Assessing Eligibility Guidance

Higher Education Student Finance in Wales
Academic Year 23/24 – Version 4.0

Summary

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

Regulation References

Since academic year (AY) 18/19 there have been two sets of Regulations governing student support in Wales:

- The Education (Student Support)(Wales) Regulations 2017 (SI 2017/47) as amended
- The Education (Student Support)(Wales) Regulations 2018 (SI 2018/191) as amended

As these Regulations often have mirroring provisions, the regulation references throughout this guidance are followed by either “(2017)” or “(2018)” to denote which set of Student Support Regulations the regulation is in reference to.

Disclaimer

This guidance is designed to assist with the interpretation of the student support regulations as they stand at the time of publication. It does not cover every aspect of student support nor does it constitute legal advice or a definitive statement of the law. Whilst every endeavour has been made to ensure the information contained is correct at the time of publication, no liability is accepted with regard to the contents and the Regulations remain the legal basis of the student support arrangements for the AY 23/24. In the event of anomalies between this guidance and the Regulations, the Regulations prevail. Please note the Regulations are subject to amendment.

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

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Abbreviations

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

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General Eligibility

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

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

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

1.1 Time limit for applying for student support

The general rule is that a student must make their application to SFW within nine months of the first day of the academic year in respect of which the student is applying for support (regulations 10(1) (2017) and 33 (2018)). SFW has the discretion to extend this deadline where they consider it is appropriate to do so, with consideration to the individual's situation (regulations10 (2(f)) (2017) and 33 (2018)).

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

- the date on which the course was designated, if that happens after the first day of the academic year
- the date on which the student or their spouse/civil partner, parent or stepparent 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 stepparent has been granted leave to enter or remain, if that happens after the first day of the academic year

See Annex A for a full list of events.

The general rule also does not apply where the student is making a separate application for a loan product, including an additional amount of loan or for DSA.

1.2 Documentation requirements

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

For all loans paid in AY 23/24, the Welsh Ministers may make it a condition of entitlement to payment of any loan that a student provides them with a UK National Insurance number (NINO) as a condition of entitlement to payment of any loan (regulations 59(1) (2017) and 96(1) (2018)). The DWP will in most cases issue NINOs to applicants applying for student support (if they do not have one). In exceptional circumstances where a student has not provided a NINO the Welsh Ministers will be able to release loan instalments (regulations 59(3) (2017) and 96(2) (2018)). This will avoid hardship in the event that there are delays for students obtaining a NINO which are outside their control.

Regulations 60(2) (2017) and 35(2) (2018)) state that Welsh Ministers may request sight of a student's valid national ID card, their valid passport issued by the state of which the student is a national or their birth certificate. Relevant documents are listed in the supporting notes available when completing each application.

Students are asked at the point of application whether or not they hold a valid UK passport (which has not expired). Students holding a valid UK passport can provide SFW with their passport number and details rather than sending their original passport. SFW may also accept scanned copies or clear photographs of UK passports which are digitally uploaded by applicants into their online account. However, SFW would encourage applicants to provide their UK passport details in the relevant part of their application. SFW verify these details with His Majesty's Passport Office (HMPO) via the Government Secure Intranet.

SFW may accept legally certified or notarised true copies of documents on an exception only basis, where they consider it unreasonable to insist on originals. Every endeavour should be made however to have sight of original identity documents, preferably a passport or identity card. A certified true copy is a photocopy of an original document. It must have been 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 list is not exhaustive and applicants should check with SFW. The person certifying the copy must provide their name, address and contact number. The certifying person must not be a relative.

SFW may accept scanned copies or clear photographs of UK birth certificates which are digitally uploaded by applicants into their online account. However, SFW should not require students to produce birth certificates where they are unwilling to do so, nor should they require students to provide reasons for not wanting to do so. In such cases, other forms of evidence such as a valid passport should be accepted.

In exceptional cases, a student may, with valid reason, be unable to provide either a birth certificate or passport: for example, the Home Office is holding the passport and the student is not in possession of their birth certificate. SFW must not in these circumstances continue to request these items, but may accept other forms of evidence from external organisations such as the Home Office or the student's solicitor in order to ensure that they can satisfy themselves of the applicant's identity.

1.3 Students ineligible for funding

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

- are in receipt of a non-income assessed 'healthcare bursary'
- are in receipt of any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007
- 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

Where a person qualified as an eligible student for the previous academic year, it will not usually be necessary for SFW to re-determine personal eligibility for the following year (see regulations 4(7-10) (2017) and 11 (2018)), unless they have a temporary immigration status which expires during the academic year. In that case, support for the next academic year of the course will not be approved until evidence of a new eligible immigration status has been provided.

1.3.1 Healthcare Bursaries

Eligible students who apply for a healthcare bursary for an NHS-funded course have access to the same package of NHS support: an income assessed NHS Bursary and a non-income assessed grant of £1,000. Such students are also eligible to access limited support under the Student Support Regulations in addition to the support available from the NHS. See the AY 23/24 'Assessing Financial Entitlement' guidance chapter for full details.

Some students have access to a healthcare award which is not funded by the NHS bursary scheme, for instance students on some paramedic courses. If the award is means tested, they should be assessed for reduced rate of maintenance loan (RRML).

Nursing, midwifery and AHP students

Studying in England and Scotland

From 1 August 2017, new nursing, midwifery and allied health professional (AHP) students on undergraduate pre-registration courses in England/Scotland have not received healthcare bursaries. Instead, they can apply for the standard student support package, subject to previous study rules.

Studying in Wales

For students who started nursing, midwifery or AHP courses in Wales before 1 August 2017 they can apply for income-assessed healthcare bursaries, which they will continue to receive until completion. For students starting a course in nursing, midwifery or AHP in Wales after 1 August 2017, a new healthcare bursary eligibility requirement was introduced and this requires students to sign an agreement to work in the NHS in Wales for up to two years after course completion.

Dental hygiene and dental therapy courses

Studying in England and Scotland

From 1 August 2018, new dental hygiene and dental therapy students on undergraduate pre-registration courses in England/Scotland have not received healthcare bursaries. Instead, they receive the standard student support package.

Studying in Wales

Students studying these courses in Wales will continue to be able to access the healthcare bursary and are subject to the eligibility criteria introduced in AY 17/18, including the requirement to work in the NHS in Wales for up to two years after course completion.

1.3.2 Previous student loans – breaches of obligation to repay loan and unratified loans

The Regulations provide that a person shall not be eligible for support if they are in breach of any obligation to repay any loan (regulations 4(3) (2017) and 10(Exception 4) (2018)) or the person has reached the age of 18 and has not ratified any agreement for a loan made with them when they were under the age of 18 (as defined in regulations 4(3)(e) (2017) and 10(Exception 5) (2018)).

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

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

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

The student declaration form covers previously borrowed loans where the student was under the age of 18. By signing a new declaration, that student acknowledges and agrees that they are automatically ratifying all student loans that they borrowed before reaching the age of 18.

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

1.3.3 Unfitness to receive support

A student does not qualify as an eligible student if, in SFW's opinion, they have shown themselves by their conduct to be unfitted to receive support (regulations 4(3)(f) (2017) and 10(Exception 6) (2018)). This power may be used at any stage in the process of assessing a student's eligibility for support, but once a student has been notified that they are eligible this power may not be used. However, SFW may also terminate a student's period of eligibility for reasons provided for by regulations 6(5) (2017) and 20(1) (2018).

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

- Where it comes to light that the student has committed fraud in applying for support:
  - In these cases, SFW should consider exercising the power to refuse the application (or terminate eligibility, depending on when the fraud comes to light). This is based on the grounds that the student has demonstrated they are unfit due to fraudulent conduct to be considered for support. This can include making applications (and receiving support) to more than one authority and presenting fraudulent information in order to receive more support than they are entitled to.

- Where the student has made repeated applications for support and received support for a number of different courses without completing those courses:
  - This is most likely to involve loans for living costs and supplementary grants such as GfDs and DSA, as entitlement to these loans and grants is not subject to the previous study rules. It may also involve fee loan and maintenance grant support. Where a student has already received support for four uncompleted courses, SFW should consider whether that student should be eligible for further support based on the student's individual circumstances. If applicable, the student should be deemed unfit for further support. In the case of fee support, SFW should consider any additional years of fee support awarded due to compelling personal reasons when making their decision.

- Where evidence from the HE provider calls a student's fitness to receive support into question:

- The HE provider may provide evidence of attempted fraud against it. This may not actually lead to the student being expelled but may lead SFW to consider whether the student, though being allowed to continue with the course, should continue to receive support for it.

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

It is important to bear in mind that the decision as to whether a student is suitable for or should be allowed to take a course rests with the HE provider, the decision as to whether the student is eligible for funds rests with SFW. Consideration should also be given where the applicant is pursuing higher education as a means towards their rehabilitation.

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

It is important to remember that the purpose of these provisions is to safeguard public funds, and to ensure that they are spent properly. SFW should always ensure that a decision to refuse or terminate support will stand up to examination in the event of a formal appeal or a court challenge. It may be a sensible precaution to seek advice from SFW's legal staff.

1.4 Prisoners

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

An eligible prisoner under the Regulations is one who is serving their sentence of imprisonment in the UK, has an earliest release date within six years of the first day of the first academic year, and has approval from the appropriate prison authority to study the current course.

Note that where a prisoner has been given an indeterminate sentence, the Ministry of Justice considers the minimum period of imprisonment set at trial (the sentence tariff) as the earliest release date, rather than waiting for a direction from the parole board. This is subject to the governor's determining whether a prisoner is on track to meet their sentence requirements.

A FT/PT '2012 cohort' or '2018 cohort' student who is an eligible prisoner will be eligible for tuition fee support only for those periods when they are imprisoned. For more information see the AY 23/24 'Change of Circumstances (Including Overpayments)' guidance.

Students who have spent any time in prison (whether on remand or otherwise) within the academic year will not be entitled to any maintenance support whilst they are in prison unless they are undertaking a part-time course and the academic year is a year in which they enter or leave prison (regulation 44 (Exception 1) (2018)). Maintenance support should be calculated on a pro-rata daily basis excluding the time in prison (regulation 93 (2018)).

In exceptional circumstances, SFW will have the discretion to determine whether to pay full or partial support, or none at all whilst a student is in prison in an academic year. SFW should only use their discretion where stopping or recovering payments will cause financial hardship to students and prevent them from continuing with their course.

In order to determine if a student should receive grants and loans for living costs for periods spent in prison during the academic year, SFW need to consider factors such as a student's ability to pay rent and other living expenses to enable them to continue with their course. It is expected that exercising the discretion would be appropriate when a student spends a very short time in prison.

1.5 Students attending more than one course

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

2 General Residency

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

2.1 Ordinary Residence

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

A person is not to be treated as ordinarily resident in a place unless that person lawfully resides in that place. Therefore, periods where an applicant has not been lawfully resident in the relevant residence area prescribed in the Regulations at any time within the required

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

Note that the Home Office has the power to disregard instances where an individual remains in the UK beyond the expiration of their grant of leave, referred to here as 'overstaying', which normally would result in their continued residence in the UK being deemed unlawful:

- Until 24 November 2016, a period of overstaying where an application was made within 28 days of a person's leave expiring would be disregarded where the application was subsequently granted.
- From 24 November 2016, paragraph 39E of the Immigration Rules allows the Home Office to consider some exemptions for overstayers whose application could not be made within 14 days of the applicant's leave expiring.

The Home Office can apply this exemption (sometimes called a 'grace period') in Limited Leave to Remain (Immigration Rules), Discretionary Leave to Remain (outside the Immigration Rules) and Indefinite Leave to Remain cases. This means that the Home Office can determine that the period of unlawful residence, from the point of expiry of the person's leave to the point further leave was granted, will be disregarded where the late application was submitted within 14 days (or 28 days if before 24 November 2016) and the Home Office subsequently granted leave. In cases where there was a late application within the 'grace period' and further leave was granted, it is expected that the Home Office will confirm this to SFW. Where that is not possible, SFW should consider whether a student's residence is lawful by virtue of their relationship to someone with a valid status.

In addition to the 14-day overstayer policy, on 22 October 2020 the Home Office amended paragraph 39E of the Immigration Rules. These changes were put in place as a response to restrictions relating to the COVID-19 pandemic and to act as a protection against overstaying in the period 24 January 2020 – 31 August 2020 and allowed individuals time to either leave the UK or regularise their stay within the UK. Any overstaying between 24 January and 31 August 2020 is discounted for the purposes of future student support applications, where the applicant's leave expired within this period.

Where an applicant to the EU Settlement Scheme applies after the cut-off date of 30 June 2021 and the Home Office applies their discretion and processes the application, any period of unlawful residence in the UK from 1 July 2021 until the date of award of pre-settled or settled status can be disregarded for the purposes of considering the three-year ordinary residence requirement. In practice, this means that SFW can count the period of unlawful residence as part of the three-year lawful residence period. The Home Office can also

exercise its discretion to accept an application after the pre-settled status expiry date – in that case, any period of unlawful residence in the UK following the date of expiry of pre-settled status until the date of award of settled status can be disregarded.

The Home Office also put in place an additional measure in response to the COVID-19 pandemic in the form of the NHS healthcare extension scheme, under which eligible healthcare workers and their families whose leave expired between 31 March 2020 and 1 October 2021 were granted a one-year extension to their visa without having to make an application or pay relevant fees. Where there is a gap between an individual's previous leave expiring and leave under the extension scheme being awarded, the Home Office disregard that period of overstaying when the person is otherwise eligible for leave under the Scheme. SFW will make a similar determination when considering whether an individual has been ordinarily lawfully resident during this period.

Eligible family members of EEA and Swiss nationals covered by the Withdrawal Agreement may come to the UK to join their family member. For those who do not apply to the EU Settlement Scheme within the applicable deadline (the later of 30 June 2021 or three months from arrival in the UK) but do so at a later date, any period of unlawful residence in the UK and Islands beyond the expiry of the deadline up to the date a valid late application is made is to be treated as lawful residence for the purpose of considering the three-year ordinary residence requirement.

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

2.2 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 (as outlined in Schedule 1 (2017) and Schedule 2 (2018)) must not have been resident in the UK and Islands (or the relevant residence area, as applicable) during the relevant three-year period wholly or mainly for the purposes of receiving FT education.

SFW should determine on a case-by-case basis whether an applicant has been resident in the UK and Islands (or the relevant residence area, as applicable) wholly or mainly for the purpose of receiving FT education.

The Welsh Government 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.

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

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

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

2.4 Temporary or occasional absence

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

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

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

Short periods of absence from the UK and Islands (or the relevant residence area, as applicable) as a result of COVID-19 can be considered temporary and should therefore be discounted for the purposes of establishing whether an individual meets the ordinary residence requirements.

Where the relevant regulations impose a requirement to be ordinarily resident in Wales/ the UK on the first day of the first academic year of the course, a short period of absence at the start of the course as a result of COVID-19, which prevents ordinary residence on the first day, will not impact on the individual's eligibility for student support.

2.5 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 relevant residence area, as applicable).

SFW will need to satisfy themselves that the student has maintained a residence in the UK and Islands (or the relevant residence area, as applicable) during the relevant period and will return to Wales (or the UK, Gibraltar, the EEA and Switzerland as appropriate) other than solely for the purpose of completing the relevant course.

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

2.6 Emigrants

Absence from the UK because of emigration should generally not be considered a temporary absence, though each case should be considered on its own merits.

2.7 Temporary employment outside of Wales, the UK and Islands (or the relevant residence area, as applicable)

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

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

Information on temporary absences due to armed forces personnel being posted outside of the UK and Islands (or the or the relevant residence area, as applicable) can be found in section 2.9.

In Annex 4 there is a certificate that can be used by SFW if they want verification of the applicant's status from the Ministry of Defence.

2.8 Children living in Wales, the UK and Islands (or the relevant residence area, as applicable)) whose parents are temporarily employed outside these areas

Children whose parents are temporarily employed outside Wales, the UK and Islands (or the relevant residence area, as applicable) but who remain in Wales, the UK and Islands (or the relevant residence area, as applicable) will normally retain the relevant connection with the UK (or the relevant residence area, as applicable), and therefore be eligible for support.

The Welsh Government is of the view that the relevant period of their residence should not be regarded as being 'wholly or mainly for the purposes of receiving FT education` simply because they are still here and receiving education while their parents are temporarily employed abroad. Schedule 1, Part 2, paragraph 2(1) (2017) and Schedule 2, paragraph 1(1) (2018) states that three years of residence in the UK and Islands which was not wholly or

mainly for the purpose of receiving FT education does not apply to a person who is treated as ordinarily residence in the UK and Islands in accordance with Schedule 1, Part 1, paragraph 1(4) (2017) and Schedule 2, paragraph 9(2) (2018).

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

2.9 Considerations when establishing temporary employment

When determining if a break in ordinary residence is a result of temporary employment abroad, SFW should be satisfied that the period abroad arises from employment. They should then assess whether or not the absence is temporary, and decide whether, but for the temporary employment of the applicant (or parents or spouse/civil partner), the applicant would have been ordinarily resident in the relevant place.

In making their decision, SFW may wish to consider, among other things, the nature of the posting, the terms of any contract or employer's letter, the period of time spent abroad, the time spent in the country, and whether a residence has been maintained in Wales or the UK and Islands (or the relevant residence area, as applicable).

The onus is on the applicant to satisfy SFW that their absence was due to temporary employment abroad, and were it not for temporary employment abroad they would be ordinarily resident in Wales or the UK and Islands (or the relevant residence area, as applicable).

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

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

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

- Does the contract include liability for the UK and Islands (or the relevant residence area, as applicable) tax on earnings?

- Is the posting for a specified period, or if for an unspecified period, what is the reason for no specification?
- How long is the contractual period?
- Is the contract renewable, has it been renewed or is it one of a succession of contracts abroad?
- Does the contract convey automatic rights of return to this country from time to time?
- How long has the employee already been resident abroad?

When reviewing the contract, SFW may wish to bear in mind domestic employment case law, where 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, or they may indicate a long-term posting with the contract being renewed as a matter of formality rather than a real review.

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

- the nature of the work:
  - Is it normal for the nature of the trade or profession to be mobile?
  - Is mobility a condition of service?
- Does the applicant (or parent, spouse/civil partner etc.) have an automatic right of return to work in his or her organisation (or a related one) in his or her home country on completion of the duty abroad?
- periods between overseas postings:
  - Have such periods been spent in, for example, the employer's HQ in the UK and Islands (or the relevant residence area, as applicable)?
- previous contracts
- If there is no contractual period, how long has the employee already been resident abroad?

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

2.10 Determining dual residence

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

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

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

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

2.11 Armed forces personnel

2.11.1 Ordinary Residence

For the purposes of this guidance, 'UK Armed Forces' includes active service members of the British Army, Royal Navy, and Royal Air Force. Please note that this also includes members of the British Army Reserves, Royal Navy Reserves and Royal Air Force Reserves when on active duty 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, all UK administrations apply a consistent approach to the responsibility of processing such applications.

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

2.11.2 Temporary Absence

The Regulations state that members of the regular naval, military or air forces of the Crown (UK), an EEA State, Switzerland or Turkey who serve any period outside these areas are considered to be temporarily employed overseas for any such period.

The effect of this is that a person may be treated as being or having been ordinarily resident in Wales or the UK and Islands (or the relevant residence area, as applicable) if they would have been so resident but for the fact that they or their family member was serving overseas or in another country within the UK.

This group of people are in a special situation because of the unique nature of their employment, namely that they are bound by military law to accept overseas postings. This also includes members of the UK armed forces reserves when they are on active duty only.

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

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

2.12 Distance learning exception

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

From AY 17/18 new and/or continuing students who are either:

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

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

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

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

2.13 Derivative rights of residence (Zambrano, Chen and Ibrahim/Teixeira)

Individuals may hold an EEA family permit (issued prior to entry to the UK), a derivative residence card (issued after entry) or pre-settled status or settled status (issued under the EU Settlement Scheme) if they have a 'derivative right of residence' as the:

- primary carer of an EEA child in the UK who is financially independent (Chen)
- child of an EEA former worker and are currently in education in the UK (Ibrahim/Teixeira)
- primary carer of a child of an EEA former worker and the child is currently in education in the UK (Ibrahim/Teixeira)
- primary carer of a British child (Zambrano)
- primary carer of a British dependent adult (Zambrano) or the
- child of a primary carer who qualifies through one of these categories

Holding a derivative right of residence does not confer an automatic eligibility for student support in its own right, but it may mean that an individual holds an immigration status and lawful period of residency which would enable them to be able to satisfy the requirements of the Regulations.

Links to further details on Zambrano, Chen and Ibrahim/Teixeira cases can be found on Gov.UK:

https://www.gov.uk/derivative-right-residence

SFW will validate the award of an immigration status based on a derivative right of residence via the Home Office. Those with a derivative right of residence may also be able to apply to the EU Settlement Scheme.

2.14 Impact of the UK's exit from the EU

The UK's exit from the EU took place on 31 January 2020 and a transition period ended on 31 December 2020, after which free movement ended and post-EU exit immigration rules apply. The withdrawal of the UK from the EU will be referred to 'EU exit' for the purposes of this guidance.

2.14.1 Continuing students in AY 23/24 who started a course in AY 20/21 or earlier

Student support policy rules (and home fee status rules) are unchanged for all students who started a course in AY 20/21 or earlier, i.e. any course start date before 1 August 2021; their eligibility is therefore preserved. Support will continue on the same eligibility grounds until these students have completed their period of study. This applies whether or not the period of study starts after the end of the transition period in AY 20/21 (i.e. from 1 January 2021 to 31 July 2021 inclusive). EU, EEA, Swiss national students and their respective eligible family members will therefore continue to be eligible for student support in Wales according to the regulatory residency rules that were in force at the outset of AY 20/21.

Note that:

- these rules apply regardless of the duration of the student's period of study
- the period of study is not terminated where the student transfers course
- the period of study terminates when the student withdraws from or completes a course.

Section 3 of this guidance sets out the changes to residency categories for new students from AY 21/22 onwards.

2.14.2 Citizens' rights or 'protected' rights

EU, EEA and Swiss nationals and their respective family members who have exercised their right to reside in the UK by the end of the transition period (31 December 2020) and continue to reside there thereafter have citizens' rights under the EU Withdrawal Agreement (and the similar EEA-EFTA (Iceland, Liechtenstein and Norway) Separation Agreement and Swiss Citizens' Rights Agreement). Those with citizens' rights have the right to continue to legally reside in the UK and enjoy associated rights. The rights of those who move to the UK after the end of the transition period (unless they have citizens' rights as a family member of a person already in the UK) will be subject to the points-based immigration system.

Certain categories, such as family members of persons of Northern Ireland, who do not have citizens' rights under the EU Withdrawal Agreement, continue to be in scope to access home fee status and student financial support on the same basis as family members of EU nationals. Such persons, as well as those with citizens' rights, are referred to as having 'protected rights'. Those with 'protected rights' are defined in regulations as follows:

(a) a person within the personal scope of the citizens' rights provisions who:

i. has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules;

ii. is an Irish citizen who, pursuant to section 3ZA of the Immigration Act 1971(1), does not require leave to enter or remain in the United Kingdom;

iv. is an applicant for the purposes of regulation 4 of the 2020 Citizens' Rights Regulations where the relevant period has not expired; or

v. otherwise has rights deemed to apply by virtue of any citizens' rights deeming provisions; or

(b) a family member of a relevant person of Northern Ireland for the purposes of residence scheme immigration rules, where that family member has leave to enter or remain in the United Kingdom granted by virtue of residence scheme immigration rules.

Note that (a)(iii) was removed from the Regulations in AY 22/23 as it is no longer relevant.

Those who have pre-settled or settled status under the EU Settlement Scheme are considered to have citizens' rights for the purpose of providing student support. SLC will accept proof of pre-settled status or settled status from student finance applicants, together with ID documentation, as evidence that EU, EEA and Swiss nationals and their family members are covered by the Withdrawal Agreements.

People of Northern Ireland: The definition of "people of Northern Ireland" is taken from the residence scheme immigration rules as defined by section 17(1) of the European Union (Withdrawal Agreement) Act 2020, and refers to people born in Northern Ireland to a parent who was a British citizen, Irish citizen or dual British and Irish citizen at the time of the birth. The person of Northern Ireland must be British, Irish or have dual citizenship at the time of their family member's application to the EU Settlement Scheme.

2.15 The EU Settlement Scheme

Those who have protected rights can apply for a status under the Home Office's EU Settlement Scheme. They had until 30 June 2021 to apply and any discretion to extend this date is applied on a case-by-case basis. In certain circumstances, family members can join an EEA or Swiss national in the UK after 31 December 2020 and apply to the EU Settlement Scheme once they are here. Applications will, in this circumstance, be considered after 30 June 2021. Family members who are granted pre-settled or settled status will have the same rights in the UK whether or not they arrived by the end of the transition period.

Applicants to the EU Settlement Scheme will be awarded:

- **settled status** (i.e. indefinite leave to remain) if they have the requisite minimum of five years of continuous lawful residence in the UK, or
- **pre-settled status** (i.e. limited leave to remain) if they have a shorter period of UK residence (any period of lawful residence of less than five continuous years). After five years of continuous lawful residence in the UK they can apply to change this status to

settled status and must do so before the pre-settled status expires (unless Home Office discretion is applied).

2.15.1 Demonstrating settled or pre-settled status granted under the EU Settlement Scheme

From AY 21/22, access to student support under some of the categories detailed in section 3 depends on the individual having protected rights as demonstrated through the award of settled or pre-settled status under the EU Settlement Scheme. SLC will check that the individual with protected rights has settled status or pre-settled status granted under the EU Settlement Scheme where either status is required for student support eligibility.

All successful applicants to the EU Settlement Scheme are able to demonstrate their status digitally. In order to do so, the individual generates a share code which remains valid for 30 days and which allows external parties such as SLC to check the individual's status via the Home Office's View and Prove service. To generate the code, the individual must select that they wish to demonstrate their immigration status, data enter their national identity card number and date of birth and verify their account by text or e-mail. The verifying individual or organisation will require the individual's share code and date of birth to check the status. SFW will request the share code from the relevant applicants as part of the student finance application process.

2.15.2 Outstanding applications or appeals

Where an applicant to the EU Settlement Scheme applies after the cut-off date of 30 June 2021 and the Home Office applies their discretion and processes the application, any period of unlawful residence in the UK from 1 July 2021 until the date of award of pre-settled or settled status can be disregarded for the purposes of considering the three-year ordinary residence requirement (i.e. SLC will effectively treat this period as lawful residence). The Home Office can also exercise its discretion to accept an application for settled status after the pre-settled status expiry date – in that case, any period of unlawful residence in the UK following the date of expiry of pre-settled status until the date of award of settled status can be disregarded.

Where an applicant to the EU Settlement Scheme has had their application rejected and has an ongoing appeal with the Home Office, or where the Home Office has not reached a determination, they are to be treated as if they have protected rights until the case is concluded. Evidence of a qualifying application or an ongoing appeal would be required in order to consider their eligibility under any of the relevant policy categories described later in this section, where that category requires the applicant to have a status under the scheme.

2.15.3 Expiry of pre-settled status

Where an applicant has pre-settled status and this status expires during an academic year of their course, the student will not be eligible for support for subsequent course years unless they can evidence that they have been granted settled status. Where they do not obtain settled status (and do not qualify on any other basis), they will be ineligible for support for future academic years.

2.16 Residency categories

Part 2 of Schedule 1 (2017) and Schedule 2 (2018) of the Regulations set out the categories under which a student can be eligible for support. 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. They must meet the other conditions as prescribed under regulations 4 (2017) and 9-11 (2018).

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

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

On that date the student must:

- have been ordinarily resident in the UK and Islands throughout the three-year period preceding that date other than wholly or mainly for the purpose of receiving FT education,

- be ordinarily resident in Wales, and

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

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

A person is to be treated as ordinarily resident in Wales or the UK and Islands if the person would have been so resident but for the fact that:

- the person, or
- the person's spouse or civil partner, or
- the person's parent, or
- in the case of a dependent direct relative in the ascending line, the person's child or child's spouse or civil partner

is or was temporarily employed outside Wales or the UK and Islands.

2.17.1 Settled status

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

- The person is a British citizen. British citizens are not subject to any restriction on their length of stay in the UK. Evidence of British citizenship may be established by a British passport.

- They are a person who has been granted indefinite leave to enter/remain (ILR/ILE) (which includes settled status under the EU Settlement Scheme). The immigration status of such applicants may be established or verified by reference to their award of settled status under the EU Settlement Scheme or a stamp(s) in their passports or travelling documents.

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

- The person is an Irish citizen.

- They are exempt from immigration control under section 8(4)(a) of the Immigration Act 1971 (they are a member of HM forces).

2.17.2 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).

NB: If the parents were not married when the child was born, but subsequently 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 (for example 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
    - (if neither (1) nor (2) apply) he can satisfy certain requirements as regards proof of paternity – for example, he is named as the father on a birth certificate issued within one year of the child's birth or he can satisfy the Home Secretary that he is the father of the child (by means of DNA test results, court orders or other relevant evidence)

2.17.3 British overseas territories

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

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

Any BOTC entering the UK from the relevant countries (provided they have not renounced or acquired their BOTC status by naturalisation as a BOTC in an overseas territory after 21 May 2002) will be doing so as a British citizen and will not be subject to immigration control.

- 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 who began courses in AY 22/23 or earlier are eligible for home fee status only (unless they meet the criteria of a residency category under Schedule 1 (2017) or Schedule 2 (2018) to qualify for student support). Students from BOTs beginning courses from AY 23/24 may qualify for fee support only if they have been ordinarily resident in the UK, the Islands and the specified BOTs for the three-year period immediately prior to the first day of the first academic year of the course, with at least part of that period having been spent in a specified BOT.

Students may be asked to provide proof that they have settled status when applying for places at colleges and universities in the UK.

Acceptable evidence might be:

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

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

2.17.4 Gibraltar

Gibraltar is the only BOT that has historically been part of the EEA. It was not part of the customs union and was not a member of the EU in its own right. Since the end of the transition period, Gibraltar is no longer part of the EEA or subject to EU law, but it remains part of the free-travel Schengen area.

UK nationals and their family members with resident status in Gibraltar granted by the Government of Gibraltar continue to be eligible in Wales for home fee status and fee support only for courses starting before 1 January 2028, on the basis of three years of residence in the UK, Gibraltar, the EEA and Switzerland. From AY 23/24, EU nationals and their family members who have a right to reside in Gibraltar arising from the Withdrawal Agreement will be eligible in Wales for home fee status and fee support only for courses starting before 1 January 2028, on the basis of three years of residence in the UK, EEA, Switzerland and the overseas territories. See section 3.24.

For more information see the following sections: Gibraltar nationals working in the UK (section 3.17); persons settled in the UK who move to Gibraltar then return before the first day of the first academic year (section 3.19); and UK nationals, EU nationals and their family members in Gibraltar (section 3.24).

2.18 Settled persons resident in the Common Travel Area – students who start a course from AY 21/22

Fee support only will be available under paragraph 1(3) (2018) to settled persons who have been ordinarily resident in the Common Travel Area (the UK, Islands and Ireland) for the three years prior to the first day of the first term of the course (with at least part of that residence period spent in Ireland) if they are studying in Wales and are settled in the UK on the first day of the first term of the course. A person who moves to Wales from the Islands for the purposes of undertaking the course is not eligible for fee support under this category.

A UK national who was resident in Ireland before the end of the transition period and who starts a course before 1 January 2028 could be eligible for full support under paragraph 6B, so would not need to apply for fee support only under this category.

Examples of students who may be eligible under paragraph 1(3):

- **Calum** is an Irish citizen who was ordinarily resident in Ireland until he arrives in the UK in September 2023. He starts a course in Wales in October 2023.

  He is eligible for fee support only as:

  - He was ordinarily resident in the UK, Islands and Ireland for the three-year period prior to the first day of the first term of the course (1 September 2020 – 31 August 2023).

- **Shane** is a UK national. He moves from the UK to Ireland in January 2023 and returns to the UK in September 2023 to start a course in Wales in the same month. His residence period in Ireland is not considered a temporary absence.

  He is eligible for fee support only as:

  - He has been resident in the UK, Islands and Ireland for the three years prior to the first day of the first term of the course (1 September 2020 – 31 August 2023).

2.19 Persons who have a right of permanent residence in the UK - students who started a course before AY 21/22

The meaning of 'right of permanent residence' for student purposes is defined within the Regulations. For Schedule 1 Part 2 paragraph 3 (2017) or Schedule 2 paragraph 1(2) (2018), this refers to the right of permanent residence as acquired under the Citizens' Rights directive, or directive 2004/38.

Only EEA and Swiss nationals and their family members who acquired the right of permanent residence in the UK under directive 2004/38 can be eligible students under Schedule 1 Part 2 paragraph 3 (2017) or Schedule 2 paragraph 1(2) (2018).

Students with a right of permanent residence under Directive 2004/38 who started a course in AY 20/21 or previously can continue to receive student support on the same basis as they do currently. However this category will no longer apply to new applicants from AY 21/22 and beyond. For further details on this category, please see the AY 20/21 SFW 'Assessing Eligibility' guidance.

2.20 Persons who have a right of permanent residence in the UK - students who start a course in AY 21/22 or later

The right of permanent residence awarded under Directive 2004/38 has been replaced by the right of permanent residence under Article 15 of the EU Withdrawal Agreement. Anyone who has a right of permanent residence under Directive 2004/38 can have it exchanged for the new status and must have applied to do so via the EU Settlement Scheme by 30 June 2021. In doing so, they are awarded settled status, and they can apply as settled persons for full support for a course starting from AY 21/22.

To fall within Schedule 2 paragraph 1(2) (2018), the student must be able to satisfy four requirements. They must:

- be settled in the UK by virtue of having acquired the permanent right of residence, as demonstrated by the award of settled status under the EU Settlement Scheme
- be ordinarily resident in Wales on the first day of the first academic year of the course
- have been ordinarily resident in the UK and Islands throughout the three-year period preceding the first day of the first academic year of the course, and

  Where the three-year residence period referred to above was wholly or mainly for the purpose of receiving FT education, have been ordinarily resident in the territory comprising the UK, Gibraltar, the EEA and Switzerland immediately prior to the start of that period of residence. Full support will be available to students in this scenario. From AY 23/24, those that were resident in an overseas territory (other than Gibraltar) immediately prior to the start of that period of residence will be eligible for fee support only. See annex C for a full list of the overseas territories.

Non-EEA family members of EEA or Swiss nationals may have protected rights under the Withdrawal Agreement and be awarded settled status under the EU Settlement Scheme; these individuals can be assessed under this category.

Retired EEA migrant workers and their family members may also acquire permanent residence, subject to Home Office guidance and relevant regulations. Upon acquiring permanent residence they will be eligible to apply for settled status under the EU Settlement Scheme.

If an individual can demonstrate that they have acquired the right of permanent residence through having settled status awarded under the EU Settlement Scheme (and that they haven't lost it due to, for example, a two-year absence or serious criminality), SFW can treat this as proof that a person thereafter has the legal right to reside in the UK without restriction for the purposes of checking periods of legal ordinary residence.

An applicant may become eligible under this category after the start of the course as an "event".

Example of a student who may be eligible under paragraph 1(2) (2018):

- **Annika** is a Russian national who moved to Wales in January 2011 and became the spouse of a Spanish national in June 2013. She was granted the right of permanent residence in July 2018 as the family member of an EEA national who was exercising their treaty rights under directive 2004/38. In October 2020, she is granted settled status under the EU Settlement Scheme. She starts a course in September 2023.

  She is eligible for full support as:

- she has settled status in the UK on the first day of the first academic year of the course
- she is ordinarily resident in Wales on the first day of the first academic year of the course
- she has three years of ordinary residence in the UK and Islands prior to that date

2.21 Refugees and their family members (their spouses, civil partners, children or stepchildren)

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 (Schedule 1, paragraph 4 (2017) and Schedule 2, paragraph 2 (2018)). The student must be:

- a refugee in their own right who is ordinarily resident in the UK and Islands and who has not ceased to be so resident since they were recognised as a refugee, or
- the spouse or civil partner of a refugee and who was also the spouse or civil partner of the refugee on the date on which the refugee made 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 refugee status was awarded, or
- the child or stepchild of a refugee who upon the date on which the refugee made their application for asylum to the Home Office, was the child or stepchild of the refugee and also under the age of 18 and is ordinarily resident in the UK and Islands and has not ceased to be resident since refugee status was awarded, and
- ordinarily resident in Wales on the first day of the first academic year of the course.

In cases where the spouse, civil partner or child arrived after the date refugee status was awarded, they must have leave to enter or remain or have been granted leave in line with their parent of partner. SFW must satisfy itself that all of the relevant Home Office documentation is valid.

A “refugee” is a person who is recognised by His Majesty’s Government as a refugee under the 1951 United Nations Convention relating to the status of refugees. A refugee is defined in the Convention as someone who is outside their own country of origin owing to a well-founded fear of returning there because they may be persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and who is unable, or owing to such fear unwilling to avail themselves of the protection of that country.

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

Refugees are awarded five years limited leave to enter or remain in the UK (apart from those entering the UK under a resettlement scheme such as the Gateway Protection Programme). At the end of the initial five-year 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 stepchild 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 ILE.

Note that where the student has been granted leave to enter the UK (i.e. where leave is granted either prior to arrival in the UK or at the UK border), the leave start date should be taken as the date of arrival in the UK.

An applicant may become eligible under this category after the start of the course as an "event".

2.22 Persons granted leave to enter or remain as a protected person and their family members

Prior to amendments to the relevant regulations in January 2021, a student eligible for support on the grounds of humanitarian protection, stateless leave or Section 67 leave (or their relevant dependants) was required to 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.

Following amendments to regulations in January 2021 all students (and their relevant family members) applying for support in respect of AY 21/22 onwards who are considered to be a person granted leave to enter or remain as a protected person (Schedule 1, paragraph 4ZA (2017) and Schedule 2, paragraph 2ZA (2018)) (i.e. those students who hold a leave to remain status of humanitarian protection, stateless leave or Section 67 leave) will no longer be required to demonstrate that they have been 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.

The definition of persons granted leave to enter or remain as a protected person also extends to individuals applying for support in respect of AY 21/22 onwards who hold Calais leave status. There is no requirement on these individuals to demonstrate that they have been 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.

Eligibility requirements for persons granted leave to enter or remain as a protected person are detailed in the sub-sections below. Note that persons granted leave to enter or remain as a protected person (and their qualifying family members) are subject to the provisions within the regulations covering student finance eligibility where the grant of leave to remain has expired. Please see section 2.25.1 'Expiration of leave to enter or remain' for more information.

2.22.1 Persons granted leave to remain on the grounds of humanitarian protection and their family members

Prior to 1 April 2003, the Home Office granted 'exceptional leave to enter or remain' (ELE/ELR). From 1 April 2003 the Home Office replaced the granting of ELE/ELR with humanitarian protection or discretionary leave (see section 2.5 for further information on individuals granted discretionary leave). Leave to enter or remain with humanitarian protection is not the same as asylum and does not constitute recognition as a refugee within the meaning of the United Nations Convention. Persons awarded either of these statuses are nevertheless in genuine need of international protection or have other truly compelling reasons for not being removed from the UK. Humanitarian protection status is not granted to people who qualify for asylum or to EU, EEA or Swiss nationals and their family members with protected rights under the Withdrawal Agreement.

Paragraph 4ZA of Schedule 1 (2017) and Paragraph 2ZA of Schedule 2 (2018) provides eligibility for support to individuals granted leave to enter or remain on the grounds of humanitarian protection (i.e. those individuals granted leave to enter or remain by the Home Office under paragraph 339C of the immigration rules).

Individuals qualifying for leave on grounds of humanitarian protection are granted leave to enter or remain, as appropriate, for five years in the first instance, with the possibility of indefinite leave to remain thereafter. At the end of the five-year qualifying period, people with refugee and humanitarian protection status are entitled to apply for indefinite leave to remain. The applicant should have been sent a letter or immigration status document by the Home Office confirming their grant of leave on the grounds of humanitarian protection.

Individuals who are the spouse, civil partner, child or stepchild of a person granted leave to enter or remain on the grounds of humanitarian protection, and were so at the time of the application to the Home Office for said leave, and in the case of the child or stepchild, who are under 18 years old at the time of the application to the Home Office would also be eligible to apply for support.

To be eligible for support, students with leave to remain on the grounds of humanitarian protection / their qualifying family members must:

- hold leave to enter or remain which has not expired
- be ordinarily resident in Wales on the first day of the first academic year of the course
- have been ordinarily resident in the UK and Islands since the date the leave status was granted*.

Note that where the student has been granted leave to enter the UK (i.e. where leave is granted either prior to arrival in the UK or at the UK border), the leave start date should be taken as the date of arrival in the UK.

*Note that this period of ordinary residence refers to the period subsequent to the student's most recent grant of their humanitarian protection status. Where a student has had to renew their humanitarian protection leave, there is only a requirement for the student to have been ordinarily resident from the date of the renewal onwards.

A student, or the spouse, civil partner, parent or stepparent of a student, does not need to have been granted humanitarian protection prior to the first day of the first academic year of the course for the student to be able to commence study on their course (provided they are lawfully resident). Where the student or the student's spouse, civil partner, parent or stepparent is granted humanitarian protection, this is considered an 'event' under the Regulations.

2.22.2 Persons granted stateless leave and their family members

Paragraph 4ZA of Schedule 1 (2017) and Paragraph 2ZA of Schedule 2 (2018) provides eligibility for support to persons granted leave to remain as a stateless person (i.e. those individuals granted leave to remain by the Home Office because they have no right to residence in their country of former habitual residence or any other country).

This category applies to all students applying in respect of a current course from 1 August 2018 onwards (subject to meeting other eligibility criteria such as time limits).

To be eligible under this category students must:

- be a person granted stateless leave status by the Home Office, whose leave to remain has not expired (or a qualifying family member of a person granted stateless leave status by the Home Office with a valid and extant form of leave to enter or remain)

- be ordinarily resident in Wales on the first day of the first academic year of their course

- have been ordinarily resident in the UK and Islands throughout the period since being granted such leave*.

Note that where the student has been granted leave to enter the UK (i.e. where leave is granted either prior to arrival in the UK or at the UK border), the leave start date should be taken as the date of arrival in the UK.

*Note that this period of ordinary residence refers to the period subsequent to the student's most recent grant of their stateless leave status. Where a student has had to renew their stateless leave, there is only a requirement for the student to have been ordinarily resident from the date of the renewal onwards.

Family members of persons granted stateless leave may also be eligible for support.

If the student is the:

- spouse, civil partner, child or stepchild of the person granted stateless leave, or the
- child or stepchild of the spouse or civil partner of the 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 Home Office, they may be eligible for support. A child or stepchild of the person granted stateless leave or of their spouse or civil partner must have been under 18 on the date the valid application for leave was made to the Home Office but does not need to be under 18 when applying for student support. Note that family members will also need to hold a valid Home Office form of leave (for example limited leave to remain or discretionary leave to remain) on the first day of the first academic year of their course.

Note that a student, or the spouse, civil partner, parent or stepparent of a student, does not need to have been granted stateless leave prior to the first day of the first academic year of the course for the student to be able to commence study on their course (provided they are lawfully resident). Where the student or the student's spouse, civil partner, parent or stepparent is granted stateless leave, this is considered an 'event' under the Regulations.

2.22.3 Persons granted leave to remain under Section 67 of the Immigration Act and their dependent children

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 the children known as 'Dubs children') and came into force on 31 May 2016. Paragraph 4ZA of Schedule 1 (2017) and paragraph 2ZA of Schedule 2 (2018) provides eligibility for support to persons granted leave to remain under Section 67 of the Immigration Act 2016 and their dependent 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 leave under section 67 of the act. This form of leave allows 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.

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

- be ordinarily resident in Wales on the first day of the first academic year of the course
- have been ordinarily resident in the UK and Islands since the date their leave status was granted*
- hold leave to enter or remain which has not expired.

*Note that this period of ordinary residence refers to the period subsequent to the student's most recent grant of their Section 67 leave status. Where a student has had to renew their Section 67 leave, there is only a requirement for the student to have been ordinarily resident from the date of the renewal onwards.

A student or the parent of a student does not need to have been granted leave under Section 67 of the Immigration Act 2016 prior to the first day of the first academic year of the course for the student to be able to commence study on their course (provided they are lawfully resident). Where the student or parent of a student is granted leave under section 67 of the Immigration Act 2016, this is considered an 'event' under the Regulations.

2.22.4 Persons granted Calais Leave and their dependent children

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 an unaccompanied child who was to be reunited with qualifying family. These individuals are granted leave to remain under paragraphs 352J, 352K, 352L or 352T of the Immigration Rules.

Individuals with this form of leave to remain applying for student support in respect of AY 21/22 onwards will be eligible under Paragraph 4ZA of Schedule 1 (2017) and Paragraph 2ZA of Schedule 2 (2018). Eligibility is also extended to the dependent children of a person who holds Calais leave status, who have been granted "leave in line" with their parent.

To qualify for student support as a person with Calais Leave (or as a person with 'leave in line' granted by virtue of being a dependent child of a person granted Calais leave) an individual must:

- be ordinarily resident in Wales on the first day of the first academic year of the course,
- have been ordinarily resident in the UK and Islands throughout the period since the person was granted such leave*.

Note that where the student has been granted leave to enter the UK (i.e. where leave is granted either prior to arrival in the UK or at the UK border), the leave start date should be taken as the date of arrival in the UK

and

- have leave to enter or remain which has not expired.

*Note that this period of ordinary residence refers to the period subsequent to the student's most recent grant of their Calais leave status. Where a student has had to renew their Calais leave, there is only a requirement for the student to have been ordinarily resident from the date of the renewal onwards.

As this immigration status is typically only valid for a five-year period, a person will subsequently need to demonstrate they have a further valid leave to remain status for the remainder of their course if their Calais leave status expires whilst they are still in study, prior to any application for student support being approved in respect of any remaining academic years of their course.

If a person submits an application for another residence permit to obtain a further five years of leave to remain under Calais leave, they would ultimately be a UK resident for a period of ten years and would therefore be eligible to apply for UK settled status at the end of that period. Where this is granted, they can then declare settled status on their student finance application rather than Calais leave.

A student does not need to have been granted Calais leave status prior to the first day of the first academic year of the course for the student to be able to commence study on their course (provided they are lawfully resident). Where the student is granted Calais leave status, this is considered an 'event' under the Regulations.

2.22.5 Persons granted leave under the Afghan Relocations and Assistance Policy (ARAP) or the Afghan Citizens Resettlement Scheme (ARCS)

From AY 22/23, individuals with leave under the ARAP or the ACRS are eligible for funding on the same basis as the protection-based categories (those with refugee status, humanitarian protection leave, Calais leave, Section 67 leave and stateless persons).

Paragraph 2ZA is for the following individuals:

- A person who has been granted limited leave to enter (LLE), indefinite leave to enter (ILE) or indefinite leave to remain (ILR) under the ARAP, or ILE/ILR under the ACRS who:
    - is ordinarily resident in Wales on the first day of the first academic year of their course, and

- has been ordinarily resident in the UK and Islands from the date* their most recent leave was granted.

and

- A family member who has been granted leave in line under the ARAP or the ACRS, where the family member:
  - is ordinarily resident in Wales on the first day of the first academic year of the course; and
  - has been ordinarily resident in the UK and Islands from the date* their most recent leave was granted.

*Note that where the student has been granted leave to enter the UK (i.e. where leave is granted either prior to arrival in the UK or at the UK border), the leave start date should be taken as the date of arrival in the UK.

Eligible family members are defined as follows:

- spouse or civil partner who has been granted leave in line with the main applicant under the ARAP or the ACRS,
- dependent child/stepchild who has been granted leave in line with the main applicant under the ARAP or the ACRS.

A child/stepchild of any age can be considered eligible for student funding as long as they have leave in line and are dependent on the parent/stepparent. The Home Office is responsible for checking a child is dependent at the time of the application for leave and this does not require to be checked again at the point of their application for student support.

Leave under the ARAP is granted to Afghan nationals who are aged 18 or over and their relevant Afghan national family members. Leave / leave in line under the ACRS may be granted to Afghan nationals and nationals of other countries (for example in mixed nationality families), although it is expected that the majority will be Afghan. SLC will require proof of leave or leave in line under the relevant scheme, regardless of the nationality of the applicant or the applicant's family member.

Those who were granted limited leave to enter are eligible for student funding under the ARAP whether or not they have transferred their limited leave into indefinite leave.

Example of a student eligible under paragraph 2ZA:

> **Amina** is an Afghan national who worked for the British government in Afghanistan. Amina is relocated to the UK under the ARAP and arrives in the UK in September 2022. Amina starts a UG degree course in AY 23/24.

As Amina has leave under the ARAP, is resident in Wales on the first day of the first academic year of the course and has been ordinarily resident in the UK and Islands since being awarded leave under the ARAP, she is eligible for full UG funding from SFE.

2.23 Persons granted leave to remain as a protected partner and their children

In general, students are eligible for student support only if they have been ordinarily resident (which must be lawful residence) in the UK and Islands for three years before the first day of the first academic year of their course. The Home Office makes special provisions to disregard gaps in leave when granting leave to remain for persons who are a victim of domestic violence or abuse or those who are bereaved partners of a settled person.

Prior to AY 21/22, students with these forms of leave to remain status could access student support only where they can meet the three-year ordinary residency requirement. These students are eligible under the following categories within Schedule 1 (2017) and Schedule 2 (2018):

- 'Persons settled in the UK' – individuals with indefinite leave to remain are considered to be settled in the UK. Where the student has been awarded indefinite leave to remain as a victim of domestic violence or abuse or as a bereaved partner, they can qualify for support as a settled person, providing they can demonstrate three years of ordinary residence prior to the first day of the first academic year of the course.

- 'Persons with leave to remain and their family members' - where the student has been awarded any form of leave to remain (including limited leave to remain) on the grounds of family life as a victim of domestic violence or abuse or as a bereaved partner they can therefore qualify for support as a settled person, providing they can demonstrate three years of ordinary residence prior to the first day of the first academic year of the course.

Following amendments to the Regulations, individuals applying for support in respect of AY 21/22 onwards who are considered to be a person granted leave to remain as a protected partner (Schedule 1, paragraph 4ZB (2017) and Schedule 2, paragraph 2ZB (2018)) (i.e. those students with leave to remain as a victim of domestic violence or abuse and leave to remain as a bereaved partner) and their children are no longer required to demonstrate three years of lawful, ordinary residence to be eligible for student support. These individuals can be eligible for student support as soon as their status has been granted.

A student or the parent of a student does not need to have been granted leave to remain as a protected partner prior to the first day of the first academic year of the course for the

student to be able to commence study on their course. Where the student or the parent of a student is granted leave to remain as a protected partner, this is considered an ‘event’ under the Regulations.

Note that persons granted leave to remain as a protected partner (and their qualifying family members) are subject to the provisions within the Regulations covering student finance eligibility where the grant of leave to remain has expired. Please see section 2.25.1 ‘Expiration of leave to enter or remain’ for more information.

Further details on the eligibility requirements for persons with leave to remain as a protected partner and their children are detailed below.

Persons granted leave to remain as a victim of domestic violence or abuse

The Home Office grants leave to remain to 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 or limited leave to remain, even if they have only been in the UK for a short period of time and do not have existing leave.

Individuals applying for student support from AY 21/22 onwards who have been granted leave to remain by the Home Office as a victim of domestic violence or abuse will be eligible for student support without being required to demonstrate three years of ordinary residence in the UK prior to the first day of the first academic year of the course. This includes individuals granted leave to remain in the UK under any of the following provisions of the Immigration Rules:

- paragraph 289B and 289D (victims of domestic violence);
- paragraphs D-DVILR.1.1. and D-DVILR.1.2. of Appendix FM (victims of domestic abuse);
- paragraphs 40 and 41 of Appendix Armed Forces (victims of domestic violence partners of members of armed forces)

In order to qualify for student support without having to demonstrate three years of ordinary residence in the UK and Islands prior to the first day of the first academic year of the course, a person who holds the status of leave to remain as a victim of domestic violence or abuse (or their children) are required to be:

- ordinarily resident in Wales on the first day of the first academic year of the course
- ordinarily resident in the UK and Islands since their leave was granted

Persons granted leave to remain as a bereaved partner

The Home Office makes special provision to disregard gaps in leave when granting leave to remain for bereaved partners of a settled person where their leave expired during the stages of their bereavement. The Home Office accepts that it is reasonable to take into account the difficult personal circumstances that the individual may have experienced during this period of time and that this may impact on their ability to submit applications for further leave in time.

Individuals applying for student support from AY 21/22 who have been granted leave to remain by the Home Office as a bereaved partner will be eligible for student support, without being required to demonstrate three years of ordinary residence in the UK prior to the first day of the first academic year of the course. This includes individuals granted leave to remain in the UK under any of the following provisions of the Immigration Rules:

- paragraph 288, as a person in relation to whom the requirements in paragraph 287(b) of those rules are met (bereaved partners)
- paragraphs D-BPILR.1.1. and D-BPILR. 1.2 of Appendix FM (Decision on application for indefinite leave to remain as a bereaved partner)
- paragraphs 36 and 37 of Appendix Armed Forces (bereaved partners)
- paragraph 295N, as a person in relation to whom the requirements in paragraph 295M of those rules are met (bereaved partners)

In order to qualify for student support without having to demonstrate that they have been ordinarily resident in the UK and Islands for the three years prior to the first day of the first academic year of the course, a person with leave to remain as a bereaved partner (or their dependent child) is required to be:

- ordinarily resident in Wales on the first day of the first academic year of the course
- ordinarily resident in the UK and Islands since their leave was granted.

2.24 Persons granted leave under the Ukraine Schemes

Paragraphs 2ZC (2018) and 4ZC (2017) have been added to regulations and provide support from AY 22/23 to new and continuing students who have been granted leave in the UK under one of the following schemes, referred to collectively as the “Ukraine Schemes”:

- The “Ukraine Family Scheme” (launched on 4 March 2022), which allows Ukrainian nationals and their family members to come to the UK or extend their stay in the UK if they have family members who already have leave to remain in the UK.

- The “Homes for Ukraine Sponsorship Scheme” (launched on 18 March 2022), which allows Ukrainian nationals and their family members to come to the UK if they have an approved sponsor under this scheme.
- The “Ukraine Extension Scheme” (launched on 3 May 2022), which allows Ukrainian nationals and their family members who already have leave to remain in the UK to extend their leave in the UK because they cannot return to Ukraine.

Students who are granted leave outside the immigration rules in connection with the Russian invasion of Ukraine can also be eligible under this category.

Students who are eligible under this category are referred to as “protected Ukrainian nationals” in the 2017 and 2018 regulations.

Those who are granted leave under one of the Ukraine Schemes will be eligible for home fee status, the home student undergraduate tuition fee cap, and student finance (HE UG fee and maintenance support) without being subject to a three-year ordinary residence requirement, as long as they:

- are ordinarily resident in Wales on the first day of the first academic year of the course,
- are ordinarily resident in the UK and Islands and have not ceased to be so resident since being granted such leave and
- meet all other personal and course eligibility requirements.

All those who are granted leave under one of the Ukraine Schemes are granted up to three years of limited leave to enter or remain in the UK. They will fall into one of the following groups:

- Those who have been granted leave for three years under a Ukraine scheme.
- Those who have been granted leave for six months outside the immigration rules, having either:
  - arrived at the UK border with a permission to travel document on the basis they fall within one of the Ukraine schemes, or
  - arrived at the UK border with another form of leave, which is transferred thereafter to six months of leave on the basis they will fall within one of the Ukraine Schemes.

Note that where the student has been granted leave to enter the UK (i.e. where leave is granted either prior to arrival in the UK or at the UK border), the leave start date should be taken as the date of arrival in the UK

For example:

- **Galina** is a Ukrainian national who is granted three years of leave in the UK on 1 May 2022 under the Ukraine Family Scheme. Galina starts a four-year UG degree course in AY 23/24 and applies to SFW for funding as she is living in Wales.

  As Galina is ordinarily resident in Wales on the first day of the first academic year of the course (1 September 2022) and has been ordinarily resident in the UK and

Islands since being granted leave under a Ukraine Scheme, she is eligible for full UG funding from SFW for AY 23/24.

Galina's period of leave in the UK expires on 30 April 2025. As her leave expires during AY 24/25, support will be awarded for the whole of the academic year but support will only be awarded in academic year 25/26, if she provides proof that her leave has been extended by the end of AY 24/25, or or is granted another valid form of leave by the end of AY 24/25.

Family members

Family members who are granted leave under one of the Ukraine Schemes will be granted leave in their own right, rather than 'leave in line' as a family member. This means that there is no distinction for student support purposes between leave granted to an individual or leave granted to their immediate or extended family member(s), and no need for an 'eligible family member' definition for student support purposes for this category. SLC will not request details of the family relationship or request proof of the relationship.

Note that:

- family members of any nationality may be granted leave under a Ukraine Scheme. Any undergraduate student who is eligible for student support under the Ukraine Schemes category would be assessed for full fee and maintenance support, even if the applicant is an EU national, rather than EU student 'fees only' support.

- family members of EEA/ Swiss nationals may be eligible for the EU Settlement Scheme as a joining family member, if the EEA/ Swiss national already has either settled or pre-settled status in the UK under the EU Settlement Scheme. Individuals in this scenario can choose which scheme they want to apply for.

Note that Ukrainian nationals and their family members, who in either case do not meet the eligibility criteria for any of the Ukraine Schemes, may be granted refugee status or humanitarian protection leave instead, so may be eligible to apply for support under those categories.

Eligibility as an event

There is currently no end date confirmed for the Ukraine Schemes, so it will be possible to become eligible as an event where leave is granted under a Ukraine Scheme after the start of the academic year of study. See **Annex A** for the full list of events.

2.25 Persons with leave to enter or remain and their family members

Schedule 1, Paragraph 5 (2017) and Schedule 2 Paragraph 3 (2018) provides eligible student status to individuals:

- who have applied for refugee status and have been informed by the Home Office that they do not qualify for refugee status but have been awarded leave to enter or remain in the UK on the grounds of discretionary leave

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

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

Prior to 1 April 2003 the Home Office granted ‘exceptional leave to enter or remain’ (ELE/ELR). From 1 April 2003 the Home Office replaced the granting of ELE/ELR with humanitarian protection (HP) or discretionary leave (DL) (for more information on persons granted leave to remain on the grounds of humanitarian protection, please see section 2.22.1). Exceptional leave to enter or remain with discretionary leave is not the same as asylum and does not constitute recognition as a refugee within the meaning of the United Nations Convention. Persons awarded either of these statuses are nevertheless in genuine need of international protection or have other truly compelling reasons for not being removed from the UK.

Discretionary leave is not granted by the Home Office where a person qualifies for asylum or humanitarian protection, or where there is a category within the Immigration Rules under which they qualify. Discretionary leave is not granted to EU, EEA or Swiss nationals or their family members with protected rights under the Withdrawal Agreement.

Exceptional leave to enter or remain with discretionary leave (DL) is not the same as indefinite leave to remain. The duration of the leave period is normally granted to set calendar dates which can vary. The applicant should have been sent a letter or Immigration

Status Document by the Home Office confirming their grant of leave. Individuals who have completed six years of discretionary leave (or four years under the old exceptional leave policies) are entitled to apply for indefinite leave to remain.

Note that a student, or the spouse, civil partner, parent or stepparent of a student, does not need to have been granted leave to enter or remain (as defined within the Regulations) prior to the first day of the first academic year of the course for the student to be able to commence study on their course (provided they are lawfully resident). Where the student or the student's spouse, civil partner, parent or stepparent is granted leave to enter or remain, this is considered an 'event' under the Regulations.

2.25.1 Expiration of leave to enter or remain

The Regulations provide that where an individual has previously been assessed to be eligible for student support as a person (or the family member of a person) with leave to enter or remain (as detailed within section 2.5) or as a person (or the family member of a person) with one of the grants of Home Office leave detailed in section 2.22 (Protected Persons) or 2.23 (Protected Partners), and their grant of leave to enter or remain in the UK has expired and no further leave to remain has been granted/ no appeal is pending (within the meaning of section 104 of the Nationality and Asylum Act 2002), the student is ineligible for support in any subsequent academic years of their course.

The student support application requires students to enter the date of expiry of their or their family member's immigration status if applicable. Before allowing student support to continue in the next academic year, SFW will be required to check whether the student is still entitled to student support. SFW should request revised documentary evidence of their immigration status from the Home Office.

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

Before allowing support to continue in the academic year following the expiry of the relevant immigration status, SFW will need evidence that the status, or a different qualifying immigration status, has been confirmed by the Home Office or that the Home Office is considering awarding an appropriate immigration status, or an appeal is pending. Consideration should also be given as to whether the student may qualify under another category.

The Home Office has issued guidance about the immigration position of persons whose current leave to enter or remain has expired or is about to expire. This guidance would cover persons who have been granted limited leave to enter or remain in the UK and who have to demonstrate that they have current leave to enter or remain in order to be eligible for student support.

Where a person with limited leave to enter or remain applies for a further period of leave before the first period of leave has expired, the applicant's leave may be extended by section 3C of the Immigration Act 1971. Provided the application for further leave has not been withdrawn or the applicant does not leave the UK, the first period of leave is extended for the period it takes the Secretary of State to make a decision on the renewal application.

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

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

A person whose leave to enter or remain has been extended under section 3C of the 1971 Act may satisfy the definition of a person with leave to enter or remain/ person with leave to enter or remain as a protected person/protected partner as set out in Schedule 1 of the 2017 Regulations and Schedule 2 of the 2018 Regulations. Whether such a person is an eligible student or qualifies for any particular type of support available for AY 23/24 will be determined in accordance with the provisions of those Regulations, as will the amount of support, if any, payable to that person.

SFW may validate the award of an immigration status with the Home Office.

2.26 Workers, employed persons, self-employed persons and their family members - Students who started a course before AY 21/22

Paragraph 4(1) (2018) does not apply to new applicants for student funding from AY 21/22. Students eligible under paragraph 4(1) who started a course in AY 20/21 or previously can continue to receive student support on the same basis as they do currently. For further details on this category, please see the AY 20/21 SFW 'Assessing Eligibility' guidance.

Where an eligible student who started a course in AY 20/21 or earlier subsequently becomes a worker, self-employed person or a family member of either during their course, they may become eligible under this paragraph under the event provisions.

2.27 Workers, employed persons, self-employed persons and their family members – students who start a course from AY 21/22

Workers, employed person, self-employed person and their family members who are covered by the Withdrawal Agreements and have been granted pre-settled or settled status under the EU Settlement Scheme can access student finance under paragraph 4A(1).

The requirement to have a status under the EU Settlement Scheme does not apply to Irish citizens. Irish citizens are eligible under this category as long as they were resident in the UK by 31 December 2020 (migrant workers) or working in the UK by 31 December 2020 (frontier workers). They are not required to apply for a status under the EU Settlement Scheme.

Frontier workers (workers who are resident outside the UK while working in the UK) will not be able to apply to the EU Settlement Scheme and will instead be awarded a frontier worker permit as evidence of their worker status under the Withdrawal Agreement. The permit will be available only to those who are working in the UK by 31 December 2020. Irish citizens do not need this permit to work in the UK. Family members of frontier workers can apply to the EU Settlement Scheme as long as they are living in the UK by 31 December 2020, even though the frontier worker is resident elsewhere.

Note that all applicants may provide alternative evidence of their or their family member's frontier worker status, as a frontier worker permit is not mandatory for the purposes of a student support application.

To fall within paragraph 4A(1), as well as having pre-settled or settled status, the student must be able to satisfy the following requirements. They must:

- be an EEA migrant worker or an EEA self-employed person
- be a Swiss employed person or a Swiss self-employed person
- be a family member of a person mentioned above
- be an EEA frontier worker or an EEA frontier self-employed person
- be a Swiss frontier employed person or a Swiss frontier self-employed person, or
- be a family member of a person mentioned above, and
- be ordinarily resident in Wales* on the first day of the first academic year of the course, and
- have been ordinarily resident in
    - the UK, Gibraltar, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course (full support), or
    - The UK, the overseas territories, the EEA and Switzerland throughout the three-year period preceding the first day of the first academic year of the course (fee support only – applies to those starting a course from AY 23/24 only).

*EEA frontier workers, EEA frontier self-employed persons, Swiss frontier employed persons and Swiss frontier self-employed persons do not need to be ordinarily resident in Wales on the first day of the first academic year of the course as per paragraph 4A(1).

Migrant worker status must be maintained throughout the course. Where worker status is lost, the student would no longer be eligible for support under this category.

Where the child of a migrant worker is not under 21, factual dependency on the migrant worker (i.e. dependency for any reason, financial or otherwise) must be demonstrated.

Where an eligible student who started a course in AY 21/22 or later subsequently becomes a worker, self-employed person or a family member of either during their course, they may become eligible under this paragraph under the event provisions.

A specialist team will carry out the assessment of support for all students whose eligibility for support falls under the EEA Migrant Worker category.

2.27.1 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. SFW will consider the principles set out below including the remuneration received and whether the work is lawful.

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

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

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

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

Principles from EU case law

In order to decide whether an EEA national can be classed as a migrant/frontier worker or a Swiss national employed in the UK, SFW should continue to take into account the previous 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 UK's prior membership in the EU and is being maintained for those with protected rights under the Withdrawal Agreement, therefore the term "worker" – which determined the scope of application of that freedom – must be interpreted broadly and not restrictively.

- The essential characteristics of an employment relationship is that for a certain period of time, a person performs services for and under the direction of another person in return for which they receive remuneration.

- To qualify as a worker, the activity performed by the person must nevertheless be effective and genuine, to the exclusion of activities of such a small scale as to be regarded as purely marginal and ancillary.

- When determining whether the work is effective and genuine, the decision maker must take its decision on the basis of objective criteria and taking into account all the circumstances of the case.

- A person is not precluded from being classified as a worker where their work is part time (Levin v Secretary of State for Justice case 53/81 [1982]), low wage (Lawrie-Blum v Land Baden-Wurttemberg case 66/85 [1986] ECR 2121 [16]), below the minimum subsistence wage (Levin), on call (Raulin), or short term (Brown v Secretary of State for Scotland [1988] ECR 3205). In particular, a person is not required to complete a minimum period of employment before being able to attain the status of a worker (Brown [22]). The irregular nature and limited duration of the services provided are however factors which may be taken into account when assessing whether the work is effective and genuine or purely marginal and ancillary (Raulin). Depending upon the circumstances of the individual case, multiple short-term contracts may be satisfactory where these show that an individual has, in total, worked more than a 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 or prior Member State in the case of individuals with protected rights working in the UK are irrelevant and must not be taken into account. What matters is that the person is performing genuine and effective work in paid employment (Levin). It follows that a person who enters the UK with the principal intention of pursuing a course of study, but who also pursues effective and genuine employment activities in the UK, is not precluded from having the status of a worker (Styrelsen Case C-46/12 [2013] ICR 715 [39]).

- The person, however is not entitled to be classified as a migrant worker at the start of an academic year for student support purposes, where the person has arrived in the UK and is not working, or is actively seeking employment but has not yet worked here (Collins v SSWP [2005] QB 145).

- Where a person has ceased work before undertaking higher education studies, the person will be able to retain their status as a worker (and be eligible to receive the same benefits as national workers) provided there is a link or connection between the previous work activities performed in the host Member State and the course of study they have undertaken (Lair v University of Hanover Case 39/86 1988 ECR 3161 [24] [28] (Raulin). As an exception, such a connection may not be required where the person has involuntarily become unemployed and is obliged by labour market conditions to undertake occupational retraining in another field of activity (Lair) (Raulin). It is not necessary however to show any link or connection where the person works at the same time as studying.

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

2.28 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 are a 'person with protected rights' and fulfil relevant residency requirements. The definition of 'family member' varies according to the category of person in question. The following table explains this further.

Category of person	Definition of family member
EEA migrant worker EEA self-employed person EEA frontier worker EEA frontier self-employed person	• the person’s spouse or civil partner • direct descendants of the person or of the person’s spouse or civil partner who are either under the age of 21, or dependants of the person or the person’s spouse or civil partner • dependent direct relatives in the ascending line or that person or the person’s spouse or civil partner
Swiss employed person Swiss self-employed person Swiss frontier employed person Swiss frontier self-employed person	• the person’s spouse or civil partner • the person’s child or the child of that person’s spouse or civil partner

When establishing eligibility under 4A(1) of the Regulations:

- a ‘direct descendant’ of an EEA worker or of their spouse/civil partner refers to their:
    - child, stepchild, grandchild or great-grandchild who is either:
        - under the age of 21, or
        - a dependant of the EEA worker or of their spouse/civil partner

- a ‘dependent direct relative in the ascending line’ of an EEA worker or of their spouse/civil partner refers to their:
    - parent, stepparent, adoptive parent or grandparent

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

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

- ‘child’ refers to their:
    - child, a child of which they are a guardian, or a child of which they have parental responsibility (this includes a stepchild)

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

The residence criteria that must be met by those who fall under 4A(1) is as follows:

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

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

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

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

As qualifying under this category of student is an “event” under the Regulations an applicant may become eligible under this category after the start of the course.

Examples of students who may be eligible under paragraph 4A(1):

- **Rafael** is a Spanish national who arrived in the UK in October 2020. Prior to that he lived in France for five years. He is granted pre-settled status under the EU Settlement Scheme. He starts a course in September 2023 and continues to work while studying.

  He is eligible for full support as:

  - he is a migrant worker whose work continues during his course
  - he has pre-settled status in the UK
  - he is ordinarily resident in Wales on the first day of the first academic year of the course
  - he was ordinarily resident in the UK, Gibraltar, the EEA and Switzerland for the three years prior to the first day of the first academic year of the course

- **Marco** is a Dutch national who works in Wales and returns to his home in Belgium at weekends. He is awarded a frontier worker permit under the Withdrawal Agreement as he was working in the UK by 31 December 2020. He starts a course in September 2023 and continues to work while studying.

  He is eligible for full support as:

  - he is a frontier worker whose work continues during his course
  - he was ordinarily resident in the UK, Gibraltar, the EEA and Switzerland for the three years prior to the first day of the first academic year of the course

As a frontier worker, he is not required to be ordinarily resident in the UK on the first day of the first academic year of the course.

2.29 Children of former EEA migrant workers - students who started a course before AY 21/22

Schedule 2, paragraph 4(2) (2018) no longer applies to new applicants for student funding from AY 21/22. For further details on this category, please see the AY 20/21 SFW 'Assessing Eligibility' guidance.

Eligible students who started a course in AY 20/21 or previously can continue to receive student support on the same basis as they do currently.

2.30 Children of former EEA migrant workers - students who start a course in AY 21/22 or later

To be eligible for support under Schedule 2, paragraph 4A(2) (2018) 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 this category, it is 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.

Students qualifying under this category are persons who were previously entitled to support by virtue of Article 10 of Council Regulation 492/2011 on the freedom of movement as workers as extended by the EEA Agreement and who now have citizens' rights protected under the Withdrawal Agreement and are awarded pre-settled or settled status under the EU Settlement Scheme.

Article 10 states that "The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions".

The Welsh Government advises that this provision may apply to the children of EEA workers in the UK where that worker is no longer a worker here and where the child has protected rights under the Withdrawal Agreement as demonstrated via the award of pre-settled or settled status under the EU Settlement Scheme. The migrant worker parent does not need to have an EU Settlement Scheme status.

As qualifying under this category of student is an "event" under the Regulations, an applicant may become eligible under this category after the start of the course.

2.31 UK settled persons who have exercised a right of residence elsewhere – students who started a course before AY 21/22

Schedule 2, paragraph 5 (2018) does not apply to new applicants for student funding from AY 21/22. Students eligible under this category who started a course in AY 20/21 or previously can continue to receive student support on the same basis as they do currently. For further details on this category, please see the document AY 20/21 SFW 'Assessing Eligibility' guidance.

2.32 UK settled persons who have exercised a right of residence elsewhere – students who start a course in AY 21/22 or later

Schedule 2, paragraph 5A (2018) will provide full support for those starting a course from AY 21/22 where the applicant exercised a right of residence in the EEA or Switzerland by the end of the transition period and where, on 31 December 2020, the applicant was ordinarily resident either:

- in the EEA, Switzerland or Gibraltar, or
- in the UK, having moved back to the UK from the EEA/Switzerland/Gibraltar on or after 1 January 2018.

Where a settled person moves from the UK to the EEA or Switzerland after the end of the transition period, they are not exercising a right of residence and will not be eligible under this category.

The applicant must have exercised a right of residence in the EEA or Switzerland before the end of the transition period. However, they can spend part of the three-year ordinary residence period in the UK and Gibraltar. They must have remained resident in the UK, Gibraltar, the EEA or Switzerland throughout the period beginning on 31 December 2020 and ending immediately before the first day of the first academic year of the course.

The following are some examples of situations where a person has exercised a right of residence for the purpose of paragraph 5A:

- a UK national who exercised a right under Article 7 of Directive 2004/38 in an EU Member State before the end of the transition period (e.g. a UK national who went to work in France before 1 January 2021)
- a UK national who exercised 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 before the end of the transition period (e.g. a UK national who went to work in Iceland before 1 January 2021)
- a family member of a UK national who exercised a right under Article 7 of Directive 2004/38 in an EU Member State (please note that 'family member' here has the

meaning provided in Article 7 of Directive 2004/38) before the end of the implementation period (e.g. the American spouse of a UK national accompanies them when they went to work in Germany before 1 January 2021)

- a family member of a UK national who exercised 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) before the end of the transition period (e.g. the Chinese husband of a UK national who accompanied her when she went to work in Norway before 1 January 2021)

- a person who has acquired the right of permanent residence in the UK (as defined in the Regulations) and exercised a right under Article 7 of Directive 2004/38 in an EU Member State before the end of the transition period (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 before 1 January 2021 with his Spanish national civil partner who took up a job there)*.

- a person who has acquired the right of permanent residence in the UK (as defined in the Regulations) and exercised 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 before the end of the transition period.

- A person who has acquired the right of permanent residence in the UK (as defined in the Regulations) and went 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 of before the end of the transition period.

*If, for example, the Moroccan national and their Spanish national civil partner went to Spain instead of the Netherlands, they would not be exercising rights under Article 7 of Directive 2004/38. However paragraph 5A allows a return to the student's own Member State, or that of the person in relation to whom the student is a family member, to count as an exercise of the right of residence.

The other requirements that need to be satisfied are listed below. The applicant must:

- be ordinarily resident in the UK on the first day of the first academic year of the course

- have been ordinarily resident in the territory comprising the UK, Gibraltar, 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, have been ordinarily resident in the UK, Gibraltar, the EEA and Switzerland immediately before that period of residence.

Eligibility for student support under this category (and home fee status) will only be available for courses starting up to seven years from the last day of the transition period (i.e. courses starting on 31 December 2027 at the latest).

An example of when paragraph 5A may apply is where a family of UK nationals who are ordinarily resident in the UK left Wales to live in Spain prior to the end of the transition period, with the parents going as workers and the children accompanying them. If the daughter returns to the UK aged 18 to enter HE before 31 December 2027, she may be eligible for support under paragraph 5A if she satisfies the relevant provisions.

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

Examples of students who may be eligible under paragraph 5A:

- **Bill** is a UK national who lives in Wales until March 2008 when he goes to live and work in Spain. He returns to the UK in July 2023 and starts a course in Wales in September 2023.

  He is eligible for funding as:

  - he was ordinarily resident in Wales before exercising a right of residence
  - he was ordinarily resident in the EEA and Switzerland before the end of the transition period
  - he is ordinarily resident in the UK on the first day of the first term of the course
  - he was ordinarily resident in the UK, Gibraltar, the EEA and Switzerland for the three-year period preceding the first day of the first academic year of the course and has remained there since the end of the transition period
  - his course start date is within the seven-year time limit starting from the last day of the transition period

- **Bridget** is a UK national who lives in Wales until December 2020 when she goes to live and work in Switzerland. She returns to the UK in March 2027 and starts a course in April 2027.

  She is eligible for funding as:

  - she was ordinarily resident in Wales before exercising a right of residence
  - she is ordinarily resident in the UK on the first day of the first term of the course

- she was ordinarily resident in the EEA and Switzerland before the end of the transition period
- she was ordinarily resident in the UK, Gibraltar, the EEA and Switzerland for the three-year period preceding the first day of the first academic year of the course and has remained there since the end of the transition period
- her course start date is within the seven-year time limit starting from the last day of the transition period

2.33 EU Nationals and their family members – students who started a course before AY 21/22

Until AY 20/21, EU nationals and their family members (as well as UK nationals who did not meet the criteria to receive the full package of support) needed to satisfy the residence conditions in paragraph 6(1) in order to potentially be eligible for support. However, this category of student only qualifies for tuition fee support.

This category does not apply to students starting a course from AY 21/22. Students eligible under paragraph 6(1) who started a course in AY 20/21 or previously can continue to receive student support in AY 23/24 on the same basis as they do currently. For further details on this category, please see the AY 20/21 SFW 'Assessing Eligibility' guidance.

Individuals who start a course from AY 21/22 onwards, who would formerly have received support in this category and have protected rights may be eligible under category 6A(1) or another category, where they meet the requirements of that category.

2.34 EU nationals with protected rights – students who start a course in AY 21/22 or later

Category 6A(1) allows EU nationals and their family members with protected rights who are granted pre-settled or settled* status under the EU Settlement Scheme, Irish nationals and their family members (Irish nationals have protected rights but are not required to apply to the EU Settlement Scheme) and family members of people of Northern Ireland living in the UK by 31 December 2020, to apply for fee support.

*Note that EU nationals who have protected rights should apply for full support if they have three years of residence in the UK and Islands. See paragraph 2.41 for further details.

Family members of Irish citizens have protected rights as an EU national's family member and are able to apply to the EU Settlement Scheme if the Irish citizen is resident in the UK by the end of the transition period. There is no requirement for the Irish citizen themselves to have applied to the EU Settlement Scheme. Similarly, the Home Office will allow family members of people of Northern Ireland to apply to the EU Settlement Scheme in order to equalise treatment with family members of Irish citizens.

The definition of "people of Northern Ireland" is taken from the Immigration Rules and refers to people born in Northern Ireland to a parent who was a British citizen, Irish citizen or dual British and Irish citizen at the time of the birth. The person of Northern Ireland must be British, Irish or have dual citizenship at the time of their family member's application to the EU Settlement Scheme.

To be eligible for fee support under category 6A(1), an EU national, their family member, a family member of an Irish Citizen or family member of a person of Northern Ireland must be ordinarily resident in the UK, the overseas territories*, the EEA and Switzerland for the three-year period prior to the first day of the first academic year of the course.

*'Gibraltar' has been replaced by 'overseas territories' for those starting a course from AY 23/24.

The applicant should apply for support from the UK territory where they are undertaking the course. Ordinary residence in that territory on the first day of the first academic year of the course is not required.

EU nationals and their family members must satisfy the residence conditions in Schedule 1 Part 2 paragraph 9 (2017) or Schedule 2 paragraph 6A(1) (2018) in order to potentially be eligible for support. However, this category of student may only qualify for tuition fee support.

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

Category of person	Definition of family member
EU national who fell within Article 7(1)© of Directive 2004/38 and has protected rights under the withdrawal agreement (not self-sufficient)	• the person's spouse or civil partner • direct descendants of the person or of the person's spouse or civil partner who are either under the age of 21, or dependants of the person or the person's spouse or civil partner
EU national who falls within Article 7(1)(b) of Directive 2004/38 and had protected rights under the withdrawal agreement (is self-sufficient)	• the person's spouse or civil partner • direct descendants of the person or of the person's spouse or civil partner who are either under the age of 21, or dependants of the person or the person's spouse or civil partner • dependent direct relatives in the person's ascending line or that of the person's spouse or civil partner

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

sickness insurance cover in the host Member State including the UK, up until 31 December 2020.

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

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

Examples of students who may be eligible under paragraph 6A(1):

- **Antonia** is an Italian national who arrives in the UK in September 2019. Prior to that she lived in Italy. She applies for and is granted pre-settled status under the EU Settlement Scheme in October 2020. She moves to Germany to live in February 2023 and returns to the UK in June 2023. As a person with pre-settled status, she can leave the UK for up to six months in every twelve-month period without losing this status or breaking her continuous residence under the EU Settlement Scheme. She starts a course in September 2023.

  She is eligible for fee support only as:

  - she has pre-settled status on the first day of the first academic year of the course,
  - she has three years of ordinary residence in the UK, the overseas territories, the EEA and Switzerland prior to the first day of the first academic year of the course.

- **Louise** is an Irish citizen who arrived in the UK in September 2021. Prior to that she lived in the Republic of Ireland. She has citizens' rights but does not need to apply to the EU Settlement Scheme to have the right to remain in the UK as she automatically has settled status as an Irish citizen. She starts a course in September 2023.

  She is eligible for fee support as:

  - she was resident in the UK prior to the end of the transition period, and
  - she has three years of ordinary residence in the UK, the overseas territories, the EEA and Switzerland prior to the first day of the first academic year of the course.

- **Umar** is a Kyrgyz national who has been living in Wales with his Irish civil partner since June 2021. Prior to that he lived in Germany. He applies for and receives pre-settled status under the EU Settlement Scheme. He starts a course in Wales in September 2023.

  He is eligible for fee support only as:

  - he is the family member of an Irish citizen,
  - he has pre-settled status, and
  - he has three years of ordinary residence in the UK, the overseas territories, the EEA and Switzerland prior to the first day of the first academic year of the course.

2.35 UK nationals and their non-UK national family members in the EEA and Switzerland by 31/12/2020 – students who start a course in AY 21/22 or later

Full support is available under paragraph 6B to UK nationals who were:

- resident in the EEA or Switzerland before the end of the transition period, and
- resident in the UK, Gibraltar, the EEA and Switzerland for three years prior to the first day of the first academic year of the course.

Full support will also be available to non-UK national family members of UK nationals, where:

- both the UK national and the family member were resident in the EEA or Switzerland by 31 December 2020, i.e.
    - on 31 December 2020, or
    - before 31 December 2020, having returned to the UK on or after 1 January 2018, and
- both the UK national and the family member were ordinarily resident in the UK, Gibraltar, EEA and Switzerland for three years prior to the first day of the first academic year of the course.

The family member must be:

- the person's spouse or civil partner, or
- a direct descendant of the person or of the person's spouse or civil partner who is
  a) under the age of 21, or
  b) a dependant of the person or the person's spouse or civil partner.

For both UK nationals and their non-UK national family members, the applicant should apply for support from the UK territory where they are undertaking the course. Ordinary residence in that territory on the first day of the first academic year of the course is not required.

Eligibility on these grounds will only be available for courses starting up to seven years* from the last day of the transition period (i.e. courses starting on 31 December 2027 at the latest).

*The rationale for this time period is to allow a child sufficient time to undertake and complete secondary school education and then come to the UK to undertake an FE/HE course.

Examples of students who are eligible under paragraph 6B:

- **Stuart** is a UK national who has never lived in the UK. (His UK national parents left the UK to permanently reside in Spain prior to Stuart's birth.) He is resident in Spain until he arrives in the UK in February 2021. He starts a course in Wales in September 2023.

  He is eligible for full support as he was:

- resident in the EEA or Switzerland at the end of the transition period, and
- ordinarily resident in the UK, Gibraltar, the EEA and Switzerland for the three years prior to the first day of the first academic year of the course (1 September 2020 – 31 August 2023).

- **Margot** is a UK national who has never lived in the UK. (Her parents are UK nationals who left the UK prior to her birth to permanently reside in the USA.) Margot left the USA in March 2017 to live and work in France and was living in France at the end of the transition period.

  She arrives in the UK in June 2023 in order to start a course in September 2023.

  She is eligible for full support as she was:

  - resident in the EEA or Switzerland at the end of the transition period, and
  - ordinarily resident in the UK, Gibraltar, the EEA and Switzerland for the three years prior to the first day of the first academic year of the course (1 September 2020 – 31 August 2023).

- **Lana** is a Spanish national whose mother is a UK national. They both live in Spain. Lana comes to the UK in June 2021 and starts a course in September 2023. She is under 21 on the first day of the first academic year of the course. Lana is not eligible for pre-settled or settled status as she did not arrive in the UK by the end of the transition period.

  Lana is eligible for full support as:

  - she is the non-UK family member of a UK national,
  - she and her UK national parent were living in the EEA or Switzerland on 31 December 2020, and
  - she and her UK national parent were ordinarily resident in the UK, Gibraltar, EEA and Switzerland for three years prior to the first day of the first academic year of the course.

2.36 Irish citizens who were resident in the EEA or Switzerland at or before the end of the transition period – students who start a course in AY 21/22 or later

Note that this category was added to the Regulations by an amendment that came into force on 31 December 2021.

Fee support will be available under category 6BA of the 2018 Regulations to Irish citizens who are undertaking a course in Wales and were:

- resident in the EEA or Switzerland immediately before the end of the transition period (or resident in the UK, having moved to the UK from the EEA or Switzerland after 31 December 2017),
- resident in the UK, Gibraltar, the EEA and Switzerland for three years prior to the first day of the first academic year of the course, and

- remained ordinarily resident in the UK, Gibraltar, the EEA or Switzerland between the end of the transition period and the first day of the first academic year of the course.

For example:

David is an Irish citizen who arrived in the UK in July 2022. Prior to that he lived in Spain, having moved to Spain from Ireland in July 2020. He starts a course in Wales in September 2023.

He is eligible for fee support as:

- he is undertaking the course in Wales.
- he was resident in the EEA and Switzerland at the end of the transition period, and
- he has three years of ordinary residence in the UK, Gibraltar, the EEA and Switzerland prior to the first day of the first academic year of the course.

- **Ciara** is an Irish citizen who arrived in the UK in October 2020; prior to that she lived in Switzerland, having moved to Switzerland from Ireland in November 2015.

  She is eligible for fee support as:

  - she is undertaking the course in Wales,
  - she was resident in the UK at the end of the transition period, having moved there from EEA or Switzerland after 31 December 2017, and
  - she was ordinarily resident in the UK, Gibraltar, the EEA and Switzerland for the three-year period prior to the first day of the first academic year of the course.

2.37 – Settled persons from the British overseas territories (BOTs) – students who start a course in AY 23/24 or later

Fee support is available under paragraph 6BB to new students who start courses from AY 23/24 for persons settled* in the UK on the first day of the first academic year of the course, who:

- o have been ordinarily resident in the UK, the Islands and the specified BOTs for the three-year period prior to the first day of the first academic year of the course, with at least part of that period having been spent in a specified BOT
- o did not move to Wales from the Islands for the purpose of undertaking the current course or a course which, disregarding any intervening vacation, the persons undertook immediately before undertaking the current course; and
- o are attending or undertaking a course in Wales.

*A person is ‘settled’ in the UK if they are ordinarily resident in the UK without being subject to immigration time restrictions. This applies to all settled persons.

Family members of persons settled in the UK are not eligible for fee support under this category. However, they are eligible for home fee status where they have been ordinarily resident for the three-year period prior to the first day of the first academic year of the course in the UK, Islands and the specified BOTs and are undertaking a course in Wales.

It will not be possible to become eligible as an event under this category.

This category is not subject to a time limit (other than the standard time limits for submission of the application).

For example:

George has full British citizenship and has been resident in Gibraltar since birth. He moves to Bermuda in November 2021 before moving to Wales in August 2023 and starts an undergraduate degree course there in September 2023.

He is eligible for fee support only from SFW as:

- he is settled in the UK on the first day of the first academic year of the course; note that as a full British citizen, he is settled when in the UK, so has to be in the UK on the relevant date in order to meet this requirement;
- he is undertaking a designated course in Wales; and
- he has been ordinarily resident in the UK, Islands and the specified BOTs for the three-year period immediately prior to the first day of the first academic year of the course, with at least part of that time spent in a BOT.

He is eligible for support under category 6BB as, although he may have resident status in Gibraltar, he does not meet the ordinary residence requirements of category 6D due to the time he spent in Bermuda.

David is a full British citizen who has been resident in the British Virgin Islands since birth. He moves to Wales in April 2021 and starts an undergraduate degree course in Wales in September 2023.

He is eligible for fee support only from SFW under category 6BB as:

- he is settled in the UK on the first day of the first academic year of the course; note that as a full British citizen, he is settled when in the UK, so has to be in the UK on the relevant date in order to meet this requirement;
- he is undertaking a designated course in Wales; and
- he has been ordinarily resident in the UK, Islands and the specified BOTs for the three-year period immediately prior to the first day of the first academic year of the course, with at least part of that time spent in a BOT.

2.38 - Family members of persons settled in the UK who have been resident in the UK and Islands for three years - students who start a course in AY 23/24 or later

Note that in AY 21/22 and AY 22/23, this category was available to family members of UK nationals only. For those starting a course from AY 23/24, this category is available to family members of all settled persons in the UK.

Fee support is available under paragraph 6C to non-settled family members of persons settled in the UK, where the student was ordinarily resident in the UK and Islands for the three years prior to the first day of the first academic year of the course.

Note that it remains the case that where the settled person is a UK national, and the non-UK national family member of the UK national was living with that UK national in the EEA or Switzerland on 31 December 2020 or moved with their family member from the EEA or Switzerland to the UK on or after 1 January 2018, they may be eligible for full support under paragraph 6B.

For the purposes of paragraph 6C, the family member must be:

- the person's spouse or civil partner, or
- a direct descendant of the person or of the person's spouse or civil partner who is
  c) under the age of 21, or
  d) a dependant of the person or the person's spouse or civil partner.

Eligibility on these grounds is not subject to a time limit.

Example of a student eligible under paragraph 6C:

- **Hector** is a Costa Rican national who is married to a UK national and has been living in the UK since 1 August 2019. Prior to that he lived in Costa Rica. He starts a course in Wales in September 2023.

  He is eligible for fee support only as:

  - he is the non-UK family member of a person who is settled in the UK on the first day of the first academic year of the course,
  - he has been ordinarily resident in the UK and Islands for the three years prior to the first day of the first academic year of the course.

  - **Nadia** is a Slovakian national who is married to an Australian national who has indefinite leave to remain (i.e. settled status) in the UK. She has been resident in the UK since August 2019 and applies for support to undertake a UG course in Wales starting in September 2023.

  She is eligible for fee support only as:

  - she is the family member of a person who is settled in the UK on the first day of the first academic year of the course;
  - she has been ordinarily resident in the UK and Islands throughout the three-year period prior to the first day of the first academic year of the course; and

- she is undertaking the course in Wales.

2.39 - UK nationals and EU nationals etc. in Gibraltar – students who start a course in AY 21/22 or later

Fee support is available under paragraph 6D to:

- UK nationals and their family members who in either case have resident status in Gibraltar granted by the Government of Gibraltar,
- EU nationals and their family members who in either case have a right of residence in Gibraltar arising under the EU Withdrawal Agreement.

The applicant must be:

- undertaking a designated course in Wales, and
- in the case of UK nationals and their family members, ordinarily resident in the UK, Gibraltar, the EEA and Switzerland for the three-year period before the first day of the first academic year of the course (other than for the purposes of education), or
- in the case of EU nationals and their family members, ordinarily resident in the UK, the EEA, Switzerland and the overseas territories* for the three-year period before the first day of the first academic year of the course (other than for the purposes of education).

*Note that for those starting a course in AY 23/24, the applicable area of ordinary residence for the three-year period prior to the first day of the first academic year of the course for EU nationals and their family members has been extended to include all overseas territories rather than just Gibraltar.

Students in this category will be eligible for home fee status and fee support on these grounds for courses starting up to seven years from the last day of the transition period (i.e. courses starting on 31 December 2027 at the latest).

EU nationals and their family members must evidence their right of residence in Gibraltar under the Withdrawal Agreement. Currently the immigration status system operated by the Government of Gibraltar is as follows:

- the 'red card' is only for Gibraltarians and other UK nationals who have been resident for over five years;
- the 'blue card' is for all EU, EEA-EFTA and Swiss nationals, regardless of whether they hold permanent residence; UK nationals who are yet to accumulate five years continuous residence also receive this card; and
- the 'green card' is for third-country nationals.

EU nationals arriving in Gibraltar before the end of the transition period were awarded a 'blue card', which is the evidence that SLC will require to prove the eligibility of an EU

national resident in Gibraltar. EU Family members / family Members of people of Northern Ireland will also need to provide a 'blue card' or alternatively a letter from the Government of Gibraltar.

The number of applicants in this category are expected to be low as the Gibraltar government already provides fee and maintenance support to its residents.

Examples of students who may be eligible under paragraph 6D:

- **Ben** is a UK national who has been resident in Gibraltar since January 2012. Prior to that he lived in the UK. He comes to the UK to start a course in Wales September 2023.

  He is eligible for fee support only as:

  - he is undertaking a designated course in Wales, and
  - he has been ordinarily resident in the UK, Gibraltar, the EEA and Switzerland for the three-year period prior to the first day of the first academic year of the course.

- **Lars** is a Swedish national who has been resident in Gibraltar since February 2020. Prior to that he lived in the UK for two years, and before that he lived in Sweden. He starts a course in Wales in September 2023.

  He is eligible for fee support only as:

  - he is undertaking a designated course in Wales
  - he is an EU national who has a right to reside in Gibraltar under the Withdrawal Agreement
  - he has been ordinarily resident in the EEA, Switzerland, the UK and the overseas territories for the three-year period prior to the first day of the first academic year of the course.

2.40 - EU Nationals with a genuine link with the UK

EU nationals with five years of residence in the UK and Islands and who have protected rights can apply to the EU Settlement Scheme and will be granted settled status. Where they are starting a course in AY 21/22 or later, they should apply under paragraph 1(2).

Students eligible under paragraph 6(2) who started a course in AY 20/21 or previously can continue to receive student support on the same basis as they do currently.

This category does not apply to students starting a course in AY 21/22 or later. For further details on this category, please see the AY 20/21 SFW 'Assessing Eligibility' guidance.

2.41 EU nationals with a genuine link with the UK from AY 21/22

EU Nationals with protected rights with a ‘genuine link’ with the UK may be eligible for tuition fee support under paragraph 6A(2) 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 Wales
- 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 UK, Gibraltar, the EEA or Switzerland immediately preceding the three-year period referred to above (full support), or
    - an overseas territory other than Gibraltar (fee support only – applies only to those starting a course in AY 23/24 or later)

To be eligible for support under paragraph 6A(2), a person must be an EU national on the first day of the first academic year of the course.

2.42 Children of Swiss nationals – students who started a course before AY 21/22

Paragraph 7 does not apply to students who start a course from AY 21/22 onwards. Students eligible under paragraph 7 who started a course in AY 20/21 or previously can continue to receive student support in AY 23/24 on the same basis as they do currently. For further details on this category, please see the AY 20/21 SFW ‘Assessing Eligibility’ guidance.

Where a student started a course in AY 20/21 or earlier and subsequently becomes a child of a Swiss national during their course, they may become eligible under this paragraph under the event provisions.

2.43 Children of Swiss Nationals - Students who start a course in AY 21/22 or later

A student is able to qualify for support under paragraph 7A where:

- they are the child of a Swiss national entitled to support in the UK under the Swiss Agreement with the Swiss Federation

- both the child and their Swiss national parent have protected rights as demonstrated via the award of either pre-settled status or settled status under the EU Settlement Scheme
- the child is ordinarily resident in Wales on the first day of the first academic year of the course
- the child has been ordinarily resident in:
    - the UK, Gibraltar, the EEA and Switzerland throughout the three year period preceding the first day of the first academic year of the course (full support) or
    - the UK, the overseas territories, the EEA and Switzerland throughout the three year period preceding the first day of the first academic year of the course, with at least part of that period spent in an overseas territory other than Gibraltar (fee support only – only applies to those starting a course from AY 23/24), and
- where the period of ordinary residence referred to above was wholly or mainly for the purpose of receiving FT education, the child was ordinarily resident in the UK, Gibraltar, the EEA or Switzerland immediately preceding this period

The child of the Swiss national is not required to be resident in the UK by the end of the transition period in order to get pre-settled status. Where the child is not living in the UK by 31 December 2020 the following rules apply:

- Where the relationship with the Swiss national existed before 31 December 2020 and still exists, the child of a Swiss national will be able to join their Swiss national parent in the UK at any point in the future.
- Where the relationship is formed after 31 December 2020 and still exists, the child of a Swiss national will be able to join their parent in the UK up to five years after the end of the transition period. This will only affect adopted children or where the relationship is through marriage.

The child must be aged under 21, or dependent on the parent if aged 21 or over.

Normally the parent(s) of the child of a Swiss national must be exercising their free movement rights in the UK on the first day of the first academic year of the course for the student to be eligible to apply for funding under this category. There is no requirement for the Swiss national parent to be or have been economically active in the UK.

As becoming the child of a Swiss National is an “event” under the Regulations, if a student becomes the child of a Swiss National by one of their parents marrying a Swiss national, or if the child’s Swiss National parent(s) move to the UK to live after the start of the course, the

child would fall under this category after the start of the course. See Section 2.43 for the support they would be entitled to.

Example of student who may be eligible under paragraph 7A:

- **Sara** is the child of a Swiss national. She arrives in the UK to join her Swiss mother on 12 December 2020. Prior to that she was resident in Switzerland She applies for and is granted pre-settled status. She starts a course in September 2023. She was ordinarily resident in the UK, Gibraltar, the EEA and Switzerland for the three-year period immediately prior to the first day of the first academic year of the course.

  As Sara's Swiss national parent arrived prior to the end of the transition period and has pre-settled status, and Sara herself also has pre-settled status, she is eligible for full support.

2.44 Children of Turkish workers – student starts a course before AY 21/22

This category does not apply to students starting a courses in AY 21/22 or later. Students eligible under paragraph 8 who started a course in AY 20/21 or previously can continue to receive student support on the same basis as they do currently. For further details on this category, please see the AY 20/21 SFW 'Assessing Eligibility' guidance.

2.45 - Children of Turkish Workers - student starts a course in AY 21/22 or later

A student is potentially able to qualify for support under paragraph 8A where:

- they are the child of a Turkish worker – the regulations define such a worker as a Turkish national who is ordinarily resident in the UK and Islands, and is, or has been, lawfully employed in the UK (this includes periods of self-employment)
- the Turkish worker is in the UK by the end of the transition period (31 December 2020) and has been allowed by the Home Office to temporarily extend their leave in order to remain in the UK (these individuals are no longer covered by the Ankara Agreement)
- the child of the Turkish Worker also arrived in the UK by 31 December 2020
- the child of the Turkish Worker are ordinarily resident in Wales on the first day of the first academic year of the course
- the child of the Turkish Worker has been ordinarily resident in
  - the territory comprising the UK, Gibraltar, the EEA, Switzerland and Turkey throughout the three year period preceding the first day of the first academic year of the course (full support), or

  - the territory comprising the UK, the overseas territories, the EEA, Switzerland and Turkey throughout the three year period preceding the first day of the first academic year of the course (fee support only – applies to those starting a course from AY 23/24 only)

Where the child of the Turkish Worker arrived in the UK on or after 1 January 2021, they could apply for support as the Child of a Turkish Worker for a course starting in AY 20/21 but will not be eligible as a Child of a Turkish Worker for a course starting in AY 21/22 or later. In either case, the parent must have extended leave granted by the Home Office at the point the course starts.

An applicant may become eligible under this category after the start of the course as an "event".

Example of student who may be eligible under paragraph 8A:

- **Emin** is a Turkish national and the child of a Turkish worker. Both Emin and his parent arrived in the UK by the end of the transition period (31 December 2020). The Turkish worker is given leave to remain by the Home Office. Emin starts a course in September 2023.

  Emin is eligible for full support as:

  - he and his Turkish worker parent both arrived in the UK by the end of the transition period
  - he was ordinarily resident in the UK, Gibraltar, the EEA, Switzerland and Turkey for the three-year period prior to the first day of the first academic year of the course (1 September 2020 – 31 August 2023).

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

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

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

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

- maintenance loan in any subsequent years of course and for the remaining term days of the academic year from the date of the event occurring,
- ADG and PLA in the relevant quarters in the academic year, following the student becoming eligible in the academic year that the event occurs, and the grant amount will be calculated by one third of the amount that would have been payable had the student been eligible for the whole of the academic year (regulation 79);
- CCG in the remaining days of the academic year from the date of the event occurring (regulation 81(2)(a)),
- WGLG, SSG in any subsequent years of the course and for the remaining days of the academic year from the date of the event occurring (excluding the quarter in which the longest vacation falls),
- DSA from the date they become eligible for support,
- tuition fee support in any subsequent years of the course if the event occurs after the first three months of the academic year,
- tuition fee support in respect of the full academic year in which the event occurs if the event occurs within three months of the first day of the academic year.

3 Course Eligibility

3.1 Designated courses

Only designated courses will attract support under the Regulations. Course designation is not a function delegated to SLC. It is either the responsibility of the HE provider to confirm designation (in relation to automatically designated courses) or the Higher Education Funding Council for Wales (HEFCW) in the case of specifically designated courses.

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

- regulation 5 (2017) or regulation 6 (2018) for FT courses and regulation 66 (2017) for FT distance learning courses
- regulation 83 (2017) or regulation 6 (2018) for PT courses including PT distance learning courses
- schedule 2 (2017) or regulation 6 (2018) for course types that can be designated

- regulation 112 (2017) or schedule 4 (2018) sets out provisions in relation to the designation of postgraduate courses for Postgraduate DSA only

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

3.2 Automatic designation of FT courses

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

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

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

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

An “English regulated institution” means a registered English institution subject to a fee limit condition under section 10 of the Higher Education and Research Act 2017(2).

An “English plan provider” means a registered English institution which has an access and participation plan approved by the Office for Students([3]) under section 29 of the Higher Education and Research Act 2017 and which remains in force.

3.3 Automatic designation of part-time courses

A course will be automatically designated for PT support under the Regulations if it is:

- of a type which is listed in Schedule 2 (2017) or regulation 6 (2018) (section 4.8) (other than a course of Initial Teacher Training (ITT) teachers or a course taken as part of an employment based teacher training scheme)
- of at least one academic year’s duration
- ordinarily possible to complete the course in not more than:
    - twice the period normally required to complete a FT course where the course began before the first of September 2014
    - four times the period normally required to complete a FT course where the course begins on or after the 1 of September 2014
- Where the course begins before 1 August 2019, it is provided by an institution that before 1 August 2019 was:
    - a publicly funded institution (whether alone or in conjunction with an institution situated outside the UK)
- Where the course begins on or after 1 August 2019 it is provided by:

([2]) 2017 (c. 29).
([3]) The Office for Students is a body corporate established under section 1 of the Higher Education and Research Act 2017.

- a Welsh-funded institution, a Scottish-funded institution, a Northern Irish-funded institution or an English-regulated institution (whether alone or in conjunction with an institution situated outside the UK)
- a registered English institution on behalf of an English plan provider

- is substantially provided in the UK (50% or more of the course is delivered in the UK and
- is not a designated FT or FT distance learning course (under regulation 66 (2017)) or postgraduate course.

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

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

An "English regulated institution" means a registered English institution subject to a fee limit condition under section 10 of the Higher Education and Research Act 2017(4).

An "English plan provider" means a registered English institution which has an access and participation plan approved by the Office for Students([5]) under section 29 of the Higher Education and Research Act 2017 and which remains in force.

3.4 Automatic designation of postgraduate courses for DSA

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

- it is a course for which a first degree (or equivalent qualification) or higher is normally required (other than a course of Initial Teacher Training (ITT) teachers or a course taken as part of an employment based teacher training scheme)
- it is a course of at least one academic year's duration
- where the course is a PT PG course:
    - which began before 1 September 2014, it is ordinarily possible to complete the course in not more than twice the period ordinarily required to complete the FT equivalent or

([4]) 2017 (c. 29).

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

- after 1 September 2014, it is ordinarily possible to complete the course in not more than four times the period ordinarily required to complete a FT course leading to the same qualification

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

Some courses designated under this regulation may also be designated for further support under the provisions of The Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017 (as amended) and The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 and The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2019. Further guidance on postgraduate support can be found in the relevant postgraduate guidance.

3.5 Combined study (UK and abroad) considerations

Combined study courses between the UK and abroad can only be designated for student support where more than 50% of the teaching and learning that comprise the course takes place at a UK institution. WG has advised that the determination of 50% should be based on the number of weeks study.

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

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

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

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

Please note that academic years on combined courses are subject to the same fee restrictions in respect of time spent at the home HE provider, and subject to being a FT course students may also qualify for a Travel Grant. For more information please see the AY 23/24 SFW 'Assessing Financial Entitlement' guidance chapter.

3.6 Interpretation of provisions on automatically designated courses

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

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

3.7 Franchising arrangements

Many institutions of higher education have entered or are considering franchising arrangements for their courses with other institutions of higher and of further education (including private or registered and unregistered institutions in England). Franchising arrangements take a number of forms. For example, the parent institution may determine to a varying degree the course content, may provide some or all of the course materials and may provide some or all of the lecturers. The parent institution may also enrol the students itself.

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 teaching and supervision. A course is provided by the institution which provides the teaching and supervision of the course.

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

The designation of the franchised courses is clarified in sections 3.2 and 3.3 above (Regulation 6 (2018 Regulations)).

3.8 Course Types - Automatic Designation

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

- a first degree course (for example a Bachelor of Arts (BA), Bachelor of Laws (LLB) or Bachelor of Science (BSc))

- a course for the Diploma of Higher Education (Dip HE)
- a course for the Higher National Diploma (HND) or Higher National Certificate (HNC) of:
    - The Business and Technician Education Council or
    - the Scottish Qualifications Authority
- a course for the Certificate of Higher Education
- a course of initial training education (ITE) (primary, secondary and post compulsory sector (further education) (excludes teacher training courses taken as part of an employment based teacher training scheme (Regulation 2)) (NB: A Postgraduate Certificate in Teaching Higher Education (PGCTHE) is not designated as an ITE course but may be designated for postgraduate DSA if it meets the criteria for PG DSA designation)
- a course for the further training of youth and community workers
- a course in preparation for a professional examination of a standard higher than that of:
    - the examination at advanced level for the General Certificate of Education or the examination at the higher level for the Scottish Certificate of Education or
    - the examination for the National Certificate or the National Diploma of either of the bodies mentioned in paragraph 3
    - not being a course for entry to which a first degree (or equivalent qualification) is normally required
- a course:
    - providing education (whether or not in preparation for an examination) the standard of which is higher than that of courses providing education in preparation for any of the examinations mentioned in 7(a) or (b) above but not higher than that of a first degree course
    - for entry to which a first degree (or equivalent qualification) is not normally required (for example an NVQ level 4 where this is awarded along with a first degree, Dip HE or HND)

3.9 Foundation Degrees

Foundation degrees are vocational higher education qualifications that frequently combine academic study with learning in the workplace. They are designed to address the skills gap at the associate professional and higher technician level. Foundation degrees are delivered by consortia consisting of HE providers with degree awarding powers, further education colleges, relevant professional bodies and employers. They are designed to be flexible to suit different situations, and courses will be completed in two years if studied full time. Foundation degrees constitute 240 credits, and should enable the student to graduate to honours degree level with one year of further study.

Many foundation degree courses are automatically designated for support, provided they meet the requirements of the Regulations. However, HE providers have been encouraged to be flexible in their provision of foundation degrees, and consequently a number may be organised so that days of learning in the workplace and days of study are combined in the same week. We do not want students on these courses to be penalised relative to those doing a similar amount of study but via a more traditional route.

Foundation degree courses may be FT courses or sandwich courses. Some may be PT in that (a) they do not contain enough FT study per year on average to meet the definition of a sandwich course, and (b) they meet the designation criteria of a PT course.

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

3.10 Initial Teacher Education (ITE) Courses

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

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

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

3.10.1 FT ITE courses

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

FT ITE courses that do not lead to a first degree (PGCE and equivalent courses) are courses of at least one academic year but no more than two academic years in length, where the periods of study in each academic year are at least 300 hours. A week of study can be considered as 30 hours. These include ITE courses leading to Qualified Teacher Status (Primary, Secondary) and courses for those wishing to teach in the post compulsory sector (Further Education) as set out in the Further Education Teachers' Qualifications Wales 2002.

3.10.2 PT ITE courses

ITE courses that that are at least one 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 ITE courses if the intensity of study is at least 50% of an equivalent FT course over the duration of the PT course (continuing students in AY 14/15) or 25% of an equivalent FT course over the duration of the PT course if the course started from AY 14/15 onwards. These courses attract the PT support package only, regardless of whether or not the course leads to a first degree. To note, there is one PT ITE programme currently running in Wales via the Open University leading to Qualified Teacher Status (QTS).

3.10.3 School Centred Initial Teacher Training (SCITT) scheme

ITT courses will include courses on the School Centred Initial Teacher Training (SCITT) scheme. SCITT courses (undertaken in England only) are designated by the DfE where the institution is not registered with the Office for Students (OfS). Courses not registered with the OfS will be subject to a specific designation process in Wales. If the provider is registered with the OfS, SCITT courses will be automatically designated upon registration with the OfS, for students ordinarily resident in England.

SFW will be able to identify these in many cases from the course title and from the name of the qualification to which it leads. Previously this also referred to the further training of teachers.

Courses for the further training of teachers are not in the list of courses at Schedule 2 (2017) / regulation 6 (2018). The only FE ITE course attracting student support is at paragraph 3.10 below.

3.10.4 FE ITE courses

PGCE (FE) Teacher Training Incentive Grant in Wales aims to attract good-quality candidates into teaching in further education. The training grant is available to graduates starting FT postgraduate initial teacher training to teach at further education level with a higher education institution in Wales (currently Cardiff University, Glyndwr University, University of Wales Trinity Saint David and University of South Wales). No other forms of training provision for FE apart from this specific scheme attracts support.

The grants apply to graduate students on FT pre-service courses of PGCE (FE) initial teacher training leading to a qualification to teach further education, starting between September

and August. These courses do not confer Qualified Teacher Status (QTS), but attract student support in line with other FT ITE courses.

3.10.5 England only ITE courses

Wales-domiciled students who choose to undertake the English ITE courses detailed below would also attract student support, depending on whether the course is FT or PT. Similar provision at Welsh institutions does not attract support.

England introduced regulations (The Further Education Teachers' Qualifications (England) Regulations 2007) (Statutory Instrument 2007/2264) to reform the training and qualifications of all teachers, tutors, trainers, lecturers and instructors in the Further Education Sector from September 2007. The reformed ITE pathways sees all new Further Education teachers working towards either Associate Teacher Learning and Skills (ATLS) status or Qualified Teacher Learning and Skills (QTLS) status.

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

3.10.6 Schools Direct Training Programme

Schools direct places are available in certain primary and secondary schools across England and are delivered in partnership with an accredited ITE provider (either a SCITT or an HE provider). 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 qualified teacher status (QTS). School Direct programmes may also include a postgraduate certificate in education (PGCE). There are two separate School Direct training options:

- Schools Direct Training Programme (unsalaried) is for graduates who will be part of a school team from enrolment. These graduates may be eligible for a bursary of up to £20,000 to support them in training. The training bursary is paid by the National College of Teaching and Leadership. Where undertaken on a 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.

  The Open University is also providing FT courses in conjunction with the Schools Direct programme. Where the course is designated as FT, students on these course can also receive the FT package of support including maintenance support.

- Schools Direct Training Programme (salaried) is an employment-based route for graduates with at least three years' work experience. These graduates will earn a

salary while they undertake this programme through Schools Direct. Where a student opts for the 'Salaried' programme they are ineligible for support under the student support regulations.

When a prospective teacher enters the FE sector, the onus is on the employer to assess the role they will play and to specify the qualification needed. If the Welsh student needs to be trained, the Welsh Government would expect the employing colleges to ensure that contracts of employment cover their legal obligations within the Regulations.

Teachers will achieve ATLS status by studying a Certificate in Teaching in the Lifelong Sector (CTLLS) and QTLS by studying a Diploma in Teaching in the Lifelong Learning Sector (DTLLS). Courses may continue to be badged as CertEd or PGCE course or given new titles for example Professional Diploma in Education (PDE) and Professional Graduate Diploma in Education (PGDE) courses at Bolton University. ITE courses provided by higher education institutions can attract student support under the Regulations. Courses validated by awarding bodies can also be designated for student support. This means that students enrolling on such courses will be eligible to apply for fee and living costs support under the Regulations. SFW should ensure that courses meet the designation criteria set out in the Regulations.

There are three types of FE ITE qualifications at Level 5:

- Level 5 Diploma in Education and Training: 120 credits
- Level 5 Diploma in Education and Training with specialist pathways* (120 credits)
- Standalone specialist diplomas (45 credits)

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

* The diplomas with specialist pathways are as follows:

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

3.10.7 PGDE courses in Scotland

Teaching in Scotland has confirmed that the PGCE course run in Scottish universities has been renamed to PGDE (Professional Graduate Diploma in Education). This is an ITE course and therefore eligible for student support. This is not the same as the PGDE (Post Graduate Diploma in Education) in England, which is not ITE and therefore not eligible for student

support (refer to paragraph about Professional Graduate Diploma in Education which is also eligible for support). SFW should satisfy themselves that the PGDE course they are being asked to support is the Professional rather than the Postgraduate course. The Professional Graduate Diploma in Education (PGDE) course at Aberystwyth also attracts support as it leads to Qualified Teacher Status.

3.11 Courses leading to professional examinations

Schedule 2 paragraph 7 (2017) and regulation 6 (condition 1(g)) (2018) specifies courses leading to professional examinations, for example above A level/Scottish Higher/NC/ND and not higher than first degree and for which a first degree or equivalent qualification is not normally required.

In establishing whether a course satisfies either Paragraphs 7 or 8 of Schedule 2 (2017) and regulation 6 (condition 1(g) (h)) (2018), SFW will, as well as determining the level of the qualification which the course leads to, need to establish the normal entry requirement. Courses are only within these paragraphs if a first degree or equivalent qualification is not a normal entry requirement. It will not be sufficient to establish that entry may be obtained without a first degree the issue is whether entry without a first degree or equivalent qualification is the normal route. In the case of many courses leading to postgraduate qualifications, the likelihood is that they will not meet this criterion, as the normal entry route will be via a first degree or equivalent.

NVQ level 4 courses may in some cases be below first degree or HND level and NVQ level 5 courses may not be postgraduate. If there are any doubts about a particular NVQ course consideration should be given to: the course entry requirements (if these are set at degree level or equivalent, the course is probably postgraduate), the fee payable for the course, and whether it is set at a level appropriate for a postgraduate course, guidance from the relevant professional or award making body, if the course is vocational the view of other colleges running the same or similar courses and how the course is generally regarded in the college).

The provision under Schedule 2 paragraph 8 (2017) and regulation 6 (condition 1(h)) (2018) is a very general one. It has the effect of designating any course which meets the other designation requirements and:

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

SFW will therefore find in many cases that they can establish whether a course falls under Paragraph 8 of Schedule 2 (2017) without having to establish whether it satisfies either Paragraphs 6 or 7.

3.12 Free standing foundation and conversion courses

Free-standing foundation or conversion courses are not normally designated in their own right if they are not an integral part of a designated course. The following additional tests may help SFW to determine whether or not a foundation year is an integral part of a designated course. In the Welsh Government's view, it may be regarded as such a part, provided that:

- where the foundation year is undertaken at another institution, students are enrolled with the parent institution providing the designated course and for the full duration of the extended course
- the foundation year does not normally lead to any separate award or qualification in its own right and
- the whole course provides for students to proceed automatically on successful completion of the foundation year to the next year of the course

3.12.1 Access courses

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

3.12.2 Twin-track access courses

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

3.12.3 Accelerated degree courses

These courses are 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.

Accelerated degrees courses are not offered by HE providers in Wales. Students domiciled in Wales who are studying a new accelerated degree course in England in AY 23/24 will be able to access the standard package of fee support for these courses. The fee charged may exceed

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

3.12.4 Compressed degree courses (England only)

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

The number of students on these courses is small. The Regulations define a "compressed degree course" as a course meeting certain specific criteria that has been determined to be a compressed degree course by the Secretary of State.

A list of courses that and are currently determined to be compressed degree courses for the purposes of The Education (Student Support) (Wales) Regulations 2017 is shown below. The courses listed are undergraduate honours degree courses delivered over two long academic years (twenty four months) at a HE provider funded by HEFCW.

SFW will wish to note the criteria that a student must satisfy in order to be treated as a compressed degree student for the purposes of the Regulations. In particular, SFW should note that, unless the student is a disabled student who cannot attend the course for a reason connected to their disability, the student can only be treated as a compressed degree student for AY 18/19 if they are required to be in attendance on the course for part of that year.

Any designation queries should be referred to Welsh Government in the first instance.

The Welsh Government have a list of specifically designated courses at private (alternative) providers.

3.12.5 Foundation years as part of an extended course

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

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

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

3.12.6 Single course provisions

Certain courses which are not higher than first degree level and which lead to more than one qualification, either as an optional or integral part of the course, will be considered to be single courses (regulations 5(6&7) (2017) and 6(3&4) (2018)). These are:

- medical, dental and veterinary science courses which include an intercalated first degree such as a BSc
- courses in architecture, landscape architecture, landscape design, landscape management, town planning and town and country planning where qualifications are awarded both at an intermediate point in the course and at the end
- 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) where the course is studied as a single course in conjunction with Part 1. See section 3.12.7 Architecture Courses for further detail.

3.12.7 Architecture courses

In order to qualify as an architect, a student is required to complete a programme of study that leads to registration with the Architects Registration Board (ARB). This is primarily achieved via study on a course prescribed by ARB:

http://www.arb.org.uk/student-information/schools-institutions-architecture/

These courses are composed of distinct "parts". Part 1 (typically the first three years of the student's programme of study) is studied at undergraduate level and provides students with a graduate qualification, even if they do not continue with architecture as a profession. Part 2 is usually studied at a postgraduate (predominantly Master's) level. Part 3 is also studied above the level of a first degree and does not attract student support.

In general, a student is not entitled to support for a Master's level course under the Regulations as these courses are higher in level than a first degree course. However, there are a number of exceptions, one of which being Master's courses leading to qualification as an architect, where the Master's level course ('Part 2') is undertaken in conjunction with a first degree level course ('Part 1'). Regulation 5 (6&7) (2017) and regulation 6 (3&4) (2018) allow Part 1 and Part 2 architecture courses to be treated as a single course for a first degree (irrespective of the fact that the student will receive a graduate qualification prior to the commencement of Part 2), thus allowing them to be designated for support under Schedule 2, paragraph 1 (2017) and regulation 6, condition 1(a) (2018), for the entirety of Parts 1 and 2 combined. In this scenario, both courses would be considered a single course not higher in level than a first degree, similar to integrated Master's courses.

Part 1 and Part 2 architecture courses can be considered a single course, and therefore a designated course under the Student Support Regulations, where the student has:

- Not withdrawn from their course between completing Part 1 and commencing Part 2
- Not changed their mode of study between completing Part 1 and commencing Part 2
- Not broken their period of eligibility due to an excessive* gap between completing Part 1 and commencing Part 2

*In general, it is understood that students will frequently undertake a period of practical work experience between completing Part 1 and commencing Part 2 of their architecture course. This period is not considered to represent an excessive gap, and the student's Part 1 and Part 2 programmes will generally remain designated as a single course. An excessive gap is generally considered a break of more than three academic years between Part 1 and Part 2. However, where the gap between Part 1 and Part 2 exceeds 3 academic years, SLC has discretion to consider this a single course if the student has maintained a connection with architecture (e.g. undertaken an extended placement or other relevant work experience) or if the delay in undertaking a Part 2 course was due to a compelling personal reason.

A student will normally only be considered to be studying on a course leading to qualification as an architect (and therefore falling under the single course provisions) if, at the point the student commences the relevant Part, that Part is prescribed by ARB. Note that there is no requirement for prescription if the student does not wish to apply on the single course provisions.

It should be noted that if the student changes HE provider between their Part 1 and Part 2 courses, the student's entire programme of study will still be considered a single course under the Regulations, providing the student meets the above criteria.

If the student undertakes their programme of study in line with the above, Part 1 and Part 2 will be considered a single course and therefore designated under Paragraph 5 and Schedule 2 (2017) and under Paragraph 6 (2018). Providing the student meets all other eligibility criteria, they will be entitled to full UG support (fee loan, maintenance loan, supplementary grants and DSA), irrespective of the fact that Part 2 of the course is studied at a level above that of a standard first degree (e.g. a Part 2 course leading to the award of a Master's of Architecture qualification).

The single course rules, as outlined above, apply to all students who undertake both the Part 1 and Part 2 course on a full-time basis. The single course rules also apply to part-time courses, where the student commenced study on the Part 1 course on or after 1 August 2018. Where a student commenced study on a part-time architecture course prior to 1 August 2018, the single course rules do not apply and the student will not qualify for UG support on the Part 2 course.

A student will not be considered to be undertaking Part 1 and Part 2 architecture courses as a single course where:

- The student has changed their mode of study (i.e. student has undertaken Part 1 on a part-time basis and then undertakes Part 2 on a full-time basis)
- The student has withdrawn from their Part 1 course
- The student is considered to have taken an excessive gap between completing the Part 1 course and commencing study on the Part 2 course, as per guidance on excessive gaps noted above

Where the student's Part 2 course is a Master's level course and is not considered to be part of a single course in line with the above criteria, it is not designated under the Regulations and therefore the student will not be entitled to support under those Regulations for their Part 2 course. The student may be entitled to Postgraduate Master's support providing the course meets the designation criteria within the Education (Postgraduate Master's Degrees) Regulations and the student meets the eligibility requirements in the same regulations. Please refer to the 'Postgraduate Master's' guidance for further information.

Note, that the course content of the Part 2 programme and tuition fee levels charged (i.e. are fees charged in line with standard undergraduate level fee caps) have no bearing on the determination of whether a student has undertaken Parts 1 and Parts 2 as a single course for the purposes of designation under the Student Support Regulations.

3.13 Specific Designation

The Welsh Ministers have the power to designate courses, which are not automatically designated under the Regulations. HEFCW, on behalf of the Welsh Ministers, considers applications for designation for HE courses at private institutions in Wales, Scotland and Northern Ireland and Approved or unregistered providers in England and NHS colleges. These can be for FT or sandwich courses, PT courses, or PT courses of ITE, as well as postgraduate courses for the purpose of awarding DSA. These courses would need to be satisfactorily validated by a recognised UK awarding body.

The list of courses designated by HEFCW can be found here:

https://www.studentfinancewales.co.uk/media/199087/list-of-courses-to-be-specifically-designated-for-2020-2021-feb-version.pdf

The list of designated courses for dance and drama awards can be found in the HE Dance and Drama Courses section of the SFW AY 23/24 'Assessing Financial Entitlement' guidance chapter.

3.13.1 Specific Designation of postgraduate courses for the purpose of DSA

Postgraduate courses can be specifically designated solely so that students can receive DSA. This includes courses such as the Legal Practice and Bar Vocational course.

3.14 Guidance for Determining Mode of Study

3.14.1 PT courses

For guidance on PT courses please refer to the AY 23/24 SFW 'Support for PT students' guidance.

3.14.2 Credit courses

For guidance of Credit Courses please refer to the AY 23/24 SFW 'Support for PT students' guidance.

3.14.3 FT courses

Although 'full-time' is not defined in the Regulations, the following guidance may be referred to. 'Full-time' courses normally require:

- students to undertake the course for a period of a minimum of 24 weeks in each academic year, and for courses of two years or more, for a minimum of eight weeks in the final year
- that a whole year FT fee is chargeable by the institution for the current year of the programme of study (exceptions to this will be made for students who are repeating part of a year)

FT means that students are required to undertake their course on most days of the week and for most weeks of the academic year for its duration, excluding weekends and the usual vacations (for example attendance on the course is the main call on the student's time during the working day).

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

Study at premises outside the institution (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 higher education provider or, indeed, at an institution in the UK. 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 attend, rather than those which are undertaken by individuals.

3.14.4 Sandwich courses

The Regulations define a sandwich course. A course is a sandwich course if it is not a course for the initial training of teachers, it consists of alternate periods of FT study in an institution and periods of work experience and taking the course as a whole, the student attends the periods of FT study for an average of not less than 18 weeks in each year. Entitlement to the WGLG will depend on the number of aggregate weeks of FT study and the cohort of student.

For the purposes of calculating the student's attendance, the course shall be treated as beginning with the first period of FT study and ending with the last such period.

Where the 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. Also, when counting days of study to make up a number of weeks of study, the divisor should be 5 rather than 7.

As an example, a course that required 3 days' 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 two days' study and three 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 PT support if it met the designation criteria of a PT course in the Regulations.

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

- Year 1 - 4 days' study and 1 day's work experience each week for 30 weeks
- Year 2 - 2 days' study and 3 days' work experience each week for 30 weeks

There would be an aggregate of 24 weeks' study in Year 1 and 12 weeks' study in Year 2, averaging 18 weeks a year. The course would attract support.

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

FT study in an institution does not in our view include learning in the workplace. Such learning is a feature of some foundation degree courses. It may also occur in courses other than foundation degree courses.

Provisions relating to the support available for new system students on sandwich placements and further guidance is set out in the AY 23/24 SFW 'Assessing Financial Entitlement' guidance chapter.

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, and whether they are designated for student support will depend, among other things, on whether they meet the definition under the Regulations).

SFW will need to be observant of the difference between a sandwich course with periods of work experience and a PT course. Regulations specify 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) (2017) and Schedule 1 paragraph 6(1) (2018) and may include periods during which modern language students spend living and working in a country whose language they are studying on their course.

3.14.5 Learning in the workplace

For the purposes of determining whether a course is a 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. It may also occur in courses other than foundation degree courses.

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

Unlike work experience, which is one element of a course, learning in the workplace is at the heart of an individual's learning programme and must be subject to the same level of academic supervision and rigour as any other form of assessed learning. It includes:

- the imparting of relevant knowledge and skills to students
- opportunities for students to discuss knowledge and skills with their tutors
- assessment of students' acquisition of knowledge and skills by the institution's academic staff, and perhaps jointly with an employer

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

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

3.15 Distance Learning courses

Distance learning, sometimes called flexible or open learning, is a programme of study that allows students to study at home or remotely. The regulations define a distance learning course as "a course in relation to which a student undertaking the course is not required to be in attendance by the institution providing the course, other than to satisfy any requirement imposed by the institution to attend any institution— (a) for the purposes of registration, enrolment or examination, or (b) on a weekend or during a vacation".

Most HE providers offer some distance learning programmes, from language courses to full undergraduate degrees, postgraduate programmes and MBAs. Some even offer courses or programmes entirely over the Internet, often called e-courses or online courses. They provide a mode of delivery for students who do not attend traditional on-campus courses, although there may be some short periods of attendance.

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

A distance learning course may be deemed FT by the HE provider because of the number of hours of study but only courses which meet all of the criteria below would in our view be a FT course for the purposes of the Regulations.

Students are normally required to undertake the course for a period of a minimum of 24 weeks in each academic year, and, for courses of two years or more, for a minimum of 8 weeks in the final year. A whole year 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.

3.15.1 Distance Learning courses and student support – new and continuing students from AY 22/23

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

From AY 22/23, FT and PT students who are undertaking a designated distance learning course may be assessed for tuition fee loan, maintenance support, DSA and GFDs.

3.15.2 Unable to attend a course due to a disability

Students on courses that are not distance learning courses and who cannot attend due to a disability, will be eligible to apply for tuition fee loan, maintenance support, DSA and GFDs.

For more information on the support available for these students please see the AY 23/24 SFW 'Assessing Financial Entitlement' guidance and the AY 23/24 SFW 'Grants for Dependants' guidance.

3.16 Mixed mode courses

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

4 Eligibility for Fee Support

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

The term 'fees', for this purpose, has the meaning given in section 28 (1) of the Teaching and Higher Education Act 1998. Section 28 (1), provides that fees means fees in respect of, or otherwise in connection with, undertaking the course including admission, registration, tuition and graduation fees other than:

- fees payable for board or lodging
- fees payable for field trips (including any tuition element of such fees)
- fees payable for attending any graduation or other ceremony
- such other fees as are prescribed by Regulations made by the Welsh Government

A student who started their course on or after 1 September 2012 but before 1 September 2018 may be eligible to apply for a Fee Grant, a tuition fee loan (in accordance with the regulations explained in this section), an accelerated graduate entry tuition fee loan (for students starting graduate entry medical and dental courses). Whilst most students will qualify for support, there are exceptions to these principles.

A student who started their course on or after 1 August 2018 may be eligible for tuition fee loan to cover their fees. There is no Fee Grant

4.1 First degree rule

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

A first degree is defined in the Regulations as an honours degree, an ordinary degree or a foundation degree.

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

Regulation 6 & 7 (2017) and 24 & 25 (2018) provide exceptions to this general rule.

4.2 Students with no previous study

The general principle surrounding previous study is that students will be eligible for support for the standard length of the HE course plus an additional year if needed.

Regulations 6(8) (2017) and 14 (2018) make provision for students applying for student support in AY 22/23 who have not studied on a previous course.

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

OD [+ R] +1

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

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

4.3 Students with previous study

Please see also the first degree section above (section 4.1). Once it has been determined that the student has been on a previous course, the Regulations set out which years of that previous course count as previous study.

The general rules are:

- all academic years that the student completed on the previous course are included, and
- an academic year that the student started but did not complete or began part way through the year is treated as one academic year.

The entitlement of a eligible student who has studied on a previous course is determined in accordance with regulations 6(9) (2017) and 17 (2018).

The entitlement of a student falling within regulation 6(9) (2017) or 17 (2018) is the ordinary duration of the current course plus one, minus the number of years spent on previous courses (PC).

Example: Student A started a three year course in AY 22/23 and is applying for support in AY 23/24. The student has in the past completed a year of study on a previous course. The student's entitlement is 3 years (the ordinary duration of the current course plus 1, less the year spent on the previous course).

OD + 1 – PC = 3 years

Unlike in England, the regulations in Wales do not rule out support for equivalent or lower qualifications. Therefore, while students with first degrees cannot generally receive support for another course, students studying sub-degree qualifications (DipHE, CertHE and HNC/HND) may qualify for support for more than one course of the same level, subject to a calculation of their entitlement taking into account their previous study.

4.3.1 Definition of a previous course

Regulations 6(17) to (21) (2017) and 17(3) to (7) (2018) set out what is a previous course for the purposes of determining eligibility to fee support and living cost support.

A "previous course" is any FT higher education course or any PT course which the student began to attend or, in the case of a compressed degree course or a designated distance learning course, undertaken before the present course and which meets one or both of the following conditions:

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

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

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

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

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

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

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

4.4 Exception for ITE courses

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

A requirement of regulations under this section may relate to:

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

4.5 Compelling Personal Reasons (CPR)

The Regulations make provision on the period of eligibility of applicants who have failed to complete academic years of current or previous courses because of compelling personal reasons.

The term ‘compelling personal reasons’ is not defined in the Regulations. However, in the Welsh Government’s opinion, academic performance alone would not normally be deemed a compelling personal reason but SFW should consider all cases carefully.

In the case of an eligible student who did not successfully complete the latest previous course because of compelling personal reasons an additional year of eligibility is added. In addition, the Regulations provide discretion to award one further year of entitlement if it is appropriate to do so having regard to the circumstances of a particular case.

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

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

Example:

Student B has not attended a previous course and applies as a new student in September 2021. They start a four year honours degree course therefore their entitlement is support for four years plus an additional year.

OD (4 years) + 1

Student B fails the second year of the course which they successfully repeat using up the additional year and enter the third year of the course in September 2023. The student still has support for years 3 and 4 of the course.

However student B fails the third year due to compelling personal reasons. SFW awards the student an additional year's support which will allow support to repeat the third year. The additional year of CPR support is allocated to the repeat of year 3 not the final year.

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

4.5.1 Evidence of Compelling Personal Reasons

As far as is reasonably practicable, evidence should be obtained from the student or elsewhere to support a claim that the withdrawal was for compelling personal reasons or the need to repeat a year is for compelling personal reasons. For instance, the student might be able to provide medical evidence from their GP or ask a HE provider's student support advisory service to attest to a personal or family crisis. Other possible sources might include social services or the clergy. (However, the Welsh Government would not reimburse any costs incurred by the student in obtaining such evidence.) This guidance is not exhaustive and SFW should look at all cases carefully.

4.6 Self-funded years

Where the number of academic years for which eligibility to fee support is available is less than the number of academic years that make up the period ordinarily required for the completion of the present course, the years in which the student is eligible for the support, are the latest years of the present course (regulations 6(12) (2017) and 12(4) (2018)).

Note that where a student does not qualify for tuition fee support in respect of a particular academic year as a result of their previous study, they will not qualify for maintenance grant either. They will continue to qualify for maintenance loan, GFDs, and DSA subject to meeting the relevant conditions for those products.

Example:

Student C is a new system student who starts a four year degree course in September 2020 (the student has not attended a previous course). Student C is ordinarily entitled to four years of support plus an additional year. Student C fails year one of the course for reasons other than CPR. The student is allocated fee support for the repeat year in accordance with the Regulations. Having successfully re-taken the first year the student enters year two of the degree which they fail for reasons other than CPR. Fee support cannot be allocated to this repeat year. Support from the student's entitlement is allocated to the later academic years of the course. The student will need to self-fund the repeat of year two of the course.

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

Examples:

Student F starts a four-year degree course in 2021 (course A). Having completed the second year of the four year course the student transfers into year one of a five-year degree course (course B). Both of the years spent on course A count as years spent on a previous course. Student F applies for support for year one of the new course in AY 23/24. The student's entitlement is four years (for example five years plus one year minus two years on a previous course). Therefore entitlement is exhausted before fee support is allocated to the first year of course B. The student will need to self-fund their first year of course B but should then receive support to complete the remainder of the course.

Student G starts a three-year degree course in September 2022 (course A). The entitlement is three years of support plus an additional year. Having passed the first year the student decides to transfer onto a four-year course in September 2023 (course B). The year spent on course A counts as a year spent on a previous course. The entitlement for course B is four years (four years plus an additional year less the year spent on course A). Assuming there is no repeat study, there is sufficient support entitlement to complete the course with fee support allocated to each year.

Student H enrols on a four-year course in September 2021 (course A). The entitlement is 4 years support plus an additional year. Having completed 2 years of course A, the student transfers to the second year of a three-year course (course B). Both years on course A count as years spent on a previous course. Student H's entitlement for course B is ordinary course length (course B) plus an additional year, less the two years spent on course A (3 + 1 - 2 = 2). Their entitlement is therefore two years of support which, assuming no repeat study, is sufficient to complete the course.

Student J is also on a four-year course which starts in September 2017 (course A) and also completes the first two years but then transfers onto year 1 of a 3 year course (course B). Both years spent on course A count as years spent on a previous course. The student's entitlement for the course B will be 2 years (3 + 1- 2 = 2). The student will need to self-fund the fees for the first year of the second course. Assuming no repeat study, fee support should be available for the remainder of the course.

End on course example:

A student completed a two-year sub-degree course in August 2020. They went onto a three-year course to top up to an honours degree – the honours degree course is an 'end-on' course and the application of the remaining years of support to the latest years of the course still applies. The student's entitlement is two years support (3 + 2 – 2 = 3 years) so the student would need to self-fund the first year of the top-up course. The student may receive further support if there are periods of repeat study or CPR.

4.7 Transferring course

Regulations 8 (2017) and 28-30 (2018) set out the circumstances in which students may have their status as an eligible student transferred to another course. SFW is required to transfer the student's status where:

- they receive a request from the eligible student to do so
- they are satisfied that one or more of the grounds for transfer apply
- the period of eligibility has not terminated

The grounds for transfer are:

  - on the recommendation of the academic authority the eligible student ceases one course and starts to attend another designated course at the same institution
  - undertake another compressed degree course in the UK at the institution
  - undertake a compressed degree course in the UK at the institution

- the eligible student starts to:
  - attend a designated course at another institution
  - undertake a compressed degree course in the UK with another institution
- after commencing a course for the Certificate of Education the eligible student is, on or before completing that course, admitted to a designated course leading to a BEd

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

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

Receiving institutions should notify course details to SFW so that SFW can check, and, if necessary, reassess support. The notification will be taken as the receiving institution's consent to the transfer. The student would usually retain the same eligibility as they had at the start of their studies, therefore an eligible student who starts a course on or after 1 August 2018 having had their status transferred to that course under the Regulations from a course that they began before 1 August 2018 will not be a '2018 cohort' student.

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

4.8 Students topping up to honours degree after a preliminary course (end-on courses)

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

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

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

The Regulations set out the calculation as follows:

The greater of three years or the ordinary duration of the present course.
Plus
The greater of one year or the ordinary duration minus one year of the preliminary course

(or preliminary courses in total if the student completed more than one course which is to be treated as a preliminary course).
Less
Number of academic years undertaken by the eligible student on the preliminary course (or preliminary courses) excluding years repeated by the eligible student for compelling personal
reasons.

(D+X) – PrC

Where:

(D) is the greater of 3 or the number of academic years that make up the ordinary duration of the current course
(X) is 1 where the ordinary duration of the preliminary courses (in total) was less than 3 years
or
(X) is the ordinary duration – 1 where the ordinary duration of the preliminary courses (in total) was 3 years or more
(PrC) is the number of academic years that the student spent on any preliminary course (including part years of study) excluding any years of repeat study for compelling personal reasons

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

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

As the student's current course is 3 years in duration, and the student only has 2 years of fee entitlement available they will have to 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.

The above calculation applies to both:

- end-on students: students who commence the honours degree immediately after the preliminary qualification (disregarding the intervening vacation), and

- top-up students: students who do not commence the honours degree immediately after the preliminary qualification.

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

4.9 Healthcare bursary years – previous study considerations

A student will not qualify for fee support in an academic year in which a student is eligible to apply for a healthcare bursary (defined in regulations 2(1) (2017) and 10(4) (2018)). As a

result, years in which a student is eligible to apply for a healthcare bursary (also known as bursary years) are not counted as years for the purpose of the OD of a course.

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

4.10 Erasmus/ Turing/ Taith (the International Learning and Exchange programme) years – eligibility for fee support

A student will not qualify for fee support in an academic year which is an ERASMUS/Turing Scheme/Taith year for:

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

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

An Erasmus/Turing Scheme/Taith year is defined in regulations 2 (1) (2017) and Schedule 2, paragraph 4 (3) (2018).

A student will qualify for limited fee support in an academic year which is an a ERASMUS/Turing Scheme/Taith year for

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

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

The Regulations make an exception for students taking courses in medicine, dentistry, veterinary science, architecture, social work and undergraduate Initial Teacher Training

(ITT). Students will continue to be eligible for loans for living costs, even if they already hold an equivalent or higher level qualification.

For more information on the support available for health students please see the AY 23/24 SFW 'NHS' guidance.

5 Eligibility for support for living costs

5.1 General

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

5.2 Students who are not eligible for support for living costs

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

- EU students who fall within Schedule 1, Part 2, Paragraph 9 (2017) and Schedule 2, paragraph 1(2)(d)(ii), 1(3), 4A(1)(b)(ii), 4A(2)(b)(ii), 6 (1), 6A(1), 6A(2)(d)(ii), 6BA, 6BB, 6C, 6D, 7A(c)(ii) and 8A(1)(d)(ii) (2018) will not be eligible for any support towards living costs under the Regulations
- students who are eligible to apply for an income assessed "healthcare bursary"
- students eligible to apply for an income assessed Scottish young or independent students' bursary and grants for living-costs (as defined in regulation 2)
- students on 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 the prison or probation and aftercare service in the UK
    - unpaid research in an institution in the UK or, in the case of an eligible student attending an overseas institution as part of the eligible student's course, in an overseas institution or

- unpaid service with a Special Health Authority, the National Health Service Commissioning Board, the National Institute for Health and Care Excellence, the Health and Social Care Information Centre, Local Health Board, Health Board, Special Health Board or Health and Social Services Board H in England or Wales, or their Scottish or Northern Irish equivalents

These groups of students will, however, be eligible for modified amounts of loans for living costs. Detailed guidance on these matters is provided in the AY 23/24 SFW 'Assessing Financial Entitlement' guidance.

5.3 Students aged 60 and over

In order to qualify for a loan for living costs, eligible students will need to be (or have been) below the age of 60 on the first day of the first academic year of the students course.

In most cases it will be the first day of the first academic year of the current course. Please refer to the AY 23/24 SFW 'Assessing Financial Entitlement' guidance for further details.

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

6 Annexes

6.1 Annex A – Events under the Regulations

The events are—

- the student's course becomes a designated course
- the student or the student's spouse, civil partner or parent is recognised as a refugee, becomes a person granted stateless leave, becomes a person with leave to enter or remain or becomes a person granted humanitarian protection under paragraph 339C of the immigration rules
- the student or the student’s parent becomes a person with section 67 leave to remain or a person granted leave to remain as a protected partner,
- the student becomes a person with Calais leave
- the student becomes a family member described in paragraph 6A(1)(a), 6C(1)(a) or 6D(a) of Schedule 2 (2018)
- the student becomes a person described in paragraph 1(2)(a) of Schedule 2 (2018),
- where regulation 9(1A)(a) applies, the student becomes a person described in paragraph 8(1)(a) of Schedule 2 (2018)
- the student becomes a person described in paragraph 4A(1)(a) of Schedule 2 (2018) or, where regulation 9(1A)(a) applies, in paragraph 4(1)(a) of Schedule 2 (2018)
- the student becomes a person described in paragraph 7A(a) of Schedule 2 (2018) or, where regulation 9(1A)(a) applies, in paragraph 7(1)(a) of Schedule 2 (2018)
- the student becomes a person described in paragraph 6B(1)(a)(ii) of Schedule 2 (2018)
- the student becomes a person awarded leave to enter or remain (including leave in line as a family member) under the ARAP or the ACRS
- the student becomes a protected Ukrainian national

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

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

At page 27 B-G:

"There are two and no more than two, respects in which the mind of the 'propositus' (the student applicant) is important in determining ordinary residence. The residence must be voluntarily adopted. Enforced presence by reason of kidnapping or imprisonment, or a Robinson Crusoe existence on a desert island with no opportunity of escape, may be so overwhelming a factor as to negative the will to be where one is. And there must be a degree of settled purpose. The purpose may be one or there may be several. It may be specific or general. All the law requires is that there is a settled purpose. This is not to say that the 'propositus' intends to stay where he is indefinitely and indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode. And there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled. The legal advantage of adopting the natural and ordinary meaning, as accepted by the House of Lords in 1982 and recognised by Lord Denning in this case, is that it results in the proof of ordinary residence, which is ultimately a question of fact, depending more upon the evidence of matters susceptible of objective proof than upon evidence as to the state of mind. Templeman L J emphasised in the Court of Appeal the need for a simple test for LEAs to apply: and I agree with him. The ordinary and natural meaning of the words supplies one. For if there is to be proved a regular, habitual mode of life in a particular place, the continuity of which has persisted despite temporary absences, ordinary residence is established provided only if it is adopted voluntarily and for a settled purpose.

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

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

Country	Date of Accession	EU	EEA	Related Territory	EU	EEA
Austria	01/01/1995	Y	Y			
Belgium	01/01/1958	Y	Y			
Bulgaria	01/01/2007	Y	Y			
Croatia	01/07/2013	Y	Y			
Cyprus	01/05/2004	Y	Y			
Czech Republic	01/05/2004	Y	Y			
Denmark	01/01/1973	Y	Y	Greenland*	N	N
				Faroe Island*	N	N
Estonia	01/05/2004	Y	Y			
Finland	01/01/1995	Y	Y	Åland Islands	Y	Y
France	01/01/1958	Y	Y	French Overseas Departments[1]	Y	Y
				French Overseas Territories[2]*	N	N
Germany	01/01/1958	Y	Y	Heligoland	Y	Y
Greece	01/01/1981	Y	Y			
Hungary	01/05/2004	Y	Y			
Ireland	01/01/1973	Y	Y			
Italy	01/01/1958	Y	Y			
Latvia	01/05/2004	Y	Y			
Lithuania	01/05/2004	Y	Y			
Luxembourg	01/01/1958	Y	Y			
Malta	01/05/2004	Y	Y			
Netherlands	01/01/1958	Y	Y	Netherlands Antilles*	N	N
				Aruba*	N	N
Poland	01/05/2004	Y	Y			
Portugal	01/01/1986	Y	Y	Madeira	Y	Y
				Azores	Y	Y
				Macau	N	N
Romania	01/01/2007	Y	Y			
Slovakia	01/05/2004	Y	Y			
Slovenia	01/05/2004	Y	Y			
Spain	01/01/1986	Y	Y	Balearic Islands	Y	Y
				Canary Islands	Y	Y
				Ceuta	Y	Y
				Melilla	Y	Y
Sweden	01/01/1995	Y	Y			
United Kingdom (left EU on 31/1/2020 and transition	01/01/1973	N	N	Channel Islands	N	N
				Isle of Mann	N	N
				Gibraltar	Y	Y
				UK Sovereign Bases (including Cyprus)	N	N
				British Overseas Territories[3]	N	N

period ended 31/12/2020)						
Iceland	N/A	N	Y			
Liechtenstein	N/A	N	Y			
Norway	N/A	N	Y	Svalbard	N	Y
Switzerland	N/A	N	N			
Turkey	N/A	N	N			

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

[1]French Overseas Departments
Guadeloupe
Martinique
French Guyana
Réunion
Mayotte
Saint-Martin

[2]French Overseas Territories
New Caledonia
French Polynesia
Wallis and Futuna
St Pierre et Miquelon
St Barthelemy
French Southern and Antarctic Territories

[3] British Overseas Territories
Anguilla
Bermuda
British Antarctic Territory
British Indian Ocean Territory
British Virgin Islands
Cayman Islands
Falkland Islands
Pitcairn, Henderson, Ducie and Oeno Islands
Montserrat
St. Helena and Dependencies
South Georgia and the South Sandwich Islands
Turks and Caicos Islands
The Sovereign Base Areas of Akrotiri and Dhekelia

6.4 Annex D – Home Office Immigration Passport Stamps

We have previously given examples of the stamps but as new stamps are introduced or perhaps changed since the chapter was issued, we will no longer print the stamps. The stamps can be found on the Home Office’s Immigration and Nationality Directorate website which is constantly updated.

6.5 Annex E - Organisation contact details

The Student Awards Agency for Scotland (SAAS)
Saughton House

Broomhouse Drive
Edinburgh
EH11 3UT

Tel: 0300 555 0505
www.student-support-saas.gov.uk

Department for the Economy (Northern Ireland)
Higher Education, Policy, Research and Finance
Adelaide House
39-49 Adelaide St
Belfast
BT2 8FD

Tel: 028 9052 9900
economy-ni.gov.uk

Student Loans Company

European Team
Memphis Building
Lingfield Point
McMullen Road
Darlington
County Durham
DL1 1RW Tel: 0141 243 3570
www.gov.uk/Student-Finance

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

6.6 Annex F - Welsh student support cohorts

Student cohort	Eligibility period (first day of study)	2022/23 fee liability and support	2022/23 maintenance grant support*
2012 cohort (*new system*)	Started on or after 1 September 2012 and before 1 August 2018	£9,250 – first £4,955 can self-fund or take out a non-income assessed repayable tuition fee loan. A non-income assessed fee grant of up to £4,295 is available for eligible students.	Welsh Government Learning Grant** of up to £5,161 (household income up to £50,020)
2018 cohort	Started on or after 1	£9,250 - can self-fund	Welsh Government

(*new system*)	August 2018	or take out a non-income assessed repayable fee loan	Learning Grant** of up to £8,100 (elsewhere), £6,885 (parental home) and £10,124 (London). £1,000 WGLG at incomes of £59,200 or higher.

*Continuing students who started prior to AY 18/19 can apply for a partially means-tested loan for living costs, with rates depending if they are living in the parental home or outside the parental home in London, overseas or elsewhere. 2018 cohort students can access additional loan for living cost to make up maintenance funding to the maximum total support amount based on the student living in the parental home, outside the parental home in London or elsewhere.

**The SSG may be payable as an alternative to the WGLG to those eligible students who were on certain prescribed state benefits before they started their course of study. Levels of support depend on when they started their course.

All cohorts may be eligible for other grants for living costs: DSA, CCG, ADG, PLA and TG.

6.7 Annex G – Updates Log

Date	Updates
Version 0.1	Updates made for rollover and AY 23/24 policy changes
Version 0.2	Updates made following initial comments from WG
Version 0.3	Further updates
Version 1.0	Stakeholder sign off
Version 1.1	Updates made to clarify applicable leave start date when student is granted leave to enter prior to entry to or on entering the UK.
Version 1.2	Updated after WG review.
Version 2.0	Finalised version published.
Version 3.0	Updated section 2.46 Students who become eligible after the start of the course (events) to reflect eligibility for GFDs following an event.
Version 4.0	Updated section 2.17.1 Settled status to include that exemption under section 8 (4)(a) of the immigration act confers settled status following confirmation from WG that policy is the same as DfE.