person who holds Calais Leave status who have been granted “leave in line” with their parent.

In order to qualify for Student Support under this category a person must:

- Be Ordinarily Resident in England on the first day of the first Academic Year of the course,
- have been ordinarily resident in the UK and Islands throughout the
- period since the person was granted such leave,
- Be Ordinarily Resident in the UK and Islands for the three year period prior to the first day of the first academic year of their course.

A person who is a dependent child of a person with Calais Leave status must:

- Be granted “leave in line” with the parent that holds Calais Leave status,
- Be ordinarily Resident in England on the first day of the first Academic Year of the course,
- Be ordinarily Resident in the UK and Islands for the three year period prior to the first day of the first academic year of their course.

As this immigration status is typically only valid for a five year period, a person will need to demonstrate they have a further valid leave to remain immigration status for the remainder of their course if their Calais leave status expires whilst they are in study.

If a person submits an application for another residence permit to obtain a further 5 years Leave to Remain under Calais Leave they would be a UK resident for a period of ten years and would therefore be eligible to apply for UK settled status. In this instance, they can then declare settled status on their Student Finance application instead of Calais Leave once they have been granted settled status by the Home Office.

### **3.8 Persons Granted Leave to Remain as a Victim of Domestic Violence or abuse**

The Home Office grants ILR for victims of domestic violence or abuse who are in the UK by virtue of a partner visa or sponsorship by a British citizen or settled person. Where an individual's relationship has broken down with their partner/sponsor as a result of domestic violence or domestic abuse they can be granted the immigration status of Indefinite Leave to Remain, even if they have only been in the UK for a short period of time. and do not have existing leave

From AY 20/21, a person who has been granted ILR by the Home Office under their domestic violence provisions (paragraph 276AD of the Immigration Rules or paragraphs 23, 26, 28 or 32 of Appendix Armed Forces) will be eligible for Student Support providing they meet the eligibility criteria.

Unlike the majority of residency categories, a person who holds the status of ILR as a victim of domestic violence or abuse is not required to demonstrate they have been ordinarily resident in the UK for the 3 years prior to the first day of the first academic year of the course. The person is only required to be ordinarily resident in England on the first day of the first academic year of the course and since their leave was granted in order to satisfy ordinary residence requirements.

Family members or dependants of persons who were granted leave under DVILR will not be eligible for support.

### **3.9 Review of immigration status for returning students**

---

If the student is a returning student and applying for support under paragraphs 4 to 5A of the Regulations (sections 3.3 to 3.6 above), they are required to provide 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, SFE will be required to check whether the student is still entitled to student support. SFE should request revised documentary evidence of the student's or family member's immigration status from the Home Office.

If the student's (or family member's) case is still under review by the Home Office, or the Home Office are considering an appeal, student support should not be withdrawn. SFE will require evidence from the Home Office that this is the case before processing the student support application.

SFE is required to complete the Home Office check pro-forma and forward it to the Home Office. The Home Office has an official 10 days Service Level Agreement (SLA) to respond to checks, however they do aim for a 5 day turnaround.

In order for a student's support to continue after the expiry of a relevant immigration status, further evidence will be required. Ideally, SFE will receive confirmation that the status or a different qualifying immigration status has been awarded by the Home Office. Additionally, evidence that the Home Office is considering awarding an appropriate immigration status, or that an appeal is pending, would be acceptable. Consideration should also be given as to whether the student may qualify under another category.

As new stamps may be introduced or amended after the issue of this guidance, please refer to the Home Office's Visas and Immigration website: <https://www.gov.uk/browse/visas-immigration>

### 3.10 Paragraph 6 – Workers, employed persons, self-employed persons and their family members

---

Directive 2004/38/EC of the European Parliament and of the Council of the European Union covers the right of citizens of the European Union and their family members to move and reside freely within the territory of the member states.

Details of the countries and territories that make up the EEA can be found in Annex C.

#### 3.10.1 Assessing eligibility of workers

EEA migrant workers and their family members should be ordinarily resident in England on 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 is not a requirement when the person applying for support is applying as:

- an EEA frontier worker or an EEA frontier self-employed person,
- a Swiss frontier employed person or a Swiss frontier self-employed person, or
- a family member of a person mentioned in the above two categories.

An SFE specialist support team will carry out the assessment of support for all students whose eligibility for support falls under the EEA Migrant Worker category (paragraphs 6 and 7 of Schedule 1 (Part 2) of the Education (Student Support) Regulations 2011, as amended).

#### 3.10.2 Effective and genuine versus marginal and ancillary employment

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

The DfE has set an indicative threshold of 10 hours of paid work per week either in term time or during holidays. Where a student works 10 or more hours per week and is paid for that work under an employment contract that is a strong indicator the student is a worker. It is important to note that where this threshold is not met, a person may still qualify as a worker. Consequently, all individual circumstances must be considered by SFE.

Self-employed persons are in a slightly different position to workers. It is common for self-employed workers to have periods where no work is carried out. Irregular or intermittent work will not preclude a person from being properly regarded as self-employed (or as a worker). It must be considered whether the person is experiencing a temporary lull in work or whether the change in their working patterns means that they are no longer in continuing self-employment. It would be reasonable to consider a period of at least three months.

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

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

### **Principles from EU case law**

In order to decide whether an EEA national can be classed as a migrant/frontier worker or a Swiss national employed in the UK, SFE should take into account the case law of the European Court of Justice which has established the following principles:

- Freedom of movement of workers is one of the fundamental freedoms guaranteed by the EU, therefore the term 'worker', which determined the scope of application of that freedom, must be interpreted broadly and not restrictively.
- The essential characteristics of an employment relationship are that for a certain period of time, a person performs services for and under the direction of another person in return for which they receive remuneration.
- To qualify as a worker, the activity performed by the person must nevertheless be effective and genuine, to the exclusion of activities of such a small scale as to be regarded as purely marginal and ancillary.
- When determining whether the work is effective and genuine, the decision maker must make their decision on the basis of objective criteria and taking into account all the circumstances of the case.
- A person is not precluded from being classified as a 'worker' where their work is part-time (*Levin v Secretary of State for Justice* case 53/81 [1982]), low wage (*Lawrie-Blum v Land Baden-Wurtemberg* case 66/85 [1986] ECR 2121 [16]), below the minimum subsistence wage (*Levin*), on-call (*Raulin*), or short term (*Brown v Secretary of State for Scotland* [1988] ECR 3205). In particular, a person is not required to complete a minimum period of employment before being able to attain the status of a worker (*Brown* [22]). The irregular nature and limited duration of the

services provided are however factors which may be taken into account when assessing whether the work is effective and genuine or purely marginal and ancillary (Raulin). Depending on the circumstances of the individual case, multiple short-term contracts may be satisfactory where these show that an individual has, in total, worked a more than negligible number of hours per week for the period being assessed.

- The services performed by the person have to have some economic value and form part of the normal labour market. As a result, where work is performed solely as a volunteer without payment as a means of social rehabilitation or reintegration, it is unlikely to be regarded as real and genuine economic activity (Trojani v CPAS Case C-456/02 [2004] 3 CMLR 38 [18]).
- The person's subjective intentions or motives in carrying out or seeking work or in applying for entry to or residence in the Member State are irrelevant and must not be taken into account. What matters is that the person is performing genuine and effective work in paid employment (Levin). It follows that a person who enters the UK with the principal intention of pursuing a course of study, but who also pursues effective and genuine employment activities in the UK, is not precluded from having the status of a worker (Styrelsen Case C-46/12 [2013] ICR 715 [39]).
- The person, however, is not entitled to be classified as a migrant worker at the start of an academic year for student support purposes, where the person has arrived in the UK and is not working or is actively seeking employment but has not yet worked here (Collins v SSWP [2005] QB 145).
- Where a person has ceased work either before undertaking their higher education studies or has ceased work during their higher education studies, the person will be able to retain their status as a worker (and be eligible to receive the same benefits as national workers), provided there is a link or connection between the previous work activities performed in the host Member State and the course of study they have undertaken (Lair V University of Hanover Case 39/86 1988 ECR 3161 [24] [28]) (Raulin). As an exception, such a connection may not be required where the person has involuntarily become unemployed and is obliged by labour market conditions to undertake occupational retraining in another field of activity (Lair) (Raulin). It is not necessary however to show any link or connection where the person works at the same time as studying.
- A person's work history with a particular employer could be one of the objective factors to which a decision maker can have regard in determining a person's worker status, particularly if there are questions about whether the work is genuine and effective or marginal and ancillary. It is probably unnecessary to do so in most cases. Where, a student has demonstrated consistent work for an employer over several years but only for a few hours a week, this could indicate they were a worker.



### 3.10.3 Assessing eligibility of family members

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

For an EEA migrant worker, an EEA self-employed person, an EEA frontier worker or an EEA frontier self-employed person the definition of family member is:

- the person's spouse or civil partner, or
- direct descendent of the person of the person's spouse or civil partner who are either under the age of 21 or dependent direct relatives in the ascending line of that person or the person's spouse of civil partner, or
- dependent direct relatives in the ascending line of that person or the person's spouse or civil partner

For a Swiss employed person, a Swiss self-employed person, a Swiss frontier employed person or a Swiss frontier self-employed person the definition of family member is:

- the person's spouse of civil partner, or
- the person's child or the child of that person's spouse or civil partner

For the purposes of this section:

- 'EEA worker' refers to an EEA migrant worker/self-employed person/frontier worker/frontier self-employed person
- 'Swiss worker' refers to a Swiss employed person/self-employed person/frontier employed person/frontier self-employed person

#### EEA workers

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

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

When establishing the eligibility of persons who may come within scope of a dependent direct relative in the ascending line of an EEA migrant worker, 'dependent' will often mean financially dependent. In order to determine financial dependency, SFE may consider the following: can the applicant meet all of their essential needs (such as food, utilities and accommodation) with or without their family's support. If they would not be able to meet all of their essential needs without the financial support, they are dependent. Dependency for other reasons, such as health, will also be considered. Dependency must be over a sustained period.

### **Swiss workers**

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

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

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

- 'child' refers to their
  - child, a child of which they are a guardian, or a child of which they have parental responsibility (this includes step-child),
- 'parent' refers to a
  - parent, guardian or any other person having parental responsibility for a child (this includes step-parents), and

in every case the parent must have established migrant worker status in this country and the child must meet the residence conditions.

EEA migrant workers, EEA self-employed workers, Swiss employed persons, Swiss self-employed persons, as well as family members of any of these persons must be (paragraph 6(1)(a)(i), (ii) and (iii) of Schedule 1 (Part 2) of the Regulations: )

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

EEA frontier workers, EEA frontier self-employed persons, Swiss frontier employed persons, Swiss frontier self-employed persons, as well as family members of any of these persons do not need to be ordinarily resident in England on the first day of the first academic year of the course as per paragraph 6(2) of Schedule 1 (Part 2) of the Regulations. They must have been ordinarily resident in the territory comprising the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

### **3.11 Paragraph 7 – Children of former EEA migrant workers**

---

To be eligible for support under this paragraph a student must be the child of someone who was an EEA migrant worker in the UK and who has remained in this country in order to complete their studies. To consider eligibility under paragraph 7, we are of the opinion that it would be reasonable to require that the child had studied here (at a level below HE) whilst they were dependent or under 21. Once eligibility is established under this paragraph, it will continue, whether or not the parent remains in the UK. Eligibility for the child of a migrant worker will also continue for the duration of the course in cases where the migrant worker dies.

Paragraph 7 students are 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.

Article 12 states that “The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions”.

The DfE advises that this provision may apply to the children of EEA workers in the UK where that worker is no longer a worker here.

### **3.12 Gibraltar nationals working in the UK**

---

Gibraltar is only a part of the EEA by virtue of membership of the EU being extended to it through its connection with the UK. As such, Gibraltar is not a Member State of the EU or EEA in its own right.

The regulations define an ‘EEA migrant worker’ as an ‘EEA national who is a worker other than an EEA frontier worker in the United Kingdom’ and an ‘EEA national’ as a ‘national of an EEA state other than the United Kingdom’. As a result, Gibraltar nationals working in the UK do not meet the definition of an ‘EEA migrant worker’ and therefore cannot qualify for support under paragraphs 6 or 7 of Schedule 1 (Part 2).

EEA migrant worker status under the Regulations does therefore not include Gibraltar nationals working in the UK.

### **3.13 Paragraph 8 – UK settled persons who have exercised a right of residence elsewhere**

---

Under paragraph 8 of Schedule 1, specific provisions are made for persons who hold a settled status in the UK and have 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 Agreement with the Swiss Federation that is equivalent to a right under Article 7 of Directive 2004/38 (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 (please note that ‘family member’ here has the meaning provided in Article 7 of Directive 2004/38) (e.g. the American spouse of a UK national accompanies them when they go to work in Germany)
- a family member of a UK national exercises a right under the EEA Agreement or the Agreement with the Swiss Federation that is equivalent to a right under Article 7 of Directive 2004/38 (please note that ‘family member’ here has the meaning provided in relation to the right being exercised under the EEA Agreement or Swiss Agreement) (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 Agreement with the Swiss Federation that is equivalent to a right under Article 7 of Directive 2004/38

a person who has acquired the right of permanent residence in the UK (as defined in the Regulations) goes to the state within the territory comprising the EEA and Switzerland of which he is a national or of which the person in relation to whom he is a family member is a national. The other requirements that need to be satisfied are listed below. The applicant must:

- be ordinarily resident in the UK on the day on which the first term of the academic year actually begins,

- have been ordinarily resident in the territory comprising the EEA and Switzerland for the three-year period preceding the first day of the first academic year of the course, and
- where the three-year residence period referred to above was wholly or mainly for the purpose of receiving FT education, has been ordinarily resident in the EEA and Switzerland immediately before that period of residence.

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 leaves England to live in Spain, with the parents going as workers and the children accompanying them. If the daughter returns to the UK aged 18 to enter HE, she may be eligible for support under paragraph 8 of Schedule 1 if she satisfies the relevant provisions.

Students who commenced their course in September 2009 or later who are settled in the UK and exercise a right of residence anywhere in the EEA or Switzerland for a period in excess of 3 months then return to the UK and apply for support within 3 years of their return, should apply to the UK domicile that they were resident in before they left the UK, regardless of the domicile they are resident in once returned to the UK.

### **3.13.1 Persons settled in the UK who move to Gibraltar then return before the first day of the first academic year**

'UK national' includes Gibraltar nationals, whereas the UK as a physical territory includes only Great Britain and Northern Ireland, and not Gibraltar.

A person who is settled in the UK, moves to Gibraltar, and then returns to the UK before the first day of the first academic year would not be exercising a right of free movement under paragraph 8 of Schedule 1 of the Student Support Regulations. The Treaty establishing the European Community (the EC treaty) is only extended to Gibraltar by virtue of its connection with the UK, because it is a European territory "for those external relations a Member State is responsible" (Treaty establishing the European Community (Nice consolidated version), Article 299(4)). Article 7 of Directive 2004/38 of the European Parliament and of the Council of the European Union relates to a right of residence on the territory of another Member State and therefore can only apply if an individual exercises a freedom of movement in another Member State.

As Gibraltar is not a Member State in its own right, a UK resident going to Gibraltar is not moving to another Member State. For paragraph 8 to apply to a Gibraltar national, they would have had to have gone from the UK to another Member State (e.g. France) before returning to the UK.

### **3.14 Paragraph 9 – EU Nationals and their family members**

---

Until at least AY 19/20, EU nationals and their family members must satisfy the residence conditions in paragraph 9 of Schedule 1 (Part 2) in order to potentially be eligible for

support. However, this category of student may only qualify for tuition fee support. Please note that UK nationals who do not meet the criteria to receive the full package of support can be considered under this category (see further below for more information). Any description of person who would be eligible under the paragraphs immediately before exit day is to be eligible on and after exit day or until such time substantive changes to the eligibility of EU nationals and others are introduced.

In the case of an EU national who falls within Article 7(1)(c) of Directive 2004/38 (not self-sufficient) a family member is defined as:

- the person's spouse or civil partner, or
- direct descendants of the person or of the person's spouse or civil partner who are
  - a) Under the age of 21, or
  - b) dependents of the person or the person's spouse or civil partner

In the case of an EU national who falls within Article 7(1)(b) of Directive 2004/38 is self-sufficient a family member is defined as:

- the person's spouse or civil partner; or
- direct descendants of the person or of the person's spouse or civil partner who are
  - a) under the age of 21; or
  - b) dependents of the person or the person's spouse or civil partner; or
- dependent direct relatives in the person's ascending line or that of the person's spouse or civil partner

Although self-sufficient is not a term used in the Regulations, they do refer to article 7(1)(b) of Directive 2004/38. This provides that a person has a right to reside in a host Member State if the person has sufficient resources for himself/herself and family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State.

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 SFE must remain flexible in their assessment.

A student who becomes an EU national 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 16 of the Regulations).

Under paragraph 9(3) of Schedule 1 (Part 2) where a state accedes to the EU after the first day of the first academic year of the course, and a student or their family member is a national of that state, the requirement that they are an EU National on the first day of the first academic year of the course or a family member of such a person would be treated as being satisfied.

Students who fall within paragraph 9 of Schedule 1 (Part 2) are not 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.

Details of the countries and territories that make up the EU can be found in Annex C.

### **UK Nationals**

UK nationals who will be assessed under paragraph 9 are as follows:

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

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

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

In the case of a UK national, a family member is defined as:

- the person's spouse or civil partner or
- direct descendants of the person or of the person's spouse or civil partner who are
  - a) under the age of 21 or
  - b) dependants of the person or the person's spouse or civil partner

The SFE European Team in Darlington will carry out the administration of all EU students and their family members falling under paragraph 9 of Schedule 1 (Part 2). If an application of a UK national or their family member is received and it is found that they are not eligible under any of the other provisions in Schedule 1, the application is also to be handled by the SFE European team. Their telephone number is 0141 243 3570.

### **3.15 Paragraph 10A - EU nationals with a genuine link with the UK (effective from 25/03/2016)**

---

EU Nationals (other than UK nationals) with a 'genuine link' with the UK may be eligible for tuition fee support and loans for living costs and grants for living and other costs if on the first day of the first academic year of the course they satisfy the following:

- they have been ordinarily resident in the UK and Islands throughout the five year period immediately preceding the first day of the first academic year (applicants applying under this category will be asked to submit evidence to prove their five year residency),
- they are ordinarily resident in England, and
- where the period of ordinary residence referred to above was wholly or mainly for the purpose of receiving FT education, the person was ordinarily resident in the EEA and/or Switzerland immediately prior to the five year period referred to above.

To be eligible for support under paragraph 10, a person must be an EU national on the first day of the first academic year of the course. Where their state joins the EU after that date, they are treated as if they were an EU national on the first day of the first academic year of the course.

### **3.16 Paragraph 10 - EU nationals with a genuine link with the UK (prior to 25/03/2016)**

---

EU Nationals (other than UK nationals) with a 'genuine link' with the UK may be eligible for tuition fee support and loans for living costs and grants for living and other costs if on the first day of the first academic year of the course they satisfy the following:



- they have been ordinarily resident in the UK and Islands throughout the three year period immediately preceding the first day of the first academic year (applicants applying under this category will be asked to submit evidence to prove their three year residency);
- they are ordinarily resident in England; and
- where the period of ordinary residence referred to above was wholly or mainly for the purpose of receiving FT education, the person was ordinarily resident in the EEA and/or Switzerland immediately preceding the three year period referred to above.

To be eligible for support under paragraph 10, a person must be an EU national on the first day of the first academic year of the course. Where their state joins the EU after that date, they are treated as if they were an EU national on the first day of the first academic year of the course.

### **3.17 Paragraph 11 – Children of Swiss nationals**

---

A student is potentially able to qualify for support where:

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

For students who commence a course in the 13/14 AY or later, the parent(s) of the ‘child of a Swiss national’ must be exercising their free movement rights in the UK on the first day of the first academic year of the course for the student to be eligible to apply for the full package of support (tuition support, maintenance support and supplementary grants).

As becoming the ‘child of a Swiss National’ is an Event under regulation 17, an applicant may become eligible under this category after the start of the course, either by one of their parents marrying a Swiss national or if the child’s parent(s) move to the UK to live after the start of the course. Please see Section 3.20 below for the support to which they may be entitled.

### **3.18 Paragraph 12 – Children of Turkish workers**

---

A student is potentially able to qualify for support where:

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

As becoming the 'child of a Turkish Worker' is an Event under regulation 17, an applicant may become eligible under this category after the start of the course. Please see 3.20 below for the support to which they may be entitled.

### **3.19 Paragraph 13 – Long residence**

---

Effective from 6 June 2016, DfE introduced a new eligibility category for student support for those with long residence in the UK. The new long residence category extends eligibility for student support to those persons who are:

- under 18 years of age and who have lived in the UK throughout the seven-year period preceding the first day of the first academic year of their course, or
- aged 18 years or above and who, preceding the first day of the first academic year of the course, have either lived at least half their life in the UK or lived for at least 20 years in the UK. Students cannot amalgamate periods of residency to meet long residency criteria.

To be eligible for support under this category the student must also:

- be ordinarily resident in England on the first day of the first academic year of the course and have been ordinarily resident in the UK and Islands throughout the three year period immediately preceding the first day of the first academic year of their course, and
- not have been resident in the UK and Islands for the three year period referred to above wholly or mainly for the purposes of receiving FT education.

Ordinary residence means lawful residence and the student must hold some form of leave to remain issued by the Home Office (Limited Leave or Discretionary Leave to Remain or another form of leave). If a student has moved from one period of leave to another during the three years preceding the first day of the first academic year their leave must run concurrently, i.e. the application for the second period of leave was made in time before the first period elapsed. A break in leave will mean that the student was here unlawfully and they will not satisfy the ordinary residence requirement. It should be noted, however, that

the SLC relies on information from the Home Office in relation to residency matters, and that the Home Office does have the power to disregard a period of overstaying. For further information on this please see section 2.1 (Ordinary lawful residence).

Students need to meet the eligibility criteria before the first day of the first academic year of the course. Students who only meet the criteria after the first day of the first academic year of their course are not eligible for any support. The student's cohort will be determined based on the first academic year of the student's course and this defines the support package available.

The onus is on the student to demonstrate that they meet the long residence requirements. Whilst only a confirmed entry date from Immigration Control and verified by the Home Office would be evidence of entry to the UK, the student may provide evidence to SFE that they have been living in the UK. This evidence is considered on a case-by-case basis and may include (but is not limited to):

- a school letter and records on headed paper, signed by someone in authority (Deputy Head, Head etc) within the school, stating the dates each year the student was in attendance,
- a letter from a GP,
- confirmation of university / college attendance,
- a council tax bill,
- wage slips / P60 / P45 / Self Assessment Tax Return, or
- a confirmation of employment from employer on company headed paper signed by a senior member of staff with contact details provided.

Please note that this evidence can also be considered when a Home Office check/documentation does not provide a definitive date of entry into the UK.

It should also be noted that a valid entry clearance visa, such as a visitor visa, is not in itself confirmation the student entered the UK at that time. Individuals usually receive an entry clearance for a 6 month period of time.

SFE should establish the student's three years ordinary residence in the UK and Islands, preceding the first day of the first academic year before requesting evidence to satisfy the long residence requirements.

The calculation for long residence is determined by the student's age as of the first day of the first academic year of their course, and their entry date to the UK (or relevant other

evidence demonstrating they were living in the UK throughout the required period). This will mean that the seven-year, half-life or 20 year calculation can be determined by the first day of the first academic year of the course.

It should be noted that a similar category is present in the NHS Bursary rules. Even if the student is assessed as meeting the rules of the NHS Bursary scheme the checks should still be carried out by SFE if the student applies for a reduced level maintenance loan.

Consideration should be given as to whether the student may qualify under another category. In some cases a student may not meet the terms of the new long residence category but if they are a non-EEA national and related to a British or EU citizen they may qualify for a tuition fee loan under paragraph 9 of Schedule 1 (Part 2) of the Regulations.

### **3.20 Students who become eligible under paragraphs 3-6, 11 and 12 after the start of the course**

---

Where the statuses under paragraphs 3-6, 11 and 12 is acquired before the start of the academic year, the student will be eligible to be assessed for support for the entire year subject to meeting any ongoing eligibility requirements.

Students with statuses under paragraphs 3-6, 11 and 12 can become eligible in the course of an academic year (regulations 16 and 17 of the Regulations).

Any applications for support must be made in line with the general time limits as set out in regulation 9 of the 2011 Regulations (see section 1.1). If an application for support is received within the initial nine-month period and the student subsequently wishes to apply for an additional amount of loan then the new loan application must be received no later than one month before the end of the academic year to which the application relates. Applications for support relating to multiple academic years should only be processed if they were received within the applicable timeframes for each academic year.

Students granted one of the statuses described under paragraphs 3-6, 11 and 12 prior to the start of their course will be eligible for support for the duration of their course provided they meet all applicable criteria after each year's application.

If a student becomes eligible under these paragraphs after the start of the course they will be eligible for:

- loans for living costs, Adult Dependents' Grant (ADG) and Parents' Learning Allowance (PLA) in any subsequent years of the course (and in the quarters following the award in the year of the award, except the quarter in which the longest vacation falls)
- Childcare Grant (CCG), Travel Grant and DSA in any subsequent years of the course and in the quarters following the award in the year of award, except the quarter in which the longest vacation falls. See the 20/21 Grants for Dependents (GFDs) and

20/21 Assessing Financial Entitlement guidance chapters for further information on the support available to students who become eligible during the course

- (for pre 2016 cohort students) maintenance grant or special support grant in any subsequent years of the course and in the quarters following the award of the status (if the status was acquired within three months of the first day of the academic year)
- tuition fee support in the academic year in which the award of the status occurs and in any subsequent years of the course (but not previous academic years)

## 4 Course eligibility

### 4.1 Designated courses

---

Only designated courses will attract support under the student support regulations. The provisions in relation to the designation of courses for tuition fee support, living cost support and supplementary grants are as follows:

- regulation 5 for FT courses including FT distance learning courses that begin on or after 1 September 2012
- regulation 139 for PT courses including PT distance learning courses
- Schedule 2 for course types that can be designated
- regulation 161 sets out provisions in relation to the designation of postgraduate courses for Postgraduate DSAs only.

Courses beginning on or after 1 September 2012 which fall within paragraphs 1, 2, 4, 6, 7 or 8 of Schedule 2 should lead to a qualification which is granted by a body which is recognised to award UK degrees, i.e. a recognised body or by a body that is permitted to act on behalf of a recognised body in the granting of degrees (i.e. a listed body).

Regardless of the mode of study, from AY 19/20, courses which are provided in part or entirely by a franchisee provider in England are automatically designated. Franchised provisions at private providers in Wales, Scotland or Northern Ireland are still required to apply for specific designation.

### 4.2 Automatic designation of full-time courses (regulation 5)

---

A course will automatically be designated for FT or FT distance learning support under regulation 5 if it is:

- of a type which is listed in Schedule 2 of the Regulations (this list is set out under the paragraph below)

- one of the following:
  - a FT course (including FT distance learning courses)
  - a sandwich course
- of at least one academic year's duration and
- either:
  - wholly provided by a registered provider, or provided by a registered or unregistered provider on behalf of a registered provider in England,
  - wholly provided by an authority-funded institution in Scotland or Northern Ireland, or in Wales where the course began before 1<sup>st</sup> September 2017,
  - provided by a registered provider on behalf of an authority-funded institution in Scotland or Northern Ireland, or in Wales where the course began before 1<sup>st</sup> September 2017,
  - provided by a registered provider on behalf of a regulated institution in Wales where the course began on or after 1<sup>st</sup> September 2017,
  - provided by a publicly funded institution situated in Scotland, Northern Ireland, or Wales on behalf of a registered provider in England, or by a publicly funded institution situated in Scotland, Northern Ireland or Wales on behalf of an authority-funded institution in Scotland or Northern Ireland, or in Wales where the course began before 1<sup>st</sup> September 2017,
  - provided by a publicly funded institution in Scotland, Northern Ireland or Wales on behalf of a regulated institution in Wales where the course begins on or after 1 September 2017,
  - provided by a registered provider in England in conjunction with an institution which is situated outside the United Kingdom,
  - provided by an authority-funded institution in Scotland or Northern Ireland, or in Wales where the course began before 1<sup>st</sup> September 2017, in conjunction with an institution which is situated outside the United Kingdom, or
  - provided by a regulated institution in Wales or a regulated institution in Wales in conjunction with an institution which is situated outside the United Kingdom, where that course begins on or after 1<sup>st</sup> September 2017, or
  - a Welsh designated FT course, a Scottish designated FT course or a Northern Irish designated FT course

A Welsh designated FT course is a FT course provided by an institution situated in Wales:

- designated by the Welsh Ministers under regulation 5(8) of the Education (Student Support) (Wales) Regulations 2017 for the purposes of section 22 of the 1998 Act and Regulation 4(1) of those Regulations or
- specified to be treated as a designated course by the Welsh Ministers regulation 8(1) of the Education (Student Support) (Wales) Regulations 2018, for the purposes of those Regulations.

A Scottish designated FT course is a FT course provided by an institution situated in Scotland:

- determined as designated by the Scottish Ministers under regulation 4(9) of the Education (Student Loans) (Scotland) Regulations 2007 for the purposes of regulation 3(2) of those Regulations
- designated by the Department for the Economy in Northern Ireland under regulation 6(9) of the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 for the purposes of Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 and regulation 5 of those Regulations and
- either—
  - (i) designated by the Welsh Ministers under regulation 5(8) of the Education (Student Support) (Wales) Regulations 2017 for the purposes of section 22 of the 1998 Act and Regulation 4(1) of those Regulations or
  - (ii) specified to be treated as a designated course by the Welsh Ministers regulation 8(1) of the Education (Student Support) (Wales) Regulations 2018, for the purposes of those Regulations

A Northern Irish designated FT course” means a FT course provided by an institution situated in Northern Ireland designated by the Department for the Economy in Northern Ireland under regulation 6(9) of the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 for the purposes of Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 and regulation 122 of those Regulations. Since 15/16 AY combined study courses between the UK and abroad can only be designated for student support where at least 50% of the teaching and learning that comprise the course takes place at a UK institution. DfE has advised that the determination of 50% should be based on the number of weeks of study. For example, a course which is comprised of two years study in the UK and two years study abroad would appear to meet the 50% criteria. On review of the number of weeks of study however (53 weeks study in the UK and 54 weeks study abroad), it would not be designated for support.

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

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

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

These courses may be subject to fee loan restrictions by virtue of them meeting the provisions set out in regulation 23(7B). If the student is attending a FT course at an approved (fee cap) provider with an Access and Participation plan and TEF award, Regulation 23(7B) provides that if the student undertakes less than 10 weeks of study at the UK institution in an academic year a reduced fee loan limit applies. The reduced fee loan limit for a course in such circumstances is 15% of the maximum fee loan limit therefore, up to £1,385 where the maximum fee loan limit is £9,250.

However, if a student studies at the UK institution for 10 weeks or more in an academic year then the full fee loan amount will be available (up to £9,250 under regulation 23(3)(b)) if students do not meet the provisions set out under regulation 23(7B).

For more information on how the provisions of regulation 23 (7B) impacts entitlement where the student is at another category of provider or on an accelerated degree course, please see the Assessing Financial Entitlement guidance chapter.

Regulation 23(7B) also restricts fee loans for an academic year to the abroad rate where the periods of FT study which are not undertaken at the UK institution exceed 30 weeks for the current academic year and any preceding academic year.

Therefore, courses where two full years are studied in the UK and two full years are studied abroad attract two years of full fees and two years of abroad rate fees. Whereas courses comprised of study in the UK and abroad in each academic year may attract full fees (where 10 weeks or more are studied in the UK) until the academic year which the 30-week rule becomes applicable and the abroad rate should be charged.

DfE has advised that in order for a course with an abroad element to be designated, fees for all years of the course should be set and administered via the UK institution.

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



quarter. The travel grant is means-tested and is paid towards reasonable travel costs for more information on how entitlement to travel grant is determined. Please see the Assessing Financial Entitlement guidance chapter.

'Quarter' in relation to an academic year means a period in that year:

- beginning on 1 January and ending on 31 March,
- beginning on 1 April and ending on 30 June,
- beginning on 1 July and ending on 31 August, or
- beginning on 1 September and ending on 31 December.

#### 4.3

##### **Automatic designation of part -time courses (regulation 139)**

---

To potentially qualify for PT fee and maintenance support the student must undertake a designated PT course. Regulation 139 sets out which courses are considered designated PT courses. A course will be a designated PT course if it meets the criteria in regulation 139(1) or it has been designated by the Secretary of State under regulation 139(7).

For further information on the designation of PT courses as well as franchise arrangements and minimum course length, please see the Course Designation section of the 20/21 Support for Part-Time Students guidance chapter.

#### 4.4 **Automatic designation of postgraduate courses Disabled Students' Allowance (regulation 161)**

---

A postgraduate course will be automatically designated for postgraduate DSA only if it is:

- a course for which entry requirements are normally a first degree (or equivalent qualification) or higher,
- at least one academic year's duration and in the case of a PT course, should not exceed
  - four times the period normally required to complete a FT course leading to the same qualification, where the student starts the course on or after 1 September 2012, and
- be either:
  - wholly provided by a registered provider, or provided by a registered or unregistered provider on behalf of a registered provider in England,
  - wholly provided by an authority-funded institution in Scotland, Northern Ireland or Wales,

- provided by a registered provider on behalf of an authority-funded institution in Scotland, Northern Ireland or Wales,
- provided by an institution situated in Scotland, Northern Ireland, or Wales on behalf of a registered provider in England, or by a publicly funded institution situated in Scotland, Northern Ireland or Wales on behalf of an authority-funded institution in Scotland, Northern Ireland or Wales,
- provided by a registered provider in England in conjunction with an institution which is situated outside the United Kingdom, or
- provided by an authority-funded institution in Scotland Northern Ireland or Wales in conjunction with an institution which is situated outside the United Kingdom or
- a Welsh designated postgraduate

A Welsh designated postgraduate course is a postgraduate course provided by an institution situated in Wales:

- designated by the Welsh Ministers under 112(4) of the Education (Student Support) (Wales) Regulations 2017 for the purposes of section 22 of the 1998 Act and regulation 110 of those Regulations or
- specified to be treated as a designated course by the Welsh Ministers under paragraph 3 of Schedule 4 to the Education (Student Support) (Wales) Regulations 2018, for the purposes of those Regulations.

A Scottish designated postgraduate course is a postgraduate course provided by an institution situated in Scotland:

- determined as designated by the Scottish Ministers under regulation 4(9) of the Education (Student Loans) (Scotland) Regulations 2007 for the purposes of regulation 3(2) of those Regulations
- designated by the Department for the Economy in Northern Ireland under regulation 141(4) of the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 for the purposes of Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 (and regulation 139 of those Regulations) and
- either—

- (i) designated by the Welsh Ministers under 112(4) of the Education (Student Support) (Wales) Regulations 2017 for the purposes of section 22 of the 1998 Act and regulation 110 of those Regulations or
- (ii) specified to be treated as a designated course by the Welsh Ministers under paragraph 3 of Schedule 4 to the Education (Student Support) (Wales) Regulations 2018, for the purposes of those Regulations.

A Northern Irish designated postgraduate course means a postgraduate course provided by an institution situated in Northern Ireland designated by the Department for the Economy in Northern Ireland under regulation 141(4) of the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 for the purposes of Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 (and regulation 139 of those Regulations).

Some courses designated under this regulation may also be designated for further support under the provisions of the Education (Postgraduate Master's Degree Loans) Regulations 2016 (as amended). Further guidance on postgraduate master's loans can be found in the 20/21 Postgraduate Loans for Master's Courses guidance chapter. For guidance on postgraduate loans for doctoral degrees, please see the 20/21 Postgraduate Loans for Doctoral Degrees guidance chapter.

#### **4.5 Automatic designation of courses (Schedule 2)**

---

Providing they meet the other criteria in regulations 5 and 139, the following types of course are designated automatically:

- a first degree course
- a course for the Diploma of Higher Education (Dip HE)
- a course for the Higher National Diploma (HND) or Higher National Certificate (HNC) of
  - The Business and Technician Education Council, or
  - The Scottish Qualifications Authority
- a course for the Certificate of Higher Education
- a course of initial training for teachers
- a course in preparation for a professional examination of a standard higher than that of,
  - the examination at advanced level for the General Certificate of Education or the examination at the higher level for the Scottish Certificate of Education, or

- The examination for the National Certificate or the National Diploma of either of the bodies mentioned in paragraph 3
- not being a course for entry to which a first degree (or equivalent qualification) is normally required
- a course:
  - providing education (whether or not in preparation for an examination) the standard of which is higher than that of courses providing education in preparation for any of the examinations mentioned in paragraph 7(a) or (b) above but not higher than that of a first degree course, and
  - for entry to which a first degree (or equivalent qualification) is not normally required (e.g. an NVQ level 4 where this is awarded along with a first degree, Dip HE or HND)

Further detail on these course types can be found in section 4.6 below.

#### **4.6 Interpretation of provisions on automatically designated courses**

---

DfE does not normally maintain any lists of courses which are automatically designated under regulation 5 (FT) and 139 (PT). All of these courses should appear on the Course Management System (CMS), the course database. The courses on this system should meet the designation criteria, however it will be for SFE to decide which of them are eligible for support. SFE may decide to contact the student or HEP directly if the information is required to establish whether a course is eligible for designation (the entry qualification required and the qualification it leads to).

#### **4.7 The Office for Students (OfS)**

---

The regulatory framework for HEPs is changing in line with the new Higher Education Research Act 2017. The Act created a new body called the OfS who will be responsible for certain functions surrounding HEP regulation, such as quality, financial sustainability, governance and regulatory monitoring of registered English HEPs from the 01 August 2019.

From 1 August 2019 All English HEPs who wish to access student finance support must register with the OfS. Providers that previously had courses specifically designated for student support will no longer need to apply for specific designation.

Designation of English providers is linked to registration with the OfS, in that all registered HEPs will be automatically designated for student support. However, the Secretary of State will retain the ability to designate or de-designate for student support purposes outside of this system (further detail can be found in section 4.8 below).

From AY 19/20, providers in England are no longer categorised as publicly/authority funded or privately funded and the categories of registration with the OfS are:

- Approved (fee cap) and
- Approved

Whilst there are only two categories of registration with the OfS tuition fee loan amounts are also dependent on other factors including:

- Access and Participation Plans (where the provider is in the Approved (fee cap) category)
- TEF awards (both categories)

For more information on fee caps, and tuition fee loan rates please see the Assessing Financial Entitlement guidance chapter.

From AY 19/20, the OfS grants teach out where a provider was designated in AY 18/19 but does not register with the OfS in AY 19/20. Unregistered providers in England (other than on behalf of an approved or approved (fee cap) provider) that were publicly funded in 2018/19 and offering designated courses starting before 1 August 2019 attract fee loans at the approved provider rates under Regulations 23(4), 23(4ZA), 23(4A) and 23(4B).

#### **4.8 Specific designation (regulations 5(10), 139(7), 161(4))**

---

The Secretary of State has the power to designate courses that are not automatically designated under the Regulations: regulation 5(10) for FT courses (including FT distance learning courses starting on or after 1 September 2012), and regulation 139(7) for PT courses and regulation 161(4) for postgraduate courses.

From AY 13/14 a new specific designation was introduced which was administered by HEFCE. HEFCE closed at the end of March 2018 and many of its functions were continued by the Office for Students (OfS) who supported the Secretary of State with specific designation during the 18/19 academic year.

The OfS website has information on the arrangements for providers that were previously funded by HEFCE, and for providers currently designated for student support by the Secretary of State, at the following link: <https://www.officeforstudents.org.uk/advice-and-guidance/the-register/existing-regulatory-data/>

HEFCE had a Register of Providers, which included details of all providers with specifically designated courses and details of their designated courses. This list was transferred to the OfS website and was first published in July 2018. The register is updated when a new provider has been through the registration process. Please check the OfS website for up to date information on the Register: <https://www.officeforstudents.org.uk/advice-and-guidance/the-register/the-ofs-register/>

#### 4.9 Designation of School Centred Initial Teacher Training (SCITT) schemes

---

If a student is undertaking an ITT course as part of a SCITT scheme at an institution that is not registered with the OfS then they will not be eligible to apply for funding (unless the course is specifically designated by DfE. The OfS is responsible for maintaining and publishing a separate register of SCITT providers.

#### 4.10 Franchising arrangements

---

Many institutions of higher education have entered or are considering franchising arrangements for their courses with other institutions of higher and of further education (including Approved and non-OfS registered institutions). Franchising arrangements take a number of forms. For example, the parent institution may determine to a varying degree the course content, they may provide some or all of the course materials and may also provide some or all of the lecturers. The parent institution may also enrol the students itself and receive grants from its Funding Council in respect of them and be responsible to its Funding Council for the quality of the teaching on the course.

Where a whole course is franchised, it should be regarded for the purposes of the Regulations as being provided by the franchisee as long as the franchisee is providing the training and supervision. A course is provided by the institution which provides the teaching and supervision of the course (regulation 5(7)(a)). Providers in England running franchised courses in AY 19/20 or later regardless if the franchisee is a registered or non registered provider are automatically designated courses in England.

For providers in Wales, Scotland or Northern Ireland the designation of franchised courses remains unchanged from previous academic years. If the franchisee is a publicly-funded institution, and the course is one which is capable of designation under regulation 5, it will be automatically designated. However, if it is a private institution, specific designation will have to be sought from DfE.

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

#### 4.11 Schedule 2 courses - further information

---

##### 4.11.1 First degree courses - (Schedule 2, paragraph 1)

For the purposes of student support, a first degree includes honours degrees and ordinary degrees (e.g. BA, BSc, LLB etc.), first degrees in Medicine, Dentistry and Veterinary Science (e.g. MBChB or BM BS, BDS, BVetMed and BVSc), integrated Master's degrees (e.g. MEng, MChem, MPhys, MPharm) and Foundation Degrees.

A first degree course that began on or after 1 September 2009 is not a designated course where it leads to the award of a professional qualification and where a first degree (or equivalent qualification) would normally be required for entry to a course leading to the award of that professional qualification.

#### 4.11.2 Integrated Master's degree

Integrated Master's are generally four-year programmes of study in science, engineering and mathematics disciplines. They comprise an integrated programme of study including typically three years study at undergraduate level and one-year postgraduate leading to a single integrated undergraduate qualification. Students enrol at the outset for the full course. For the purposes of student support ELQ policy, they are treated as equivalent to an honours degree for undergraduate student support purposes.

#### 4.11.3 Cambridge Tripos

Courses at Cambridge University are divided into parts, each lasting one or two years. In some subjects there are two parts, Part I and Part II, while in others, especially in science and engineering, there is an optional Part III. Students enrol at the outset for the full course. If they have successfully passed each part, they continue on to Part III. This three-part degree is known as a Cambridge Tripos. On successful completion of all three parts, students may be awarded an undergraduate Masters award such as MEng or MSci. Cambridge students must state that it is their intention to take Part III of the Tripos before completion of the third year of the course.

As a whole, the four-year course can attract student support. However, Part III is also offered as a separate one-year postgraduate course. Graduates of other universities who wish to take Part III of the Tripos at Cambridge would not be enrolled on the four-year course but on the separate one-year course. As a stand-alone postgraduate course this does not qualify for UG support, except for DSAs under the Education (Student Support) Regulations 2011 (as amended), but may qualify for support under the Education (Postgraduate Master's Degree Loans) Regulations 2016 (as amended).

#### 4.11.4 Foundation degrees

Foundation degrees (FDs) are vocational higher education qualifications that feature work-based learning. Many FDs, particularly PT ones, combine academic study with learning in the workplace. FDs were introduced to help address the skills gap at the associate professional and higher technician level. FDs are typically developed with substantial help from employers and other stakeholders such as professional bodies. Foundation degrees constitute 240 credits and provide a defined progression route to some bachelor's degrees.

Many foundation degree courses are automatically designated for support, provided they meet all parts of regulation 5(1) or 139(1). However, HEPs have been encouraged to be flexible in their provision of foundation degrees, and consequently a number may be organised so that days of learning in the workplace and days of study are combined in the same week. DfE do not want students on these courses to be penalised relative to those doing a similar amount of study but via a more traditional route.

Foundation degree courses are usually two years in duration though some may take longer to complete. They may be FT courses or sandwich courses. Some may be PT as they do not contain enough FT study per year on average to meet the definition of a sandwich course, and they meet the definition of a PT course under regulation 139.

Some foundation degree courses feature learning in the workplace, which should be treated as FT study in an institution in the same way as applied in the definition of a sandwich course and of determining levels of support.

#### 4.11.5 Initial Teacher Training (ITT) courses (Schedule 2 - paragraph 5)

For the purposes of student support there are two main types of ITT courses which can be designated. These are ITT courses that lead to Qualified Teacher Status (QTS) for intending schoolteachers and ITT courses for those wishing to teach in the further education (FE) sector. These courses can be delivered under a range of different models and the designation and approval arrangements vary. Schools ITT courses can be delivered by registered Approved (fee cap) and registered Approved institutions or by SCITT providers (some of these may be delivered under the School Direct programme). ITT courses for the FE sector are delivered mainly by registered Approved (fee cap) institutions and in some cases by registered Approved institutions. Further details are provided below:

- ITT courses taken as part of an employment-based teacher training scheme are not designated courses.
- The Student Support Regulations specify that “employment-based teacher training scheme” means:
  - (a) a scheme established by the Secretary of State whereby a person may undertake ITT in order to obtain qualified teacher status while being employed to teach at a school or other educational institution except a pupil referral unit; or
  - (b) a scheme established by the National Assembly for Wales or the Welsh Ministers whereby persons who are or who have been employed in a school or other educational institution except a pupil referral unit may become qualified teachers.

This definition is only relevant to schools-based ITT courses leading to qualified teacher status (QTS).

#### 4.12 Full-time ITT courses

---

FT ITT courses that lead to a first degree are defined in the Regulations as per all FT non-ITT courses that lead to a first degree.

FT ITT courses that do not lead to a first degree (i.e. Graduate courses leading to QTS or that enable someone to teach in FE) are courses of at least one academic year but no more than



two academic years in length, where the periods of study in each academic year are at least 300 hours. A week of study can be considered as 30 hours.

All students commencing FT undergraduate or postgraduate ITT courses are eligible for maintenance support as per undergraduate FT students.

#### 4.13 Part-time ITT courses

---

ITT courses that are at least one academic year in length and do not meet the minimum hours criteria as set out above for FT non-first degree courses are considered to be PT ITT courses if they meet the appropriate intensity of study conditions. For courses beginning before 1 September 2012, intensity of study is at least 50% of an equivalent FT course over the duration of the PT course. For courses beginning on or after 1 September 2012, intensity of study is at least 25% of an equivalent FT course over the duration of the PT course and in each year. These courses attract the PT support package only, regardless of whether or not the course leads to a first degree.

All students commencing PT undergraduate or postgraduate ITT courses will be eligible for the PT support package as other undergraduate PT students.

#### 4.14 School Centred Initial Teacher Training (SCITT) scheme (QTS only)

---

Programmes offered by SCITT providers are typically postgraduate ITT courses designed and delivered by organisations including schools, local authorities, private companies or FE colleges. Responsibility for accrediting these providers now sits with DfE. The courses lead to QTS with many also awarding an academic award such as a Postgraduate Certificate in Education (PGCE) that is validated by an HE provider. There are partnerships of schools running SCITT courses all over England providing different kinds of teacher training covering primary, middle years and the full range of secondary subjects. SCITT courses generally last one year FT.

##### 4.14.1 School Direct Training Programme

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

- **Schools Direct Training Programme (unsalaryed)** is for graduates who will be part of a school team from enrolment. These graduates may be eligible for a bursary of up to £26,000 to support them in training. The training bursary is paid by DfE. Where undertaken on a FT basis, students on these courses can attract the FT package of support. Where undertaken on a PT basis, these students can attract the PT tuition loan only.

- **Schools Direct Training Programme (salaried)** is an employment-based route for graduates. These graduates will earn a salary while they undertake this programme through Schools Direct salaried programme. Where a student opts for the 'salaried' programme they are ineligible for support under the Regulations.

#### 4.14.2 ITT courses for teaching in the FE sector

ITT courses suitable for those wishing to teach in FE are based on the suite of qualifications created by Learning and Skills Advisory Service (LSIS) in 2013. From 1 September 2014 these have been the only qualifications that are eligible for HE student support funding for new students. The qualifications are:

- Diploma in Education and Training (DET)- 120 credits,
- Diploma in Education and Training integrated specialist diplomas – 120 credits (or in the case of the English: Literacy and ESOL Diploma 135 credits),
- Diploma in Education and Training with specialist pathways – 120 credits (or in the case of the English: Literacy and ESOL Diploma 135 credits), and

The DET courses mentioned above are generally available as a level 5 qualification. When delivered by an FE provider or an alternative provider the qualification will be one developed by an Office of Qualifications and Examinations Regulation (Ofqual) recognised Awarding Organisation e.g. City and Guilds or Pearson and included on the Ofqual Register of Regulated Qualifications. They should take account of the revised guidance developed by the FE Advice Service in 2017.

HEPs also offer their own FE ITT qualifications, at level 5, 6 or 7. From 2020/21 any new FE ITT courses should be designated as:

- A Certificate in Education (Cert Ed) at level 5
- A Professional Graduate Certificate in Education (PgCE) at level 6
- A Postgraduate Certificate in Education (PGCE) at level 7

The terms Postgraduate Diploma (PGD) and Postgraduate Diploma in Education (PGDE) should not be used.

Courses for FE ITT do not lead to the award of QTS. However, they will have been designed and validated to meet requirements of the DET to be classified as an ITT course and eligible for funding.

#### 4.14.3 Which FE ITT courses can be designated for student support?

Currently all DET and DET compliant courses developed by HEPs that are mentioned above can be designated for student support.

English providers who are registered with OfS and Public/Authority funded providers in Wales, Scotland and NI may have courses automatically designated and will need to add their new FE ITT courses to their existing list of courses on the Course Management System.

English providers who are not registered with OfS or private/non-authority funded providers in Wales, Scotland and NI (for example some further education colleges and sixth form colleges) would have, prior to 1 April 2018, applied to the Secretary of State/HEFCE to be specifically designated. From 1 April 2018, non-authority-funded providers that plan to deliver FE ITT qualifications have to apply to the Secretary of State, through the OfS, for the course(s) to be specifically designated. This is the case regardless of whether they had a course specifically designated previously.

#### 4.15 Courses falling under paragraph 7 of Schedule 2 (Part 2)

---

The provision under paragraph 7 of Schedule 2 is a very general one. It has the effect of designating any course which meets the other requirements of regulation 5 and:

- is at a standard higher than GCE A levels, Scottish Highers, the National Certificate and National Diploma, but
- is at a standard not higher than a first degree course, and
- for which a first degree or equivalent qualification is not normally required.

The SFE will therefore find in many cases that they can establish whether a course falls under paragraph 7 of Schedule 2 without having to establish whether it falls under either of paragraphs 3 or 4.

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.

Courses under this paragraph must lead to a qualification awarded by a provider with UK degree awarding powers in order to attract student support.

In establishing whether a course is within this paragraph, SFE will need to determine the:

- level of the qualification which the course leads to, and
- the normal entry requirement for the course.

Courses can only qualify under these paragraphs if a first degree or equivalent qualification is not a normal entry requirement.

It is recognised that some courses may allow for some students to enrol with prior experience. However as the determination under this paragraph is for the course as a whole it will not be sufficient to establish that entry may be obtained without a first degree on an individual basis. SFE must be satisfied that the normal entry requirement for the entire course is without a first degree or equivalent qualification.

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.

#### **4.16 Non-standard courses**

---

##### **4.16.1 Access courses**

Access courses are separate and distinct courses that 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 meet the designation criteria for student support purposes because they do not lead to one of the qualifications shown in Schedule 2. They are unlikely to meet the criteria for foundation years (see section 4.10.4) as part of a designated extended degree course and so will not attract support on that basis either.

However, level 3 access courses may attract Advanced Learner Loan.

##### **4.16.2 Accelerated degree courses**

These courses are FT undergraduate degree courses compressed into a shorter timescale than a standard length degree. The most common scenario is where an undergraduate degree course is delivered over two academic years instead of three as is the case for a standard intensity course.

Up until AY 19/20 there was no distinction made between the fee charge cap and maximum tuition fee loan amount available per academic year of standard length HE degrees and Accelerated degrees. The living costs support package for academic years of Accelerated degrees has also been as per academic years of standard intensity HE courses, with the exception that the 'full year' rather than 'final year' loan for living costs rate has been paid in the final year of an Accelerated degree course.

New students starting accelerated courses since AY 19/20, have been able to apply for a higher maximum tuition fee loan to match the higher fee cap per academic year that Approved (fee cap) providers will be able to charge. New students at Approved HEPs who are undertaking an Accelerated degree will also be able to access a higher tuition fee loan amount than for a standard intensity course, however the fee itself is not capped. There is no change from AY 19/20 to the living costs support arrangements in place for new students starting an Accelerated degree; they can apply for the same level of living costs support as

new students starting a standard length HE course. The 'full year' loan for living costs rate will continue to be paid in the final year of an Accelerated degree course. For information on the support available for Accelerated degree courses please refer to the AY 20/21 Assessing Financial Entitlement guidance chapter.

Regulation 2(1) of the Education (Student Support) Regulations 2011, as amended, defines an Accelerated degree course as follows:

'where the course begins on or after 1st August 2019, a higher education course as defined in section 83(1) of the 2017 [Higher Education and Research] Act where the number of academic years applicable to the course is at least one fewer than would normally be the case for that course or a course of equivalent content leading to the grant of the same or an equivalent academic award'

The Office for Students (OfS) will approve the HEPs that are to deliver Accelerated degrees. The HEP will then upload the Accelerated degree courses to CMS as per current practices.

For information on the support available for Accelerated degree courses please refer to the AY 20/21 Assessing Financial Entitlement guidance chapter.

#### **4.16.3 Compressed degree courses (regulation 2(2))**

These courses are FT undergraduate honours degree courses delivered over two long academic years (24 months) by higher education institutions which started before 1 August 2019. Compressed degree courses are intensive courses which may include an element of distance learning. For the purposes of student living costs support, students on intensive degree courses are considered to be in attendance whilst undertaking the distance learning.

A number of compressed degree courses were introduced from 2006 through a pilot scheme that was supported by HEFCE as Flexible Learning Pathfinders. These were specifically designated for the purpose of student support.

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 which started before 1 August 2019.

Regulation 2(1) defines a 'compressed degree student'. SFE 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, SFE should note that, unless they are a disabled student who cannot attend the course for a reason connected to their disability, a student can only be treated as a compressed degree student for the 2016/17 academic year if they are required to be in attendance on the course for part of that year.

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

Some courses are extended beyond their normal length to include a foundation year designed to prepare students for study in their chosen subject whose qualifications or experience, while acceptable for entry to higher education, are not entirely appropriate for normal entry to their particular course. The whole of this type of extended course is designated for support provided that:

- the foundation year is an integral part of the course and that the course as a whole is designated by or under the Regulations, and
- students enrol at the outset for the full duration of the extended course.

Foundation years are not the same as foundation degrees and the two should not be confused.

Free-standing foundation or conversion courses are typically a year in length. Therefore, they are not normally designated in their own right as they are not an integral part of a designated course.

SFE may have to review an apparent free-standing foundation/conversion course. It is DFE's view that such a course may be regarded as an integral part of a designated course 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.

#### 4.16.5 Conversion courses

A conversion course is a free-standing course which, like a free-standing foundation course, is typically a year in length. These courses are not normally designated in their own right as they are not an integral part of a designated course.

#### 4.16.6 Irish colleges

Higher education colleges and universities in the Republic of Ireland, such as Trinity College Dublin, are not in the United Kingdom and are therefore classed as overseas institutions for students that are resident in England. Courses at Republic of Ireland institutions are therefore not designated for support under the Regulations and English domiciled students undertaking courses at these institutions are not eligible for student support from the English Government.

Assessors should note that courses at institutions in the Republic of Ireland do appear on the HEP database but are only designated for students domiciled in Northern Ireland or Scotland. This is because students from Scotland and Northern Ireland are eligible for student loans for study in the Republic of Ireland and in order to allow payments to these students to be authorised the courses need to be listed on the database.

SFE should not provide advice on the support available to English students intending to study at Irish Colleges but may refer them to the Higher Education Authority (HEA) in Dublin who should be able to advise on possible sources of financial assistance.

The HEA can be contacted at the following address:

Higher Education Authority  
3 Shelbourne Buildings,  
Crampton Avenue,  
Shellbourne Road  
Ballsbridge,  
Dublin 4,  
DO4 C2Y6  
Ireland  
Telephone: 00 353 1 231 7100  
Fax: 00 353 1 231 7172

[Email:info@hea.ie](mailto:info@hea.ie)

#### 4.16.7 Intercalated study

Certain courses which are not higher than first degree level and which lead to more than one qualification, either as an optional or integral part of the course, will be considered to be single courses (regulations 5(8) and (9)). 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, SFE should note that where the second part of a course leads to a postgraduate degree, that part should not attract support; and
- 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 a March) as long as the content of the course is undergraduate level and undergraduate level fees are charged. However, SFE 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).

Note that there is no support provided under the student support regulations during a year that a master's degree level course is intercalated into an undergraduate degree (although the student may be eligible for Postgraduate Loan).

Maintenance grant/Special Support Grant (pre-2016 cohorts only), maintenance loan and tuition fee loan are not available post intercalation of master's where a student holds the master's award, as the student now holds an ELQ. The exception to this is where the course leads to a qualification as a social worker, medical doctor, dentist, veterinary surgeon or architect in which case maintenance loan is available as these are exception courses.

#### 4.16.8 Single Course provisions

In accordance with Regulation 13(1) of the Education (Student Support) Regulations 2011, a student will not normally be eligible for fee support where the course leads to a qualification that is equivalent to, or lower than, a qualification that has previously been awarded to that student (subject to limited exceptions, which are outlined in section 5.16 of this chapter).

Regulation 13(4) makes an exception to this rule. A course can be designated for fee support if it is a 'single course' and that course leads to an honours degree being conferred before the qualification for the first degree is awarded. Students registered on undergraduate courses leading to a qualification as a medical doctor, dentist, veterinary surgeon, architect, landscape architect, landscape designer, landscape manager, town planner or town and country planner who intercalate to obtain an honours degree are not precluded from receiving student support for the remainder of their first degree, even when the honours degree is conferred prior to the award of the first degree. Funding is available for both the intercalated course and first degree.

Students who intercalate to undertake a postgraduate qualification will not be eligible to receive support for their first degree following conferment of the postgraduate qualification. This is in accordance with Regulation 13(1), the conferment of a postgraduate qualification means that the student has a higher qualification than a first degree. However, where the intercalated postgraduate qualification is conferred by an institution at the same time or later than the first degree (despite the postgraduate course being completed at an earlier date), this will not preclude the student from being eligible for undergraduate funding for the entirety of their first degree.

Intercalating students will not be eligible for undergraduate student support for the postgraduate qualification but may be eligible for a Postgraduate Master's Degree Loan, subject to meeting the normal eligibility criteria.

Maintenance grant/Special Support Grant (pre-2016 cohorts only), maintenance loan and tuition fee loan are not available post intercalation of master's where a student holds the master's degree award, as the student now holds an ELQ. The exception to this is where the



course leads to a qualification as a social worker, medical doctor, dentist, veterinary surgeon or architect in which case maintenance loan and supplementary grants are available as these are exception courses (see section 5.16).

#### 4.16.9 Architecture courses (regulation 5(8) & (9))

Certain courses which are not higher than first degree level and which lead to more than one qualification, either as an optional or integral part of the course, will be considered to be single courses (regulations 5(8) and (9)). These include:

- 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, SFE should note that where the second part of a course leads to a postgraduate degree, that part should not attract support, and
- 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 a MArch) as long as the content of the course is undergraduate level and undergraduate level fees are charged. However, SFE should note that Part 2 should only be funded when taken by a student who has taken Part 1 (or is exempted from Part 1).

In order to potentially qualify to register as an architect, it is understood that a student must complete five years study - years 1 to 3 being Part 1 (leading to a first degree) and years 4 and 5 being Part 2 (leading to a professional Diploma or equivalent qualification). Students are also required to complete two years worth of relevant practical experience. Students following the typical pattern of study normally complete one year of practical experience between Parts 1 and 2 and a further year at the end of Part 2.

Regulations 5(8) and 5(9) allow the two parts of an architecture course, which may be undertaken at different institutions, to be treated as one single course for student support purposes and this is unaffected by a student undertaking a year's practical experience between the two parts. Where students undertake both Part 1 and Part 2, the final year of Part 1 will attract the full-year rate of loan for living costs, rather than the final year loan rate. Students are initially paid the final year rate of loan for living costs for year 3 of Part 1. If students that have completed Part 1 submit an application for support for Part 2 and are eligible, upon review they are awarded the difference between the final year rate of loan they received for year 3 of Part 1 and the full year rate of loan (as this is then assessed as the 3<sup>rd</sup> year of a 5 year course). 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.

If, a student completes Part 1 and a year of practical experience and then decides to take a year out before starting Part 2, they can still be treated as attending the same single course provided the facts of their case do not show that they withdrew from the course at the end of Part 1. The Regulations do not require a student to declare, before starting or completing Part 1, their intention to attend both Parts 1 and 2 in order for the two Parts to be treated as a single course. However, establishing the student's intentions at the outset of or during Part 1 may assist SFE in determining how to treat a student who does not follow the typical pattern of study.

When a student, who takes more than a single year out between Parts 1 and 2, notifies SFE of this and their intention to resume their studies at a later date, the student should be treated in the same way as any other student who has temporarily suspended their studies.

If a student does not follow the typical study pattern, and SFE has not received a notification from the student or the relevant HEP, SFE should treat that student as having temporarily suspended their 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. DfE is of the view that where a period of three years has elapsed since the student completed Part 1 (in other words two years after one would expect the period of practical experience to have been completed), it may be reasonable to determine that the student has withdrawn from the single course. Therefore, where the student has a gap longer than three academic years between Parts 1 and 2 the single course provision would usually not apply. However, SFE will need to satisfy itself, on a case-by-case basis, that such a decision would be appropriate.

If a student applies to 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 support for the Part 2 course. The reason for this is that the student will probably already hold a first degree or equivalent qualification and as a result they would be ruled out of any further fee support, and consequently maintenance grant or the Special Support Grant (for pre-2016 cohorts), by regulation 19(1)(a).

Students who are on courses covered by regulation 5(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 a reduced amount of fee support if their periods of FT study are below certain levels (regulation 23(7)(b)). Any student whose periods of FT study in the relevant academic year are in aggregate less than 10 weeks and whose periods of work experience do not constitute periods of unpaid service will qualify only for the reduced loan for living costs under regulation 80(1)(b) in that year (due to regulation 38(6) applying). This is of course subject to the student satisfying the other eligibility criteria for the loan.

Note that there is no support provided during a year that a master's degree level course is intercalated into an undergraduate degree (although the student may be eligible for Postgraduate Loan). Tuition fee support, maintenance grant/SSG (pre 2016 cohorts only) and maintenance loan are unavailable post intercalation of master's as the student now

holds an ELQ, except where the course leads to a qualification as a social worker, medical doctor, dentist, veterinary surgeon or architect in which case maintenance loan is available.

#### **4.17 Guidance for determining mode of study**

---

##### **4.17.1 Part-time courses**

For guidance on PT courses, please refer to the separate 20/21 Support for Part-Time Students guidance chapter.

##### **4.17.2 Full-time courses**

SFE will need to satisfy themselves that the student's course is either FT, a sandwich course or a FT ITT course, before determining whether the student is eligible for support for FT support. Although 'FT' is not defined in the Regulations, the following guidance may be used to decide whether a course is FT.

FT courses normally require students to attend the institution or elsewhere for periods amounting to at least 24 weeks within the year and, during that time, they are normally expected to undertake periods of study, tuition, learning in the workplace, or sandwich work-placement that does not meet the criteria to be sandwich year out, which amount to an average of at least 21 hours per week.

For courses of two years or more, FT students are normally required to attend the institution, or elsewhere, for periods of a minimum of eight weeks in the final year.

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

Study at premises outside the institution (for example at another institution) should be taken into account in determining whether it is a FT course. Such study outside the institution need not necessarily be at another HEP or, indeed, at an institution in the United Kingdom. Therefore, a student who is required to attend the institution providing the course for 16 weeks in the academic year, and to attend another institution for a further eight weeks, would be considered to have been required by the institution to attend the course for 24 weeks.

When determining whether the course is FT, consideration is given to the number of weeks that a student would normally be required to undertake, rather than those which are undertaken by individuals.

#### 4.17.2.1 Sandwich courses (regulation 5(1)(b)(ii))

Regulation 5(1)(b)(ii) provides that a sandwich course can be designated for support under the Regulations, and 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, if it consists of alternate periods of FT study in an institution and periods of work experience, and, taking the course as a whole, if the student attends the periods of study for an average of not less than 18 weeks in each year.

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 FT study and ending with the last such period.

Regulation 2(10)(c) provides that where periods of FT study and work experience alternate within any week of the course, the days of FT study shall be aggregated with each other and with any weeks of FT study in determining the number of weeks of FT study in each year.

Only full days of FT study (not part days) should be counted. Additionally, when counting days of study to make up a number of weeks of study, the divisor should be 5 rather than 7 (please see the example below).

As an example a course that required 3 days FT 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 FT study in a year was maintained throughout, this course would attract support as a sandwich course.

Conversely, a course would not attract support as a sandwich course if it required 2 days study and 3 days work experience per week over 30 weeks, in each academic year of the course, because the number of days of FT 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 139.

Another possible example is of a two-year sandwich course that required:

- Year 1 - 4 days of study and 1 day of work experience each week for 30 weeks
- Year 2 - 2 days of study and 3 days of 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 as a sandwich course.

Where students will be undertaking weeks with alternate periods of FT study in an institution and periods of work experience, the term dates from the HEP course database provided by the SLC will not provide sufficient information for SFE to determine the appropriate level of support (including extra weeks of support where appropriate). SFE will need to refer to the information provided by students in their applications, and they may also need to contact HEP to ascertain attendance patterns.

There are specific provisions relating to the support available for current system students on sandwich placements. The fee amounts are determined under regulation 23 (2) and (3) which prescribe that the amounts are the same as other FT qualifications.

Provisions relating to the support available for current system students on sandwich placements are in the appropriate parts of regulations 23 (2) and (3) (amount of the fee loan), regulation 38(5) (general qualifying conditions for grants for living and other costs), and regulation 80(1)(b) (maximum amounts of loans for living costs).

Further guidance on support available for sandwich placements is in the AY 20/21 Assessing Financial Entitlement' guidance chapter, which explains how the principle of aggregating days of study also applies to determining levels of support.

The intention of the definitions of FT and sandwich courses is to distinguish those courses which consist entirely of FT 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 FT HNC courses), should be treated as sandwich courses. Whether they are designated for student support will depend, among other things, on whether they meet the definition at regulation 2(10).

SFE 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 FT study at an institution.

'Periods of work experience' are defined in regulation 2(1) and may include periods during which modern language students spend living and working in a country whose language they are studying on their course.

#### **4.17.2.2 Learning in the workplace**

For the purposes of determining whether a course is a FT 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, but it may also occur in other courses, e.g. veterinary degrees.

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

Unlike work experience, which is one element of a course, learning in the workplace an integral part 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, and
- assessment of students' acquisition of knowledge and skills by the institution's academic staff, and perhaps jointly with an employer.

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

The actual machinery (whether lectures, tutorials, examinations or other means) is not crucial in identifying learning in the workplace, so long as knowledge and skills can be shown to be effectively imparted and assessed.

#### 4.17.3 Distance learning courses

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

The regulations define a distance learning course as follows:

“distance learning course” means a course on which a student undertaking the course is not required to be in attendance by the institution providing the course, where “required to be in attendance” is not satisfied by a requirement imposed by the institution to attend any institution—

- (a) for the purposes of registration or enrolment or any examination;
- (b) on a weekend or during any vacation; or
- (c) on an occasional basis during the week

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.

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

Distance learning courses can be classed as FT or PT. FT distance learning courses at institutions registered with the OfS that begin on or after 1 September 2012 are automatically designated; part-time distance learning courses at institutions registered with the OfS can be automatically designated provided they meet the other criteria for part-time courses in regulation 139.

A distance learning course may be deemed FT by the HEP because of the number of hours of study but only courses which meet all of the criteria below would in DfE's view be a FT course for the purposes of regulation 5(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. A whole year FT fee should be chargeable by the institution for the current year of the programme of study (exceptions to this will be made for students who are repeating part of a year).

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

For student support purposes, overseas Embassies, Military Bases or overseas Missions are not considered as UK territory and regulation 144 confirms that all distance learning students, except those students outlined below, must be undertaking the course in England in order to receive student support.

Regulation 144(3) states that an eligible part-time student qualifies for a fee loan under paragraph (1) if the Secretary of State considers that:

- the student is attending the course in the United Kingdom, or
- where the course is a part-time distance learning course, the student is undertaking the course in England on the first day of the first academic year.

Please note that from AY 2017/18 the requirement to be undertaking a distance learning course in England on the first day of the first academic year has been waived for currently serving armed forces personnel and their family members who are overseas as a result of their posting, whether they were starting or continuing their course in 17/18. From 18/19, this waiver was extended to include armed forces personnel who are living in another UK domicile as a result of their posting. The following family members may be eligible students under the amendment to the Regulations:

- **the spouse or civil partner** living with a member of the UK Armed Forces serving overseas or within another country in the UK,
- **the child, step-child or adoptive child** of a member of the UK Armed Forces serving overseas or within another country in the UK who is also living with that member of the UK Armed Forces serving overseas or within another country in the UK (there is no requirement on the child's age or dependency), or
- **the dependent parent** living with either;
  - a child who is a member of the UK Armed Forces serving overseas or within another country in the UK, or
  - the child's spouse or civil partner who is a member of the UK Armed Forces serving overseas or within another country in the UK.

#### **4.17.3.1 Distance learning courses and student support - new students starting courses on or after 1 September 2012**

FT distance learners who start a FT distance learning course on or after 1 September 2012 are potentially eligible for tuition fee loans at rates equivalent to FT students who are in attendance on their course and are also potentially eligible for FT rates of DSAs. These students are not eligible for any maintenance support (including targeted grants) as they are not in attendance.

#### **4.17.3.2 The distance learning disability exception - new students starting courses on or after 1 September 2012**

The exception to this rule is disabled students who are undertaking in the United Kingdom either a FT course that normally requires attendance by distance learning or a FT distance learning course, because they are unable to attend a course for a reason which relates to their disability. Such students are treated as if they were in attendance and are eligible to apply for part and FT maintenance support (including targeted grants). Disabled students who are undertaking FT distance learning courses in the United Kingdom but are not treated as being in attendance on their course by virtue of this exception are potentially eligible for DSAs only at the FT rate.

#### **4.17.4 Mixed mode courses**

In order to be a designated course the course structure cannot include a mixture of study modes. For example, a three-year course where years one and two are part-time and the final year is FT. Any courses with a structure like this cannot be designated for support under the Regulations. There are, however, provisions in the Regulations that allow students studying on designated fixed mode courses some flexibility in their studying arrangements.

## **5 Standard entitlement to fee support**

The personal eligibility requirements covered earlier in this guidance (regulation 4) apply to support for fees and support for living costs. Additional eligibility requirements are described in this section for fee loans for current system students (regulation 19 covers the general criteria that determine the availability of fee support for current system students).

The term 'fees', for this purpose, has the meaning given in section 85(2) of the Higher Education and Research Act 2017. Section 85(2) of that act provides that fees mean fees in respect of, or otherwise in connection with, undertaking the course including admission, registration, tuition and graduation fees other than:

- fees payable for board or lodging,
- fees payable for field trips (including any tuition element of such fees),



- fees payable for attending any graduation or other ceremony, and
- such other fees as are prescribed by regulations made by the Secretary of State

An eligible student who started his course on or after 1 September 2006 may be eligible to apply for a tuition fee loan in accordance with the regulations explained in this section. Eligible students (with the exception of EU Nationals with less than 5 years OR in the UK) who qualify for fee support are generally eligible to apply for a loan for living costs, long courses loan (or the extra weeks element of loan for living costs), DSAs, , GFDs, grant for travel and either the maintenance grant or the special support grant. Whilst most students will qualify for support, there are exceptions to these principles (please see section 5.1 below).

A student will not qualify for fee support in an academic year which is a bursary year (defined in regulation 2(1)) or for an ERASMUS year (defined in Regulation 2(1)(b) in respect of the following: (i) a course provided by an institution in England, Scotland or Wales that began before 1 September 2012 or (iii) a course provided by an institution in Northern Ireland. In addition, students are not eligible for grants for living costs for any academic year which is a bursary year (as defined in regulation 2(1)).

For pre-2016 cohort students only, where a student is ruled out of tuition fee support either due to their previous study (for more information see years of previous study below), or because they already have an Honours degree from a UK institution (for those who started their current course prior to 1 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 September 2009), they will not qualify for the Maintenance Grant (regulation 56(3)) or Special Support Grant (regulation 60(3)).

## 5.1 Previous study

---

Under regulation 20, eligible students may have tuition fee support for the standard length of their HE course plus an additional year if needed. This standard entitlement will, with exceptions, be reduced if the student has studied on a previous HE course.

For example, an applicant who is due to commence study in the AY 20/21 academic year and has studied on a previous FT course in the UK or overseas, regardless of whether the student received authority funding or not, will have their standard entitlement reduced by the number of years of previous study. This includes study on compressed degree, distance learning or ITT courses.

Previous part-time study that did not lead to a qualification and self-funded study at a private institution 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 09/10 and do not have a UK Honours Degree only have the years of study on any previous FT (or part-time ITT) courses at publicly funded UK institutions taken into account.

Where previous study was undertaken but no qualification attained then regulation 21 should always be used to assess further entitlement for fee support and whether they qualify for the Maintenance Grant / Special Support Grant.

The previous study rules primarily apply to fee loans, with eligibility to Maintenance Grant/Special Support Grant, where available for FT students who started their courses before 1 August 2016 (2012 cohort students), being determined by an entitlement to fee loans. For 2016 cohort students, due to the removal of grants, previous study only applies to fee loans.

The rules do not apply to supplementary grants, such as the DSAs or CCG.

## 5.2 Definition of a previous course

---

Regulation 12 sets out what is a previous course for the purposes of Part 4 of the Regulations (tuition fee support). Generally, a course is a 'previous course' if:

- a) where the current course began before 1 September 2009, and paragraph (d) does not apply, any FT 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 distance learning course, undertook before the current course and which meets one or both of the conditions below:
  - 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
  - a 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 in respect of tuition fees was from public funds or funds attributable to public funds.
- b) where the current course begins on or after 1 September 2009, and paragraph (d) does not apply, a FT or 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 distance learning course, undertook before the current course, and where the student achieved a qualification,
- c) where the current course begins on or after 1 September 2009, and paragraph (d) does not apply, a FT 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 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:

- the course was provided by an institution whether or not 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
  - 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 distance learning course, undertaking the course in respect of tuition fees was from public funds or funds attributable to public funds.
- d) where the current course begins on or after 1 September 2009, and the student's status as an eligible student has been transferred to the current course from a course which began before the 1 September 2009, a FT, 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 distance learning course, undertook before the current course and which meets one or both of the conditions below:
- 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
  - 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 distance learning course, undertaking the course in respect of tuition fees was from public funds or funds attributable to public funds.

### **5.3 Years of previous study**

---

Once it has been determined that the student has been on a previous course, paragraphs 7 to 12 of regulation 12 set out which years of that previous course count as previous study for the purposes of regulations 21 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 12(8)(b)).

Despite these general rules;

- where a student who started their current course before 1 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 they 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 12(8)),
- 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 12(9)),
- where the student qualified for fee support for an academic year of the previous course (the 'relevant year') because they 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 12(9)),
- where the student transfers from one course (first course) to another before completing the academic year from which they are transferring, the time spent on the first course during that academic year is not counted as a year spent on a previous course (regulation 12(10)), and
- 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 September 2006 (regulation 12(11)).

#### 5.4 Exception for ITT courses

---

Students who intend to take a FT course of ITT of no more than two years in duration (or a part-time course the duration of which is not more than four years) are exempt from the previous study rules for fee support and (for pre-2016 cohorts only) Maintenance Grant / Special Support Grant unless they are already qualified teachers.

For part-time ITT courses starting on or after 1 September 2010 and before 1 September 2012, the minimum intensity of study required is 50% of an equivalent FT course for the duration of the course. For courses starting on or after 1 September 2012, the minimum intensity of study is 25% of an equivalent FT course for each year of the course and for the duration of the course.

Qualified teachers are those who are assessed as meeting the Department for Education's Teachers' Standards and issued with a Qualified Teacher Status (QTS) certificate by the Teaching Regulation Agency (TRA) and DfE. Teachers in Further Education colleges who have achieved QTLS (Qualified Teacher Learning and Skills) status but who have not been issued with a QTS certificate may be eligible for fee support and, for pre 2016 cohorts only, Maintenance Grant / Special Support Grant for a further ITT course.

## 5.5 **Compelling personal reasons (CPR) – current system students**

---

Regulations 19(10) 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. Academic performance alone would not normally be deemed a compelling personal reason but SFE should consider all cases carefully.

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 19(8) provides that where a current system student to whom regulation 21 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 they withdrew from that course.

The exclusion of the Erasmus year in both cases above is only applicable where the Erasmus year was undertaken as part of a course provided by (i) an institution in England or Wales that began before 1 September 2012 or (ii) by an institution in Northern Ireland or Scotland.

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.

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 SFE determines that the CPR criteria have been met then a further CPR year may be awarded.

However, if CPR does not apply then SFE 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.

### 5.5.1 **Evidence of compelling personal reasons**

As far as is reasonably practicable, evidence should be obtained from the student or elsewhere to support a claim that the withdrawal or repeat 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 their GP or perhaps ask a HEP's student support advisory service to attest to a personal or family crisis. Other possible sources might include social services or the clergy (however DfE would not

reimburse any costs incurred by the student in obtaining such evidence.) This guidance is not exhaustive and SFE should look at all cases carefully and on their individual merits.

## 5.6 Self-funded years

---

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 the tuition fees in the years to which support has not been allocated.

The standard entitlement cannot be allocated to non-standard academic years of the course such as NHS bursary years on medicine and dentistry courses. As a result, a student who is required to repeat a year of the course for a non-compelling personal reason may still be eligible for fee support for that academic year.

## 5.7 Transferring students

---

Regulation 7 sets out the circumstances in which students may have their status as an eligible student transferred to another course. SFE is required to transfer the student's status where:

- they receive a request from the eligible student to do so,
- they are satisfied that one or more of the grounds for transfer in regulation 7(2) applies, and
- the period of eligibility has not terminated.

The grounds for transfer are:

- on the recommendation of the academic authority the eligible student ceases one course and starts to:
  - attend or undertake another designated course which is not an accelerated course at the same institution,
  - undertake another compressed degree course in the UK at the institution, or
  - undertake a compressed degree course in the UK at the institution.
- the eligible student starts to:
  - attend or undertake a designated course which is not an accelerated course at another institution,
- after commencing a course for the Certificate of Education the eligible student is, on or before completing that course, admitted to a designated course leading to a BEd

(including a course leading to the BEd (honours)), whether or not the course is at the same institution;

- having commenced a course leading to a non-honours BEd, the eligible student is admitted to a designated honours BEd course, whether or not the course is at the same institution, or
- having commenced a course for a first degree (other than an honours degree) the eligible student is, before the completion of that course, admitted to a designated course leading to an honours degree in the same subject(s) at the same institution.

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

### 5.7.1 Current system students

Where a student transfers courses, the standard entitlement to fee support still applies, i.e. course length plus an additional year but less any years spent on previous courses (regulation 21). 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.

Regulation 7(4) provides the Secretary of State discretion to reassess the amount of fee and, where applicable, living costs support available for a second course after a student transfers from one designated (FT) course to another. Regulation 2(1) defines 'support' as "financial support by way of grant or loan made by the Secretary of State pursuant to Regulations made by the Secretary of State under section 22 of the 1998 Act".

#### **Transfer Example 1:**

A student started a four-year degree course in 2014 (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). Regulation 21 is applied using the following OD = 5 and PC = 2 and a standard fee entitlement of 4 years is calculated  $((5+1) - 2 = 4)$ . As the student's entitlement to fees is less than the course duration, they will need to self-fund the first year of course B but should then receive support to complete the remainder of the course.

#### **Transfer Example 2:**

A student started a 3-year degree course in September 2015 (course A). Having passed the first year he decides to transfer onto a 4-year course in September 2016 (course B). Regulation 21 is applied using the following OD = 4 and PC = 1 and a standard fee entitlement of 4 years is calculated  $((4+1) - 1 = 4)$ . As the ordinary duration of course B is four years, the student has enough entitlement to fees for the entire course, subject to not requiring a repeat year in a future academic year.

#### **Transfer Example 3:**

A student enrolled on a four-year course in September 2014 (course A) then having completed 2 years of course A, the student transfers in September 2016 to the 2nd year of a 3-year course (course B). Regulation 21 is applied using the following  $OD = 3$  and  $PC = 2$  and a standard fee entitlement of 2 years is calculated  $((3+1) - 2 = 2)$ . As the ordinary duration of course B is three years and the student is entering the second year, the student has enough entitlement to fees for remainder of course B, subject to not requiring a repeat year in a future academic year.

### 5.8 Regulation 20 - Students with no previous study

---

Students who are starting an eligible HE course with no years of study on previous courses (see section 5.2 for details of what is a previous course) will have their entitlement to fee support calculated under regulation 20. The calculation is as follows:

**OD + 1**

Where

**(OD)** is the number of academic years that make up the ordinary duration of the course

For example, a student who enrolls on a 3 year honours degree will have an entitlement to fee support of 4 years as in this case  $OD = 3$  ( $3+1 = 4$ ).

### 5.9 Regulation 21 - Students with previous study

---

Students who are starting an eligible HE course and have studied on previous courses (see section 5.2 for details of what is a previous course) and do not fall within regulation 22 (section 5.10 below) will have their entitlement to fee support calculated under regulation 21. For the purpose of this regulation, previous courses include students who have transferred from a previous course starting after 1 September 2006. The calculation is as follows:

**(OD + 1) - PC**

Where

**OD** is the number of academic years that make up the ordinary duration of the course

**PC** is the number of years that the student has spent on a previous course(s)

For example, a student with two years of previous study starting a three-year honours degree will have an entitlement to fee support of 2 years, as in this case  $OD = 3$  and  $PC = 2$ :  $(3+1)-2 = 2$ .



### 5.10 Regulation 22 - Students with lower level qualifications topping up to a Degree

Under regulation 22, if a student holds a lower level HE qualification such as an HNC, HND or Foundation degree they are able to access additional support to 'top-up' their qualification to a degree.

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

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

Regulation 22(2) and 22(5) sets out the calculation to establish entitlement to fee support for students who commenced their current course after 1 September 2009. The calculation is as follows;

#### **(D+X) - PrC**

Where

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

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

Or

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

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

For example, a student has studied for 1 year on an HNC, 2 years on an HND and now wishes to study on a 3-year degree course from year 1. The current course starts on or after 1 September 2009, therefore their entitlement is calculated in accordance with regulation 22(5).

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

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

Regulation 22(1) and 22(4) sets out the calculation to establish entitlement to fee support for students who commenced their current course before 1 September 2009. This

calculation is the same as above, except (X) is 1 where the ordinary duration of the preliminary courses (in total) was less than 3 years and 2 where the ordinary duration of the preliminary courses (in total) was 3 years.

Please see the exit awards section (5.15) for further explanation on when regulation 21 and 22 are used. In all other circumstances entitlement should be calculated in accordance with regulation 21.

#### **5.11 Honours degrees and previous study prior to academic year 09/10**

---

Current system students who started their current course before 1 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.

#### **5.12 ELQs and previous study changes from academic year 09/10**

---

It is the intention that funding should be focused on those students studying in higher education for the first time.

Therefore, current system students who commenced their current course on or after 1 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).

The Regulations state that a person who studies for a qualification which is deemed to be equivalent to or lower than a qualification they already hold are not entitled to financial support (for example, tuition fee loans or maintenance grants and loans). This rule applies whether their previous qualification was:

- studied in the UK or elsewhere,
- self-funded or publicly-funded,
- studied on a FT, FT distance learning, compressed or PT basis.

Under regulation 2(5), the Secretary of State has the discretion to determine what is an equivalent or lower level qualification where the qualification already held is of a level which is equivalent to or higher than the qualification to which the current course leads and the qualification held is an Honours degree.

When assessing applications for student support from students who wish to study a second higher education qualification, DfE is of the opinion that assessors should take into account a range of factors in assessing the level of the second degree. This helps in determining whether it is a qualification which is equivalent to or lower than their first qualification.

These include the whole qualification, the title and final award, the entry requirements for the qualification, and how the final award allows progression to postgraduate qualifications.

They may also seek advice from the higher education institution or awarding body. Furthermore, if the HE qualification which someone already holds is an honours degree from a UK HEP then consideration does not need to be given to the academic level of the course: it is automatically an ELQ.

The following table sets out the academic levels as considered for the Regulations, however the list is not exhaustive.

E	Master's MBAs PGCE
D	Honours Degree LLB Integrated Master's Medicine, Dentistry and Veterinary courses Scottish MAs Oxford and Cambridge MAs
C	Ordinary Degree
B	HNDs Dip HE Foundation Degrees
A	HNCs Cert HE

### **5.13 Integrated Master's**

---

For the purpose of providing student support, an Integrated Master's is an undergraduate first degree of the same level as an Honours degree and is to be treated in the same way when assessing eligibility for student support.

Therefore, students who hold an Honours degree and subsequently undertake an integrated Master's are not entitled to any further support.

### **5.14 Ordinary degree to Honours degree**

---

Students who hold an ordinary degree can receive further funding to top-up to Honours degree level. Fee entitlement for these students should be calculated in accordance with regulation 21 (for more information please see section 5.15.1 below).

There may be certain circumstances where a student wishes to enrol on a standalone, one-year 'top-up' course. Fee support should be calculated in accordance with regulation 21. The top-up course should be treated as a three-year course to allow these students to receive support to top-up to an Honours degree.

## 5.15 Exit awards

---

Where a student withdraws from their course after successfully completing enough credit for their HEP to award them an exit qualification, the student holds previous study and a lower level qualification.

When the student returns to study, their remaining entitlement to tuition loan is calculated in accordance with either regulation 21 or 22, dependent on the course that was initially started.

Students who qualify for a tuition loan may qualify for Maintenance Grant (MG) or Special Support Grant (SSG) in line with regulation 56.

### 5.15.1 Student started on a degree course

Students who start a degree (with or without Honours) and do not complete that course but are awarded a lower level HE qualification or an exit award will be assessed under regulation 21 (previous study).

In these cases the student has taken in whole or in part a FT first degree, therefore regulation 22 does not apply (regulation 22(2)(c)).

There is a possibility for CPR to be awarded for failing to complete the original course.

### 5.15.2 Student started on a lower level course

Students who start a qualification mentioned in paragraphs 2, 3 or 4 of Schedule 2, or a foundation degree, and do not complete the course but are awarded a lower level exit qualification will have any further entitlement calculated in line with regulation 22(2) and 22(5). Please see [Annex D](#) for examples.

## 5.16 Medicine, dentistry, veterinary science, architecture, social work, and Initial Teacher Training (ITT) courses as a second degree

---

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

Please note that medicine, dentistry and veterinary science courses may be listed as level 7 on the Quality Assurance Agency's Framework for Higher Education Qualifications in England, Wales and Northern Ireland. The Framework does not form part of the Regulations and for the purpose of providing student support such qualifications should be treated as equivalent to an Honours degree.

Therefore, students who already hold an Honours degree or an equivalent qualification and are studying these courses as a second undergraduate degree will not be eligible for any further fee support or maintenance grant.

Students studying undergraduate medical and dental programmes that are in their 5<sup>th</sup>/6<sup>th</sup> year of study are eligible for NHS bursaries and therefore qualify for a reduced rate loan for living costs only from SFE.

From AY 12/13 onwards, graduates entering a graduate entry accelerated medical and dental programme have been allowed some tuition support in addition to maintenance loan. For more information on the support available for these students, please see the 20/21 NHS guidance chapter.

### **5.17 Nursing, midwifery and Allied Health Professions (AHP) as a second degree**

---

Students who commenced a pre-registration nursing, midwifery or allied health profession (AHP) course prior to 1 August 2017 and who are eligible for a means-tested NHS bursary will continue to be eligible for a reduced rate loan for living costs, whether or not they already hold an equivalent or higher level qualification.

From AY 17/18, new undergraduate students starting a pre-registration course in nursing, midwifery or AHP who are not eligible to apply for a means-tested NHS bursary have been eligible to apply for the full package of fee loan, and for FT courses living costs support for each year of their course as a second degree. ELQ restrictions will not apply to these courses subject to the criteria below being met. For ELQ rules to be discounted, the current course must lead to professional registration and the student must not be registered in the profession the course leads to, i.e. the student is not a registered midwife studying midwifery as a second degree. This exemption extends to all students studying these courses including students on employer release (NHS Secondees).

From AY 18/19, the ELQ exception has been extended to include new students starting pre-registration Dental Therapy and Dental Hygiene courses and FT postgraduate pre-registration courses in nursing, midwifery or AHP on or after 1 August 2018.

For students starting FT pre-registration healthcare courses set out above, years of previous study are disregarded when calculating entitlement to support.

Please see the 20/21 NHS guidance chapter for more information on the NHS funding arrangements.

### **5.18 ELQ and part-time study in STEM subjects as a second degree**

---

ELQ restrictions were removed for graduates wishing to start a second honours degree in engineering, technology and computer science on a part-time basis from 1 August 2015.

This has now been extended to graduates wishing to start an honours degree in any STEM subject on a part-time basis from 1 August 2017.

### **5.19 Postgraduate qualifications**

---

Years of study at postgraduate level are not counted as years of previous study. However, if a student has a postgraduate qualification, as these courses are higher than degree level the student would be considered to have an ELQ. These students will not qualify for further support unless studying on a course which falls within one of the specified exceptions.

#### **5.19.1 Postgraduate loans (master's courses)**

From AY 16/17 onwards, the government is providing loan support for postgraduate master's courses. For more information please see the AY 20/21 Postgraduate Loans for Master's Courses' guidance chapter.

#### **5.19.2 Postgraduate loans (doctoral courses)**

From AY 18/19 onwards, the government is providing loan support for postgraduate doctoral courses. For more information please see the '20/21 Postgraduate Loans for Doctoral Courses' guidance chapter.

### **5.20 Students who attend a full-time course on a part-time basis**

---

When an applicant is deemed eligible for support on a designated course they are generally eligible for the duration of the course, subject to the rules on tuition fee and living costs support and regulations 3 and 5. Where a student attends part of a FT course on a part-time basis as a result of personal circumstances it does not render the course itself part-time. As long as the course is ordinarily completed through FT study the student should remain eligible for FT support.

A possible scenario might be a student who is unable to continue to attend FT due to pregnancy or 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 13(5).

Students who attend a FT course on a part-time basis are subject to the following previous study provisions best illustrated with an example:

- A 'current system' student on a three-year course having successfully completed year 1 of their course is unable to attend their course FT. It is agreed with their HEP 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 19/20, 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 regulation 19(11) are satisfied. These are that the year is a qualifying year of study, is not a bursary year and they have not exhausted their standard entitlement. The additional year of support is allocated to the first half of year 2, which is being completed in 18/19 and is treated, under regulation 13(5), as a year of repeat study for reasons other than CPR.

Whilst the above provisions provide entitlement to fee support in years being studied on a part-time basis, a student must still be in attendance in each term to automatically qualify for living cost support. A 'current system' student can fail the first year of their FT course and repeat only a term of their first year for the first time. As the student is not in attendance for the full year, they will only be entitled to living cost support when they are in attendance. For example, they only attend term 2 of the repeated year and are 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 SFE, where it considers it appropriate to do so, may exercise its discretion in the student's favour (regulation 116(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 FT fee for the applicable cohort.

## 6 Eligibility for support for living costs

### 6.1 General

---

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 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 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 69(2) (current system students) applies.

All students will continue to have access to supplementary grants (DSAs and Childcare Grant) provided that they meet the other eligibility criteria applicable. Please see the applicable 20/21 guidance for these products:

#### DSA guidance chapters

- 20/21 Disabled Students' Allowances - Continuing DSA Students
- 20/21 DSA Guidance - Students applying for DSAs for the first time from AY 16/17 and beyond

#### CCG chapter

- 20/21 Grants for Dependents

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.

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.

## **6.2 Students who are not eligible for support for living costs**

---

The following current system students will not be entitled to grants for living and other costs (regulation 38):

- EU students who fall within paragraph 9 of Schedule 1 (Part 2) of the Regulations and in no other paragraph of Part 2 will not be eligible for any support towards living costs (regulations 38(2), 69(3) and 70(4)),
- students who are eligible to apply for an income assessed 'healthcare bursary' regardless of whether they receive any payment of the healthcare bursary (see definition of 'healthcare bursary' in regulation 2),
- students who are studying an AHP (Allied Health Professional) course who are eligible to apply for payment of their tuition fees and either an income assessed Scottish Young or Independent Student Bursary from SAAS (as defined in regulation 2),
- students on part-time courses of ITT of any length, where the course begins on or after 1 September 2010 (these students should apply for the part-time support package – see the 20/21 Support for Part-Time Students guidance chapter),
- students on sandwich years where the periods of FT study are in aggregate less than 10 weeks, and the periods of work experience are not:
  - unpaid service in a hospital or in a public health service laboratory or with a Clinical Commissioning group in the UK,
  - unpaid service with a local authority in the UK acting in the exercise of its functions relating to the care of children and young persons, health or welfare or with a voluntary organisation providing facilities or carrying out activities of a like nature in the UK or a Local Authority acting in the exercise of public health functions,
  - unpaid service in 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. Note that from 14/15 students undertaking unpaid placement years in Parliament as part of a higher education sandwich course have, for student support purposes, been treated as if they are undertaking unpaid research at an institution in the UK, or
- unpaid service with a Special Health Authority, the National Health Service Commissioning Board, the National Institute for Health and Care Excellence, the Health and Social Care Information Centre, Local Health Board, Health Board, Special Health Board or Health and Social Services Board in England or Wales, or their Scottish or Northern Irish equivalents.

These groups of students will, however, be eligible for modified amounts of loans for living costs (with the exception of part-time ITT students whose course begins on or after 1 September 2010). Detailed guidance on these matters is provided in the 20/21 Assessing Financial Entitlement guidance chapter.

### **6.3 Students aged 60 and over**

---

#### **6.3.1 Pre 2016 cohort students (students who started a course before August 2016)**

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 68. In most cases it will be the first day of the first academic year of the current course. Please refer to the 20/21 Assessing Financial Entitlement guidance chapter for further details.

The age criterion does not apply to fee loans, dependants' grants, travel grants and DSAs.

#### **6.3.2 2016 cohort students**

Eligible students aged 60 and over on the first day of the first academic year of the course who started a FT undergraduate HE course in AY 16/17 or later will be assessed for the '2016 cohort' package of living costs support .

A fully means tested maintenance loan for living costs for these students is payable up to the amount indicated in the 20/21 'Assessing Financial Entitlement' guidance chapter. This is available to these students rather than the Special Support Grant that was payable under the '2012 cohort' package. No household contribution is calculated on or applied to maintenance loans payable to those aged 60 and over.

## **7 Annexes**

### **1.1 Annex A - Events under regulation 17 of the Regulations**

---

The events are—

- the student's course becomes a designated course
  - (i) under regulation 5(10),
  - (ii) or because the course is provided by or on behalf of an English HEP which becomes a registered provider,
  - (iii) or because the course becomes a Welsh designated FT course, a Scottish designated FT course or a Northern Irish designated FT course,
- the student or the student's spouse, civil partner or parent is recognised as a refugee, a person granted stateless leave, or becomes a person granted humanitarian protection; a state accedes to the EU where the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state,
- the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national,
- the student acquires the right of permanent residence,
- the student becomes the child of a Turkish worker,
- the student becomes a person described in paragraph 6(1)(a) of Schedule 1,
- the student becomes the child of a Swiss national, or
- the student or the student's parent is awarded Section 67 leave.

## **1.2 Annex B – 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 LAs, 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 LA 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 negate 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 LAs 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'."

### 1.3 Annex C – EU/EEA member states and overseas territories

Country	Date of Accession	EU	EEA	Related Territory	EU	EEA
Austria	01/01/1995	Yes	Yes			
Belgium	01/01/1958	Yes	Yes			
Bulgaria	01/01/2007	Yes	Yes			
Croatia	01/07/2013	Yes	Yes			
Cyprus	01/05/2004	Yes	Yes			
Czech Republic	01/05/2004	Yes	Yes			
Denmark	01/01/1973	Yes	Yes	Greenland	No	No
				Faroe Island	No	No
Estonia	01/05/2004	Yes	Yes			
Finland	01/01/1995	Yes	Yes	Åland Islands	Yes	Yes
France	01/01/1958	Yes	Yes	French Overseas Departments (Guadeloupe, , Martinique, French Guyana, Réunion, Mayotte and Saint-Martin)	Yes	Yes
				French Overseas Territories	No	No

				(New Caledonia, French Polynesia, Wallis and Futuna, St Pierre et Miquelon, St Barthelemy and French Southern and Antarctic Territories )		
Germany	01/01/1958	Yes	Yes	Heligoland	Yes	Yes
Greece	01/01/1981	Yes	Yes			
Hungary	01/05/2004	Yes	Yes			
Ireland	01/01/1973	Yes	Yes			
Italy	01/01/1958	Yes	Yes			
Latvia	01/05/2004	Yes	Yes			
Lithuania	01/05/2004	Yes	Yes			
Luxembourg	01/01/1958	Yes	Yes			
Malta	01/05/2004	Yes	Yes			
Netherlands	01/01/1958	Yes	Yes	Netherlands Antilles	No	No
				Aruba	No	No
Poland	01/05/2004	Yes	Yes			
Portugal	01/01/1986	Yes	Yes	Madeira	Ye	Yes
				Azores	Yes	Yes
				Macau	No	No
Romania	01/01/2007	Yes	Yes			
Slovakia	01/05/2004	Yes	Yes			
Slovenia	01/05/2004	Yes	Yes			
Spain	01/01/1986	Yes	Yes	Baleric Islands	Yes	Yes
				Canary Islands	Yes	Yes
				Ceuta	Yes	Yes
				Melilla	Yes	Yes
Sweden	01/01/1995	Yes	Yes			
United Kingdom	01/01/1973	Yes	Yes	Channel Islands	No	No
				Isle of Mann	No	No
				Gibraltar	Yes	Yes
				UK Sovereign Bases (inc Cyprus)	No	No
				British Overseas Territories (Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Pitcairn, Henderson, Ducie and Oeno Islands, Montserrat, St. Helena and Dependencies, South Georgia and the South Sandwich Islands, Turks and	No	No

				Caicos Islands or The Sovereign Base Areas of Akrotiri and Dhekelia)		
Iceland	N/A	No	Yes			
Liechtenstein	N/A	No	Yes			
Norway	N/A	No	Yes	Svalbard	No	Yes
Switzerland	N/A	No	No			
Turkey	N/A	No	No			

Note that Greenland, Faroe Islands, French Overseas Territories, Netherlands Antilles and Aruba are subject to the same provisions as British Overseas Territories as per section 3.1.3.

---

#### 1.4 Annex D – Exit award examples

---

##### Examples where regulation 21 is applied

**Student A** starts a 2 year FT HND in AY 11/12 and withdraws after year 1. In AY 13/14 student A started a FT 3 year Honours degree and successfully completed year 1 however withdraws in year 2 (AY 14/15).

Student A's HEP awarded a Cert HE for the course content which they successfully completed.

In AY 20/21 student A starts a FT four year undergraduate degree starting from year 1.

As student A has undertaken a degree in part before the current course (even though awarded an HNC), regulation 22 does not apply and therefore student A's remaining entitlement to tuition loan is calculated in accordance with regulation 21.

(OD + 1) – PC

(4+1) – 3 = 2 years of tuition loan (and any MG/SSG entitlement) remaining

As the remaining entitlement applies to the final year of the course first and then every preceding year until it is exhausted Student A will have to self-fund their tuition costs in years 1 and 2 of the new course. As they do not qualify for a tuition fee loan in year one and two no maintenance grant is available in line with regulation 56(3).

**Student B** starts and successfully achieves a Cert HE after one year of FT study in AY 10/11. Student B then started an Honours Degree in AY 12/13 and their tuition loan entitlement is calculated in accordance with regulation 22(5). Student B successfully completed year one but withdraws in year 2 (AY 13/14) of the degree for compelling personal reasons. Student B's HEP awarded an HNC for the course content which they successfully completed.

In AY 20/21 Student B starts a two-year Foundation degree starting from year 1.

As Student B has undertaken a degree in part before the current course (even though awarded an HNC), regulation 22 does not apply and therefore student B's remaining entitlement to tuition loan is calculated in accordance with regulation 21.

$(OD + 1) - PC$

$(2 + 1) - 3 = 0$  years of tuition loan (and any MG/SSG entitlement) remaining

Student B is able to apply for a further year of tuition support as they can demonstrate that they left their previous course for compelling personal reasons. Student B is awarded a tuition loan in year one of their course but is required to self-fund their tuition costs in year two of their course. As they do not qualify for a tuition fee loan in year two no maintenance grant is available in line with regulation 56(3).

### Examples where regulation 22 is applied

**Student C** started a two year part-time HNC in AY 10/11. Student C achieves the qualification and then started a two year FT Foundation degree in AY 12/13 starting from year one. Student C then starts year two of the Foundation degree in AY 13/14 however has to withdraw partway through the year. Student C's HEP award them a Cert HE for the course content which they successfully completed.

In AY 15/16 student C starts a three-year Honours degree in AY 15/16. Because student C has a Cert HE the criteria in regulation 22(2) applies, therefore student C's remaining entitlement to tuition loan is calculated in accordance with regulation 22(5) as follows:

$(D+X) - PrC$

Where D is the greater of 3 and the number of academic years that make up the ordinary duration of the course, in this scenario  $D = 3$

X is — 1 where the ordinary duration of the preliminary course (or preliminary courses in total) was less than three years,

- the ordinary duration of the preliminary course (or preliminary courses in total) minus 1 if it was three years or more.

The ordinary duration of the two previous courses undertaken is P/T HNC = 2 plus Cert HE = 1

$2 + 1 = 3$  therefore in this scenario, X is 2

$(3 + 2) - 4 = 1$  years of tuition fee loan (and any MG/SSG entitlement) remaining

**Student D** started a 2 year HND in AY 09/10 and withdraws before the end of the 1st year for academic reasons. No qualification is awarded.

In AY 10/11 student D started a Foundation Degree and due to personal reasons had to withdraw at the beginning of the 2nd academic year (AY 11/12) after successfully completing the year. Student B's provider award him an exit qualification of a Cert HE for the part of the course he successfully completed.

In AY 15/16 Student D starts an Honours degree that is 4 years in length.

Student B's entitlement to tuition loan and MG/SSG is calculated in accordance with regulation 22 as follows:

(D+X) - PrC

Where D is the greater of 3 and the number of academic years that make up the ordinary duration of the course - in this scenario D = 4,

X is — 1 where the ordinary duration of the preliminary course (or preliminary courses in total) was less than three years,

- the ordinary duration of the preliminary course (or preliminary courses in total) minus 1 if it was three years or more.

The ordinary duration combined of the two previous courses undertaken is  $2 + 1 = 3$  therefore in this scenario, X is 2

PrC is the number of academic years that the student spent on preliminary courses. In this case the PrC is 3 (1+2)

Student D's s remaining entitlement is calculated as follows:

$(4+2) - 3 = 3$  years of tuition loan (and any MG/SSG entitlement) remaining

### **1.5 Annex E - Organisation contact details**

---

<b>Welsh Government</b>	Cardiff Bay Cardiff CF99 1NA	English: 0300 0603300  Welsh: 0300 0604400	<a href="http://www.wales.gov.uk">www.wales.gov.uk</a>
<b>The Student Awards Agency for</b>	Saughton House Broomhouse Drive Edinburgh EH11 3UT	0300 5550505	<a href="http://www.student-support-saas.gov.uk">www.student-support-saas.gov.uk</a>

**Scotland  
(SAAS)**

<b>Department for Economy (Northern Ireland)</b>	Higher Education, Policy, Research and Finance Room 407 4 <sup>th</sup> Floor Adelaide House 39-49 Adelaide St Belfast BT2 8FD	028 9025 7777	<a href="http://www.delni.gov.uk">www.delni.gov.uk</a>
<b>SLC - EU Team</b>	Memphis Building Lingfield Point McMullen Road Darlington County Durham	0141 243 3570	<a href="http://www.direct.gov.uk/en/EducationAndLearning/UniversityAndHigherEducation/StudentFinance/StudentsFromOtherEUCountries/index.htm">http://www.direct.gov.uk/en/EducationAndLearning/UniversityAndHigherEducation/StudentFinance/StudentsFromOtherEUCountries/index.htm</a>
<b>SLC</b>	Student Loans Co.Ltd 100 Bothwell Street Glasgow G2 7JD	0300 100 0618	<a href="http://www.direct.gov.uk/en/EducationAndLearning/UniversityAndHigherEducation/StudentFinance/index.htm">http://www.direct.gov.uk/en/EducationAndLearning/UniversityAndHigherEducation/StudentFinance/index.htm</a>

**7.1 Annex F - List of applicable regulations**

---

This guidance applies to FT students and those who are treated as FT students for the purposes of the Education (Student Support) Regulations 2011, as amended by:

- The Education (Student Fees, Awards and Support) (Amendment) Regulations 2012
- The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013
- The Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations 2013
- The Education (Student Support and European University Institute) (Amendment) Regulations 2013



- The Education (Fees and Student Support) (Amendment) Regulations 2013
- The Further and Higher Education (Student Support) (Amendment) Regulations 2014
- The Special Educational Needs (Consequential Amendments to Subordinate Legislation) Order 2014
- The Education (Student Support) (Amendment) Regulations 2014
- The Education (Student Support) (Amendment) Regulations 2015
- The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016
- The Education (Student Support) (Amendment) Regulations 2016
- The Education (Student Fees, Awards and Support) (Amendment) Regulations 2016
- The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2017
- The Education (Student Fees, Awards and Support) (Amendment) Regulations 2017
- The Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations 2017
- The Education (Student Support) (Amendment) Regulations 2018
- The Education (Student Fees, Awards and Support) (Amendment) Regulations 2018
- The Education (Student Support) (Revocation, Amendment and Saving Provision) Regulations 2018
- The Education (Student Support) (Amendment) (No. 2) Regulations 2018
- The Education (Student Support) (Amendment) (No. 3) Regulations 2018
- The Education (Postgraduate Doctoral Degree Loans and the Education (Student Loans) (Repayment) (Amendment) (No. 2) etc.) Regulations 2018
- The Education (Student Fees, Awards and Support etc.) (Amendment) Regulations 2019
- The Education (Student Fees, Awards and Support etc.) (Amendment) Regulations 2020

Other sets of legislation/regulations cited in this document (in the order they appear):

- Immigration Act 1971 (as amended)
- The British Nationality Act 1981 (as amended)
- Human Fertilisation and Embryology Act 1990 (as amended)
- The British Overseas Territories Act 2002 (as amended)
- The Student Fees (Qualifying Courses and Persons) (England) Regulations 2007 (as amended)
- The Education (Fees and Awards) (England) Regulations 2007 (as amended)
- Treaty establishing the European Community (Nice consolidated version) (as amended)
- Directive 2004/38/EC of the European Parliament and of the Council of the European Union
- Higher Education Act 2004 (as amended)

## 7.2 Annex G - Updates log

---

Date	Updates
------	---------

Version 0.1 06/11/2019	Updated document in line with accessibility guidance. General updates as well as changes made to Residency Sections to include DVILR and Calais Leave and Course Designation updates
Version 0.2 03/12/2019	General Updates sent to DFE for review
Version 0.3 02/01/2020	Document returned by DFE with comments
Version 0.4 13/1/2020	Action taken on DFE comments
Version 0.5 14/2/2020	Accepted formatting and text changes, updates actions based on DfE comments, sent to DFE for final review.
Version 1.0 21/2/20	Chapter signed off 21/2/20 sent for publishing 24/2/20