

FINANCIAL CONTINGENCY FUNDS (HE): 2003/04

**GRANTS TO BE PAID BY THE NATIONAL ASSEMBLY FOR WALES TO THE
HIGHER EDUCATION FUNDING COUNCIL FOR WALES UNDER SECTION
68 OF THE FURTHER AND HIGHER EDUCATION ACT 1992**

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Introduction

In January 2003 the student support branch of the Welsh Assembly Government invited representatives from each HEI in Wales and HEFCW to form a consultative group principally to enable the Assembly to develop closer links with HEIs across Wales and to provide an improved forum for it to obtain the views of the sector on student support matters.

There was unanimous agreement that such a group should be established (known as the 'HE Student Support Group') and whilst remaining informal the group will, taking into account the powers of the National Assembly, and having regard for the high level of student cross border flow in both directions, consider:

- the most effective use of the Financial Contingency Fund (FCF);
- means of ensuring a consistent approach when making awards from the FCF;
- the impact of changes to the England and Wales student support system;
- the interaction between the Assembly Learning Grant and discretionary funding;
- the interaction between other bursaries and discretionary funding;
- the interaction between discretionary funding and the State benefits and Inland Revenue tax credit systems.

The following guidance for 2003/04 has been drawn up to take into account the considerations of the HE Student Support Group.

NHS Bursary Holders

For 2003/04, following agreement between the Department of Health and the Department for Education and Skills, all NHS students in England (i.e. those eligible for a means-tested or a non means-tested NHS bursary) will be eligible to apply for support from the Hardship Fund administered through HEFCE.

In Wales, the Welsh Assembly Government is exploring the possibility of extending FCFs in the same way. For the time being however the status quo will remain and paragraph 2 of this guidance reflects that position.

Main Guidance

Section 1

1. Purpose of Financial Contingency Funds

The Financial Contingency Fund is made available to institutions to provide discretionary financial help to support vulnerable students, in particular to help them access and remain in higher education.

Specifically it should be used:

- to assist those who need extra financial help to meet particular costs which are not already being met from statutory (or other) sources of funding
- to alleviate cases of financial hardship
- to meet unexpected financial crises
- to intervene in cases where a student may be considering leaving higher education because of financial problems

2. Who is eligible to apply?

The Fund is for home* students in one of the following categories:

- (i) Undergraduate students either full or part-time, including distance learners, following a higher education course including sandwich courses and any periods of work placement and foundation degrees;
- (ii) Postgraduate students either full or part-time, following a course of higher education at a level above first degree. This may include, at the institution's discretion, those who are writing up their thesis for a maximum 6 month period from date of the end of course registration and are not therefore attending the institution.
- (iii) Further education students either full or part-time, following a course of further education at a higher education institution including sandwich courses and any periods of work placement, who are aged 16 or over.

A 'home' student is defined as one who meets the residence conditions for living costs set out in the Student Support Regulations. Normally this means they must have an unrestricted right to enter and remain in the UK, and to have been ordinarily resident in the UK for three years prior to the start of the course, but there are exceptions. Full details on eligibility and residency rules are in **Annex A.*

Part-time students

A part-time student must be studying at least 50% of a full-time course in an academic year (e.g. 60 credit points, where the full-time equivalent is 120) to qualify for help. *An exception to this limit can be made in the case of disabled students, whose disability prevents them from studying at least 50% of a full-time course. These students are not eligible for DSAs and may need some additional support. These students must be studying for at least 25% (30 credits) of a full-time course.*

When deciding whether a course is 50% full-time equivalent (FTE) or not, institutions should consider how long it would take to achieve the relevant qualification if the course were taken full-time. The calculation used should be the same as that used to calculate FTE for the annual statistical return for HESA. If the part-time course would take more than twice as long to complete as a full-time course, it is unlikely that a course would qualify for a payment from the Financial Contingency Fund. It is recognised that it can be difficult to assess this 50% where no full-time equivalent course exists. In these cases, institutions may find it useful to compare the length of study to a more measurable course, perhaps in another institution if appropriate, or to determine separate criteria to define a part-time course. e.g. students registered for a minimum number of credit points depending on local arrangements.

NHS Bursary Holders

Students who receive a means-tested NHS bursary are eligible to apply for help from the Financial Contingency Fund. Students who receive a non means-tested NHS bursary are not eligible.

ITT and PGCE students

Students on initial teacher training courses must have applied for help from the Teacher Training Recruitment Scheme, if eligible, before applying for the Financial Contingency Fund. Postgraduate trainees eligible for teacher training incentives should expect to have these taken into account when making a Financial Contingency Fund application.

3. Eligibility of students from England, Northern Ireland and Scotland

Students from England, Northern Ireland and Scotland are eligible to apply for bursaries or for help from the Financial Contingency Fund. Institutions should take into account any support the student is receiving from their country of domicile.

4. Students in receipt of an Assembly Learning Grant (ALG)

Institutions should be aware that being in receipt of an ALG does not prevent the student from applying for or being awarded financial support from the Financial Contingency Fund. However the amount awarded from an ALG should be taken into account when considering support given from the Financial Contingency Fund.

Institutions should also direct those students who 'appear' eligible for an ALG but have not applied for one to, to do so before considering an application for support from the Financial Contingency Fund.

5. Priority groups for help from the Financial Contingency Fund

In line with the purpose of the fund, the Assembly expects institutions to give priority for help to students who fall into the priority groups as set out below.

The institution should ensure that its assessment process can identify students who have particular financial needs and those who are in unforeseen financial difficulty. The process should result in most of the available funding being directed to students with a low income and those who have exceptionally high costs.

- Students with children, especially lone parents
- Other mature students, especially those with existing financial commitments, including priority debts
- Students who need help with childcare costs
- Disabled students, in particular those where the DSA is unable to meet particular costs and the institution has no legal responsibility to do so
- Care Leavers
- Final Year Students, who are in financial difficulty
- Part-time undergraduates
- Foyer residents and other homeless students

6. General rules for FCFs

a) FCFs cannot be used to meet the cost of tuition fees for any full-time students

b) Where eligible, full and part-time students must have applied for their full entitlement of student loan and in the case of full-time students have received the first instalment before receiving any payment from FCFs.

c) Students can receive an emergency short-term loan from FCFs, where their first loan payment has been delayed beyond the start of the term. This should be recovered once the loan payment is received. More detailed advice on making these loan payments is at **Annex C**.

d) Student with dependants, mature students aged over 25, disabled students, students who have been awarded any bursary as an access measure and students who enter HE with pre-existing priority debts, are not required to take out a hardship loan before receiving help from the Financial Contingency Fund. The Assembly/ DfES recommends that institutions meet the needs of the groups of students through the Financial Contingency Fund wherever possible, leaving the hardship loan budget available in the main for other students. Full Hardship Loan Guidance is available from DfES.

e) Students in their second or subsequent year who have been receiving benefits during the long vacation can receive a payment from FCFs before they enrol, to bridge the gap between the benefit payment stopping (usually in the first full week of September) and the loan payment arriving.

f) FCFs can be used to meet the following costs/circumstances:

- the general costs associated with being a student
 - living costs eg rent, mortgage payment, food, utility bills, clothing, laundry
 - course costs eg childcare, travel, books, field trips
- exceptional costs, such as
 - repairs to essential household equipment
 - emergency situation (including travel costs for family illness or bereavement and - hardship due to burglary or fire)
 - additional costs for disabled students, not met by the DSA
 - high costs for students dependent on continuing medication
 - assistance with priority debts

7. Students on franchised courses at FE colleges

Students who attend a franchised course at an FE college, or who are on a course provided jointly by an HE and FE institution, remain the responsibility of the "parent" HEI. Students on franchised or partnership courses should be able to apply for help from the Financial Contingency Fund just as easily as those at the parent HEI and wherever possible through the college they attend. This will prevent them having to make unnecessary journeys to apply for and collect money. Institutions might like to consider setting aside an appropriate proportion of their Financial Contingency Fund for franchised students, for their franchised or partner FE college(s) to administer. Institutions with distant campuses must also ensure that students there can apply for the Financial Contingency Fund. This should be at the campus they attend wherever possible.

8. Fee remission for part-time students who have lost their jobs

Part-time undergraduate students who lose their job after beginning their courses are eligible to have their fees waived, through assistance from the Financial Contingency Fund. Institutions should note that the usual criterion for part-time students for Financial Contingency Funds assistance (ie 50% fte or 60 credit values where the fte is 120 credit points) applies also to this scheme. The maximum payment should be the appropriate pro-rata share of the undergraduate fee. To be eligible for consideration for fee remission, the student should be able to show that she/he was employed for at least 20 hours a week, or working as a self-employed person for at least 20 hours a week, when she/he entered higher education, and that she/he has been so working for a minimum of six months before losing the job, or ceasing to be self-employed through no fault of her/his own. A student is eligible for consideration at any stage in the academic year. If a student finds another job after losing her/his job, and benefiting from the fee remission scheme, she/he should not be asked to repay any of their tuition fee.

9. Deciding whether a student should receive a payment

It is for institutions to decide an individual student's need, and they should have a fair and open system for making this decision. Institutions should consider whether the claimed shortfall between income and expenditure constitutes real need, and cannot be reduced to a more manageable level through action by the student. Institutions should also consider the availability of support from other sources.

Parental Contribution

Where students declare that the expected parental contribution is not met, genuine cases should be treated sympathetically. Institutions should not include the LEA assessed contribution in the assessment where a student has demonstrated a clear relationship breakdown (but where there is insufficient evidence to establish estrangement for statutory support purposes).

It is recommended that the student should be asked to complete a supplementary form or provide a letter, outlining the circumstances surrounding the relationship breakdown and why the contribution is not being made. This should be taken as sufficient evidence for administrators to look at the actual rather than the expected contribution. It may also be appropriate for such additional evidence to be marked as confidential for consideration by a senior member of staff only.

10. Financial advice for students

DfES' Hardship Fund Guidance 03/04 identifies financial advice as a key part of ensuring the effective use of its Hardship Funds. It recognises that Money advisors can be particularly helpful in enabling a student to manage a budget (e.g. debt counselling) and in maximising their available resources (e.g. ensuring that they claim benefits to which they may be entitled). Students who make repeated application for support from the Financial Contingency Funds should be advised to seek money management advice and where an institute does not have money advisers, it should direct students to local agencies that can offer specific advice, eg CABs.

11. Making payments to students

The Assembly expects students to be able to receive the help they need in a timely fashion, in order to prevent unnecessary drop-out due to hardship. It is recommended that the process of approving aid, where all relevant documentation has been provided, should take no longer than 15 working days. Institutions should also consider including student representation in the decision making process. Clear procedures should be formulated for dealing with appeals, and all applicants should be aware of their right to appeal.

Financial Contingency Fund payments can be agreed in principle prior to the start of the academic year, although they cannot be paid until the student has started the course. They can be offered in addition to other Bursaries. Financial Contingency Fund payments can be used where appropriate as part of a package with Hardship Loans. Many institutions have found this a helpful approach in tackling students' needs.

The Financial Contingency Fund should not normally be used to make very small payments to students, unless the institution believes this is appropriate. On the other hand, very large payments reduce the money available to other students. We recommend a minimum level of £100 and a maximum level of £3,500 in any one year, but institutions may make exceptions to these levels in special cases, such as disabled students who are not eligible for a DSA, where a payment larger than £3,500 may be necessary.

12. Making payments to third parties

Payments can be made directly to a student, or to a third party, through the provision of items for the student (e.g. a PC), or through a short-term repayable loan. It may also be provided through the loaning of equipment (e.g. a PC, or wheelchair) which would remain the property of the institution. Payment to a third party should not be made without the student's consent. In particular, institutions should not use payment to a student from the Financial Contingency Fund as a means of paying off

directly a debt owed to the institution itself, without the student's agreement. Institutions may, however, take into account any outstanding short-term loan from the Fund which the student has not repaid, when determining how much to give a student from the Financial Contingency Fund.

Payments from the Financial Contingency Fund can be made in instalments at the institute's discretion. This can help students to manage their budgets, and can also help institutions to manage theirs - if a 'students' circumstance change, or if there are more resources in the budget than first envisaged, then the level of payment can easily be reviewed. However, for students eligible for benefits it is better for the payment to be made as a lump sum, in line with the advice on treatment of student income by the DWP (as follows).

13. DWP Disregards

Any payment from the FCFs for course-related costs, such as childcare, will be fully disregarded by the DWP for benefit purposes. Payment in instalments for these costs will not affect benefits.

It is recommended that payments for living costs are made as a lump sum for students on benefits, eg paying an electricity bill, as such payments will be disregarded provided the student's capital holding does not exceed £3,000.

Where payments from FCFs are for everyday living costs such as rent, food, utilities or clothing, and are not paid as a lump sum, they will be taken into account for benefit purposes with a £20 a week disregard. This disregard will include the £10 a week disregard of the student loan if applicable. It will help students who have received a payment from FCFs in

claiming benefits if they are given a document to present to their local JobCentre Plus. A suggested form of words is at **Annex D**.

14. Help for Disabled Students (including diagnostic test costs)

Disabled students, especially those with dyslexia, who wish to apply for a preliminary diagnostic test, prior to applying for a DSA, may have difficulty meeting the cost of that test. The cost cannot be provided by the DSA, even retrospectively, for legal reasons. Assistance in meeting the cost of the test, and associated costs such as travel to the assessment centre, may now be provided through the Financial Contingency Fund. It is **not** necessary for students to have applied for a Hardship Loan before receiving help to pay for a diagnostic test. Also, it is **not** necessary for to apply assessment criteria quite as stringently as for a standard application for help through the Financial Contingency Fund. A student would not need to be 'in hardship' in a strict sense but they should be in need of financial help to pay for the costs of the test.

Students can also receive help for other disability costs from the Financial Contingency Fund. Students who face financial difficulty because they have disabled dependant children may also need additional help. *Disabled students who have to study for less than 50% fte because of their disability are also now eligible for the Financial Contingency Fund provided that they study at least 25% fte.*

15. Students who are not attending because they are sick or unable to attend their course for health or caring reasons or other unavoidable circumstances

Where students are ill and absent for up to 60 days, they are treated as if they are still attending the course and therefore entitled to receive any instalments of student loan and allowances (if applicable) during that time. They can also apply for and receive help from the Financial Contingency Fund. Where students are absent for any other reason, i.e. bereavement, family illness, caring duties or pregnancy, it is at the discretion of the LEA whether the student continues to receive any instalments of loan or allowances. In these circumstances institutions have discretion to make a payment from the Financial Contingency Fund, provided the LEA has not decided that the student has withdrawn from the course and stopped the payment of any instalments of loan.

At the end of the statutory 60 days absence for illness, LEAs have the discretion to continue to pay any remaining instalments which may be due. Again, if they exercise this discretion, institutions may make a payment from the Financial Contingency Fund. However, if the LEA decides that the student has withdrawn from the course, and stops the payment of any further instalments of loan or

allowances, the student should not receive a payment from the Financial Contingency Fund.

If a student is unable to return to the course until the following academic year, but has recovered from their illness, or no longer has any caring duties, they will be able to claim Job Seekers Allowance (JSA) for the period until they return to the course. Students in this position who are claiming JSA, are not eligible for a payment from the Financial Contingency Fund.

In exceptional circumstances, if a student is unable to return to the course and the LEA has stopped payments of student support, but the student is unable to claim JSA, e.g. if they are pregnant, institutions may, at their discretion, make a payment from the Financial Contingency Fund, if they judge that the student may not be able to rejoin the course unless they receive such help.

16. Summer vacation funding

It is recommended that institutions set aside an amount at the beginning of the year to provide support for students over the summer vacation. Students who apply for help from FCFs before the summer can be reassessed for an additional summer vacation payment, if they demonstrate need.

Institutes are reminded that any FCF allocation, no more than 15%, held back for this purpose is not used then no more than 10% of the total allocation can be carried forward.

17. Full-time students with children

Most full-time students with children will receive a much simpler and in some cases more generous package of support in 2003/04. The current system is being streamlined and students with children will be eligible for just 2 statutory grants from their LEA – the Childcare Grant and the new Parents' Learning Allowance (PLA) to meet their study related costs – and Child Tax Credits from the Inland Revenue to meet the costs of bringing up their children.

Any students who have previously received an Access Bursary but who do not get the PLA can continue to be paid a Bursary from the Financial Contingency Fund at the institutions' discretion.

From September 2003 the Dependants' grants will be abolished as will the school meals grant. In almost all cases, students will receive more in Child Tax Credit than they did from dependants' grant. But continuing students who are lone parents with one child will receive about £300 less than under the current arrangements. Institutions are asked to meet any shortfall in income due to the abolition of the child dependants' grants from the Financial Contingency Fund.

Students who were previously eligible for school meals grant will usually receive passported free school meals if they are in receipt of full Child Tax Credit (available to parents with an income of less than £13,230) but not Working Tax Credit. Some continuing students who received school meals grant if their children were aged under 5, will not get free school meals via Child Tax Credits until their child reaches age 5. Institutions are asked to use the FCFs to provide support for any continuing students who are not eligible for free school meals for their children. The grant was worth £255 per child.

18. Discretionary Bursaries

In 2003/04 Institutions continue to have discretion to award other Bursaries to reflect local conditions and individual circumstances. Institutions should earmark an appropriate amount from their FCF allocation for such Bursaries.

19. What the Financial Contingency Fund cannot be used for

The Financial Contingency Fund should not be used to help students meet their tuition fees, with the exception of part-time students who lose their job after starting the course (see paragraph 6 above). Neither should it be used to make adaptations to buildings nor be used to provide communal facilities such as a crèche or mini bus.

20. Guidance on dealing with Students in receipt of Opportunity Bursaries awarded by Institutions in England.

Students studying at a school or college in one of the designated 'Excellence in Cities' local education authorities in England may be eligible for one of the Opportunity Bursaries of £2,000 over 3 years. Opportunity Bursaries are made available for young students aged 18 to 21 from families with low income and where there is little or no experience of higher education within the family. This is to encourage them to apply.

If a student is awarded an Opportunity Bursary by a higher education institution in England, but that student then subsequently enrolls at a HE institution in Wales (having perhaps taken up their 'insurance' offer or been offered a place as a result of the clearing process), the HE institution in Wales may need initially to cover the Opportunity Bursary from its Financial Contingency funds. The Welsh institution would then be reimbursed once DfES had

retrieved the allocation made to the awarding institution in respect of the Opportunity Bursary.

This is the final year that Opportunity Bursaries will be available as they are being phased out with the introduction of the new HE Grant in 2004/05.

21. Appeals from students

Institutions should have an appeals procedure in place for cases where students have applied unsuccessfully for help from the Financial Contingency Fund. This procedure should be clear, and students must be informed of their right to appeal. It is for institutions to consider each case and resolve appeals; cases should not be referred to the Council or the Assembly. Institutions are, of course, welcome to contact the Council for clarification of policy or procedure when deciding applications.

22. Information about payments from the Financial Contingency Fund

The Assembly asks the Council to submit an analysis on the use of the Financial Contingency Fund at the end of each academic year. This provides useful information for the Assembly on how the Fund has been spent, the main recipients and reasons for payment, and informs future policymaking. Both the Assembly and the Council are grateful for the time spent by institutions in completing these returns. The summary for 2002/2003 is attached at **Annex E**. Please provide the information requested at **Annex F** using the forms shown.

Section 2

Total Amounts available in the Fund

1. The sum of money which the Council is allocating to institutions for 2003/04 is:

- £5 million.
- Institutions will continue to be allowed to use up to 2.5 per cent of their total allocation or £500 (whichever is the greater) to ensure that the Funds are effectively publicised and administered.

Payment to institutions

2. Institutions will be paid their allocation from the **Financial Contingency Fund** in full in September.

Financial conditions and auditing requirements

3. Institutions must observe the following:

- (i) the Funds must only be used for the purposes specified in this Guidance
- (ii) the Funds must only be made available to eligible students as specified in this Guidance
- (iii) any interest gained on the Funds must be either paid to students, as part of the normal allocation of the resources available, used for publicity or administration costs or used to defray audit costs.

4. Each institution shall present to the Council by 31 December audited accounts in respect of the Financial Contingency Fund for the previous academic year and such information as the Council shall from time to time prescribe, showing how grant was used in the previous academic year. The Council shall insure that each institution's audited account includes a note showing the receipt, any payments, any repayments and closing balance of the grant for the Financial Contingency Fund provided by the Council. Institutions must identify in their monitoring returns any interest accrued on Financial Contingency Fund. Auditors are required to certify that Funds, and any combined interest earned on them, have been applied in accordance with the terms and conditions of the grant, and this Guidance.

Carry forward of unspent Funds (for Financial Contingency Fund)

5. Institutions may carry forward a proportion of their total allocation of Funds at the end of each academic year without reference either to the Council or to the Assembly. This is not intended to encourage institutions to under-spend, but to encourage them to plan ahead. Institutions can set aside some Funds in order to help them meet commitments in future years for students to whom they have provided Bursaries, and can also ensure they have sufficient funds to help students over the summer vacation period and at the beginning of the following academic year.

6. Institutions will be allowed to carry forward up to 10% of the total of their allocations and interest each year without reference to the Council or the Assembly. However, the Council will review this periodically to ensure that institutions are making use of the Funds carried forward and are not simply carrying forward an unused surplus each year.

7. Institutions will be able to carry forward any unspent Funds up to 10% of the total of their allocation and interest at the end of 2003/04.

ANNEX A: Residency requirements

Normal eligibility criteria for Financial Contingency Fund support

- 1. Schedule 1 of the Education (Student Support) Regulations sets out the residence conditions for Financial Contingency Fund support in terms of ordinary residence and settled status.**
- 2. To be personally eligible the student must normally be able to satisfy three requirements relating to his/her residence and immigration status on the first day of the first academic year of his/her course. On that date he/she must:**
 - have been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding that date other than wholly or mainly for the purpose of receiving full-time education
 - be ordinarily resident in England and Wales
 - be settled in the United Kingdom under the terms of the Immigration Act 1971, in other words ordinarily resident here without being subject to any restriction on the period for which he may stay.

Exceptions

3. There are exceptions to the settled status requirement. These are as follows:
 - refugees, their spouses, children or step-children; or
 - persons who have been informed by the Home Office that although they do not qualify as a refugee, they have been granted exceptional leave to enter or remain (ELE/ELR) in the UK, their spouses, children or stepchildren; or
 - European Economic Area (EEA) migrant workers, their spouses and children; or
 - EU nationals and their children who are applying for tuition fee support only; or
 - nationals of the Republic of Ireland.

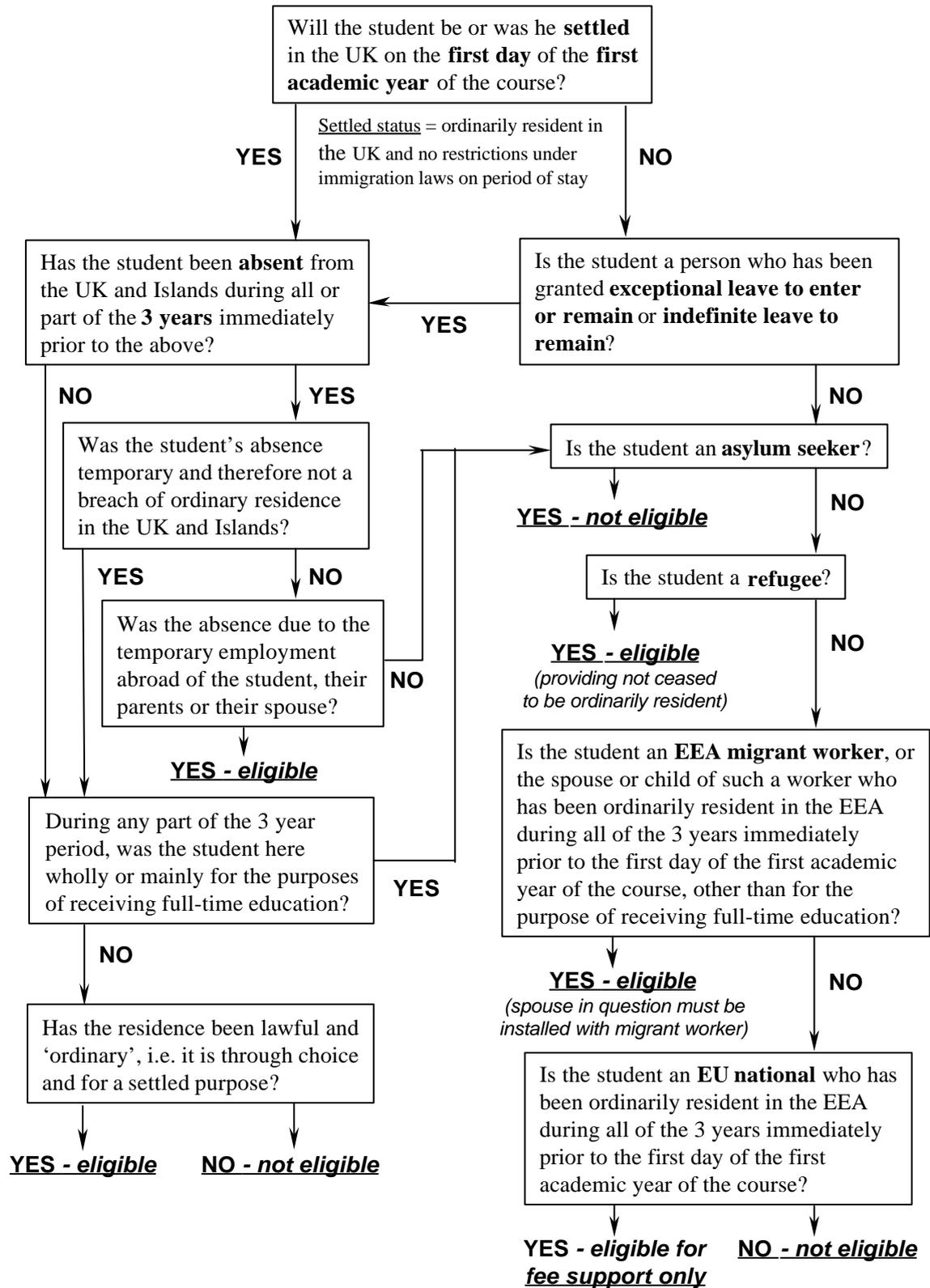
Further details of the separate provisions for these exceptions are set out in appendix B to this annex.

Settled status

- 4. 'Settled status' means a person is free from any restriction on the period for which he/she may remain in the UK if he/she 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 UK birth certificate or a British Passport; or
 - a person who has been granted indefinite leave to enter or remain (ILE/ILR). The immigration status of such applicants may be established or verified by reference to the stamp(s) in their passports or travelling documents. Examples of immigration stamps can be found in appendix A to this annex.

Residency 'decision tree'

4. This will help institutions to determine whether students meet the residence conditions. This is to be used as a guide only, and institutions must follow the residency conditions set out in this annex.



Ordinary residence

5. 'Ordinarily resident' has been defined in the courts as habitual and normal residence from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences of the applicant, his/her spouse or parent. Extracts from the judgment (Lord Scarman's) can be found in appendix C. The ruling did not define what might constitute a temporary or occasional absence, but did indicate that it might be possible for an individual to establish ordinary residence in two countries simultaneously.

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

6. The rules provide that the prescribed three-year period of ordinary residence should not include any part, however short, of ordinary residence in the UK and Islands (or the EEA where applicable) wholly or mainly for the purposes of receiving full-time education. It is for institutions to decide whether or not an applicant has been resident here 'wholly or mainly' for education purposes. This provision does not apply to refugees who have been ordinarily resident in the UK and Islands since being granted refugee status by HM Government, their spouses, children or stepchildren, as they are exempt from the three-year residence requirement.
7. However, a student is not disqualified from support simply because he/she has been receiving full-time education during some or all of the three-year prescribed period. To be disqualified full-time education must have been the main purpose of the student's residence for some or all of the period. For example, the child or spouse of a foreign businessman or diplomat ordinarily resident in the UK and Islands may be receiving full-time education, but may be here mainly to be with their parent or spouse and so be entitled to support if the time requirements are met; a child whose parents are temporarily employed abroad may be receiving full-time education here, but his/her residence here may be mainly for the purpose of remaining in the UK with relatives rather than mainly for the purpose of attending school in the UK.
8. Students who have been in the United Kingdom and Islands as trainee nurses under contract of employment to a health authority for the period of their training should not be regarded as having been here wholly or mainly for the purpose of receiving full-time education.
9. A person who has entered the country on a student visa may initially be ordinarily resident here primarily for educational purposes, but the purpose of residence may subsequently change. If, for example, an application for refugee status is submitted to the Home Office and this later results in the granting of 'exceptional leave to remain' (rather than full refugee status), institutions may conclude from the facts of an individual case that the student's residence ceased to be primarily for educational purposes from the date of that application.
10. The main purpose of a student's residence must be determined individually in all cases.

Temporary or occasional absences from ordinary residence

11. When considering whether an applicant for support has been ordinarily resident throughout the prescribed three-year period preceding the start of the first academic year of a course, temporary or occasional absences may have to be considered. Each absence must be considered in the context of the person's period of residence, rather than simply on the basis of the duration of the absence itself. Place of birth or nationality should play no part in this consideration. Each case should be judged on its individual merits. Rules of thumb should not be applied or specified

periods of time in order to determine what constitutes a temporary or occasional absence. In making a decision, each institution will wish to consider whether it would be confident that its decision would be upheld if it were challenged in Court.

12. A student taking a gap year before entering a further education course does not break his/her ordinary residence in the UK and Islands. Such a student can be considered to meet the requirement to be ordinarily resident in England and Wales on the first day of the first academic year of the course if he/she is still abroad.

Temporary employment abroad

13. The criteria are also modified for ordinary residence and settled status in cases where a student, his/her spouse, parents, guardian or any other person having parental responsibility or care of him/her was temporarily employed abroad during any part of the three-year period. It has the effect that a student in these circumstances shall be treated as having met the three-year ordinary residence and settled status criteria.

Armed forces personnel

14. Armed forces personnel on active service abroad, and their children and spouses, satisfy the temporary employment provision. This group of people is 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 exemption does not include armed forces personnel who are not engaged on active service (i.e. teachers or other support staff) who are not under the same degree of compulsion to work abroad, nor does it include reservists. An example of a certificate from the Ministry of Defence that can be used for verification of the applicant's status can be found in appendix D to this annex.

Emigrants

15. Where emigrants have been employed abroad, such employment would not count as temporary under the Regulations.

Children living in the UK whose parents are temporarily employed abroad

16. Children whose parents are temporarily employed outside the UK will normally retain the relevant connection with the UK, and therefore be eligible for support, whether they travel with their parents or stay behind. Their residence should not be regarded as becoming 'wholly or mainly for the purposes of receiving full-time education', because they are still here and receiving education while their parents are temporarily employed abroad.

Making decisions in other cases

17. In other cases it is for institutions to decide whether an applicant falls within the terms of temporary absence, i.e. whether he or she would have been ordinarily resident in this country, and therefore eligible for support, had it not been for the temporary employment abroad. Rules of thumb should be avoided, such as a set number of years. Judgements should be internally consistent.
18. In reaching a judgement, institutions will wish to satisfy themselves that the period abroad arises from employment; judge whether or not the absence is temporary; and decide whether, but for the

employment of the applicant (or parents or spouse etc.), he or she would have met the ordinary residence and settled status criteria. In making its decision, institutions should take into account, among other things, the nature of the posting; the terms of any contract or employer's letter; the period of time spent abroad; the time spent in this country; and whether a residence has been maintained in the UK.

19. The onus is on the applicant to satisfy the institution that: his/her absence was due to employment abroad; and this employment was temporary; and were it not for temporary employment abroad he/she would be ordinarily resident here.
20. In determining whether the absence was for purposes of employment but the applicant was not in employment immediately after moving overseas the institution should consider:
 - whether the applicant had applied for jobs prior to his/her departure
 - the length of the time spent overseas before obtaining work
 - whether he/she resided in the same overseas country before and after obtaining a job
 - what the applicant was doing prior to obtaining a job, or between jobs.
21. In determining whether the employment was temporary or permanent, the institution should consider:
 - The nature of the contract:
 - i. does the contract include liability for UK tax on earnings?
 - ii. is the posting for a specified period? If it is for an unspecified period, what is the reason for this?
 - iii. how long is the contractual period?
 - iv. is the contract renewable? Would it be normal or unusual for the contract to be renewed on its completion? Has the contract already been renewed or is it one of a succession of contracts abroad?
 - v. does the contract convey automatic rights of return to this country from time to time?
 - vi. if there is no contractual period, how long has the employee already been resident abroad?
 - The nature of the work:
 - i. is it normal for the nature of the trade or profession to be mobile?
 - ii. is mobility a condition of service?
 - A right of return:
 - iii. does the applicant (or parent, spouse etc.) have an automatic right of return to work in his/her organisation (or a related one) on completion of the duty abroad?
 - Periods between overseas postings:
 - iv. have such periods been spent in this country, i.e. in the employer's HQ or UK offices?
 - Previous contracts:
 - v. is the present contract a first overseas posting of its type, or is it a continuation of previous similar contracts? Institutions may wish to bear in mind domestic employment case law;

industrial tribunals have ruled that a succession of similar temporary contracts can be construed as permanent employment. A series of short contracts may be the result of a genuinely temporary posting, which is kept under review or may indicate a long-term posting with the contract being renewed as a matter of formality rather than a real review.

22. 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 on its own individual merits, and that decisions on whether employment abroad is permanent or temporary must not be decided solely on the length of period spent abroad, but in conjunction with the nature of the work and the employment pattern of the applicant. Again, the institution will wish to consider whether it would be confident that its decision would be upheld if it were challenged in Court.

Determining whether an applicant would have been ordinarily resident but for his/her temporary employment abroad

23. The applicant should be able to demonstrate that, other than for the temporary employment abroad, he or she would have been ordinarily resident here during the prescribed period. In some cases, an institution may judge that a statement of intention will provide sufficient evidence, but in most cases authorities will require something more concrete. In this connection, institutions may wish to take into account:

- ownership of property – although in many cases, this will provide sufficient evidence that an applicant would otherwise have been ordinarily resident here, in some cases it will not. For example, a property may simply be an investment or be intended for occupation only on retirement following a considerable period abroad. Non-ownership of property in the British Isles should not be taken to exclude an applicant;
- holidays – where an applicant spent any long periods of holiday or study leave;
- other business interests – does the applicant have interests, which could lead to a conclusion that he/she would be likely to return here on completion of his or her overseas tour?; and
- family or other ties with the United Kingdom, which would make a return here likely.

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

24. A student who has been ordinarily resident in Scotland, Northern Ireland, the Channel Islands, or the Isle of Man who moves to England or Wales specifically for the purpose of attending the current course or a previous designated course which the student was attending immediately before the current course should be regarded as being ordinarily resident in the place from which he has moved.

Appendix A to Annex A: Immigration stamps

| ON ENTRY | | | | |
|--|--|--|--|---|
| <p>CODE 1A</p> <p>Leave to enter the United Kingdom Is hereby given for/until.....</p> <p>.....</p> <table border="1" style="width: 100%; height: 20px; margin-top: 10px;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%;"></td> <td style="width: 33%;"></td> </tr> </table> | | | | <p>For exceptional leave to enter given at port</p> <p>remain</p> <p>outside the Rules <u>or</u> varied leave at port</p> |
| | | | | |

| AFTER ENTRY | | | |
|---|---|---|--|
| <table border="1" style="width: 100%; height: 150px;"> <tr> <td style="padding: 5px;"> Leave to remain in the United Kingdom is hereby given Until..... on behalf of the Secretary of State Home Office Date..... </td> <td style="padding: 5px; vertical-align: top;"> For exceptional leave to remain <u>or</u> leave to exceptionally </td> </tr> </table> | Leave to remain in the United Kingdom is hereby given Until..... on behalf of the Secretary of State Home Office Date..... | For exceptional leave to remain <u>or</u> leave to exceptionally | |
| Leave to remain in the United Kingdom is hereby given Until..... on behalf of the Secretary of State Home Office Date..... | For exceptional leave to remain <u>or</u> leave to exceptionally | | |

CODE 1: No recourse to public funds, can work. Used for: **Doctors, Some dependents, UK Ancestry**

Marriage,

CODE 2: No recourse to public funds, consent to work already deemed to be given. Used for: **Work Permit Holders, TWES and Students**

| |
|--|
| |
| Leave to enter for/until |
| No recourse to public funds Work (and any changes) must be authorised |

| | |
|---|--|
| | |
| Leave to remain in the United Kingdom, on Condition that the holder maintains and accommodates himself and any dependants without recourse to public funds, does not enter or change employment paid our unpaid without the consent of the Secretary of State for the Home Department is hereby given | |
| Until..... | |



***NEW VERSION:** Introduced at ports on 30 July 2000 (only given by an Immigration Officer at the port of entry)*

CODE 3: Various types of visitors, up to 6 months. No work paid or unpaid, no public funds. Used for: **Business, Academic, Tourist, Visitors for Private medical treatment and People in Transit**

CODE 4: Specified employment/employer. Names employer and Private Servants. Used for: **Au-Pairs, Working Holidaymakers, Overseas Domestic Workers, Seasonal Agricultural Workers**

| |
|-----------------------------|
| |
| Leave to enter for/until |
| To work as/with |
| Changes must be authorised |
| No recourse to public funds |

NEW VERSION: Introduced at ports on 30 July 2000 (only given by an Immigration Officer at the port of entry)



CODE 5N: Temporary category, maximum 6 months, no employment, no public funds. Used for: **Visitors**

INDEFINITE LEAVE TO ENTER

Given indefinite leave to enter the United Kingdom

INDEFINITE LEAVE TO REMAIN

| | |
|--|--|
| | |
| Leave to enter the United Kingdom on Condition that the holder maintains and accommodates himself and any dependants without recourse to public funds is hereby given Until..... The holder is not engaged in employment paid or unpaid other than with..... and is not to engage in any business or profession without the consent of the Secretary of State for the Home Department <p style="text-align: right;">On behalf of the Secretary of State Home Office</p> | |

| | |
|--|--|
| | |
| GIVEN LEAVE TO REMAIN IN THE UNITED KINGDOM FOR AN INDEFINITE PERIOD. Signed On behalf of the Secretary of State Home Office Date | |

ON ENTRY

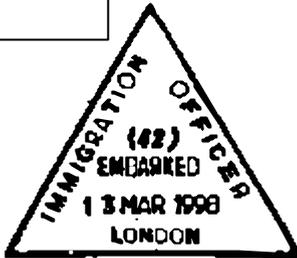
AFTER ENTRY

AUTHENTICATION



The Immigration officer's **arrival** stamp shows the date and port of arrival. It is used to authenticate leave to enter code stamps. If a person has previously been given indefinite leave to enter or remain in the UK the Immigration officer will stamp the passport with his date stamp alone

amp is used by the Office after entry to ticate grants of limited o remain.



The Immigration officer's **embarkation** stamp shows the date and port of departure from the UK. Immigration officers do not put embarkation stamps in every person's passport or travel document.

NO TIME LIMIT

There is at present no time limit on the holder's
 Stay in the United Kingdom

.....

On behalf of the Secretary of State Home Office
 date:

CODE 8: This stamp is used to transfer a passenger's existing LTE/LTR from their previous passport

| | Code |
|--|------|
| The holder has leave to enter/remain that was granted on | |
| | |
| By..... | |
| | |
| and expires on | |

Leave Varied to: Used to extend an LTE/LTR and followed by one of the immigration stamps under the following

Leave varied to:
 circumstances:

- Already has LTE/LTR in one category and wishes to be given LTE in another capacity;
- Wants to extend the existing LTE/LTR;
- To rectify an error on Entry Clearance i.e. conferred LTE

CANCELLED

(Red ink endorsement)

This endorsement is used to cancel a passenger's permission to stay in the United Kingdom

Note: 'Public funds' include housing, social security and income related benefits. They do not include education and health funds.

Appendix B to Annex A: Separate provisions

Asylum seekers

1. Asylum seekers may achieve one of three outcomes as shown in Figure 1. Those achieving outcome 2 may be given indefinite leave to remain at the end of the period of exceptional leave.

Figure 1 – Asylum seeker outcomes

Student Support Criteria

| | Outcome 1 | Outcome 2 | Outcome 3 |
|--|--|--|--|
| <div style="border: 1px solid black; padding: 5px; text-align: center;">Application made to the Home Office for asylum</div> | <div style="border: 1px solid black; padding: 5px; text-align: center;">Refugee status granted</div> | <div style="border: 1px solid black; padding: 5px; text-align: center;">Exceptional leave to enter or remain (ELE/ELR) granted</div> | <div style="border: 1px solid black; padding: 5px; text-align: center;">Asylum application refused</div> |
| Not eligible for Student Support | Eligible for Student Support (immediate entitlement) | Eligible for Student Support only if 3-year residence requirement met | Not eligible for Student Support |

Refugees

2. A refugee is defined as someone who is outside their own country of origin and who has 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. Such a person is unable, or in fear of, or unwilling to return to their former country of residence.

Asylum seekers who have been granted refugee status (stage 3)

3. Refugees, their spouses, children and stepchildren are eligible for Hardship Fund support provided the refugee is ordinarily resident in England and Wales on the first day of the first academic year of the course and has not ceased to be ordinarily resident since being recognised as a refugee. A person who has been successful in their application for refugee status will have been given a letter from the Home Office stating that they have been granted indefinite leave to remain in/enter the UK as a refugee recognised under the 1951 United Nations Convention. Students who fit the above criteria are not required to demonstrate settled status on the first day of the first academic year of the course and can also become eligible to receive Hardship Fund support during their course after they, their spouse or parent is granted refugee status.

Asylum seekers who have been awarded exceptional leave to enter or remain (stage 2)

4. The Home Office grants 'exceptional leave to enter or remain' (ELE or ELR) in a number of circumstances. Institutions are only concerned with those students who applied to the Home Office for asylum and have not been granted refugee status. Instead they have been awarded ELE/ELR, or they are the spouse, child or stepchild of such a person. ELE/ELR is not asylum and does not constitute recognition as a refugee within the meaning of the United Nations Convention.

5. ELE/ELR is not the same as indefinite leave to remain. It is normally granted to a set calendar date (four years from the date of the application) although in some circumstances it is granted for a shorter period. The applicant should have been sent a letter by the Home Office stating that, whilst they are not recognised as a refugee, they have been granted exceptional leave to remain. After completing four years exceptional leave to enter or remain it is open to the person to apply for settlement, at which point indefinite leave to remain is usually granted.
6. Students granted ELE/ELR do not have the same immediate entitlement to Hardship Fund support as have recognised refugees. **These students must meet the usual three-year residence requirement before the first day of the first academic year of the course.** Such persons, their spouses, children and step-children are exempted from the requirement to be settled in the United Kingdom within the meaning of the Immigration Act 1971 on the first day of the first academic year of their course and can, therefore, become eligible to receive Hardship Fund support during their course, after they, their spouse or parent is granted ELE/ELR.

Asylum seekers who have been awarded indefinite leave to remain in the UK as a result of backlog clearance

7. The Home Office Immigration and Nationality Directorate (IND) introduced special backlog clearance measures to speed up the processing of asylum applications made before 1 July 1993. The regulations have been amended to reflect these special measures so that applicants and their dependants granted indefinite leave to enter or remain (instead of the normal ELE/ELR), under these special measures, become eligible for support where this was granted during the course as in paragraphs 4-6. The exercise is now complete and it is unlikely that any new students will fit this description.

Temporary refuge

8. The immigration status of students granted short time stay for reasons not covered above is not always clear and the DfES has been advised that checks with IND should be made in individual cases, or the student asked to provide documentation of their status.

European Economic Area migrant workers

9. Migrant workers and their spouses, children and stepchildren are eligible for Hardship Fund support where they are ordinarily resident in England and Wales on the first day of the first academic year of the course and meet the requirement of three years ordinary residence in the European Economic Area (EEA). They are not required to have settled status in the UK.
10. 'Migrant workers' are EEA nationals who have taken up an activity as an employed person in the UK, under EU Council Regulations.
11. Students who cease work before starting their course will retain their status as migrant workers if there is a link between their work and their studies. There has been little guidance from the European Court of Justice (ECJ) on what constitutes a sufficient 'link' between the course of study and the previous employment for these purposes. In the cases of Lair and Bernini the Court indicated that what was important was the relationship between the purpose or subject matter of the studies and the previous employment. This principle does not apply where a person has been employed in the UK but has subsequently 'become involuntarily unemployed and is obliged as a result of the situation of the labour market to transfer to another employment sector'.

12. However, where a student continues to work while he is studying, a recent Opinion from the Advocate General in the case of Grzelczyk indicates that he does not need to show a link between his employment and his studies in order to retain his status as a migrant worker.

Employment which is ancillary to their studies

13. An applicant is not eligible for Hardship Fund support if he/she has taken up employment with a view to undertaking subsequent studies related to the same field of activity, and would not have been taken on by his/her employer if he/she had not already been accepted for admission to the course in respect of which he/she has applied for support.
14. Where a person has taken up employment in the UK solely for the purpose of becoming eligible for Hardship Fund support, institutions will be under no duty to bestow such support on him/her.
15. EEA nationals are generally entitled to be classified as migrant workers for a period of up to six months from their arrival in the UK where they have arrived in the UK without work but are actively seeking employment. Under EC law, a national of a member state has the right to enter the territory of another member state, not only to pursue an occupation as an employed person, but also to look for such an occupation. This right to enter and reside in another member state for the purpose of seeking work is not, however, a permanent one. Individuals concerned should be given a reasonable time within which to apprise themselves of offers of employment comparable to their qualifications and to take the necessary steps to be engaged. A period of six months is generally considered sufficient. The eligibility of such a student will remain subject to them meeting the residence requirement of three years ordinary residence in the EEA.

Remuneration for work

16. EEA nationals who came to the UK to work but received something less than a market rate salary for their work, may still fall within the definition of a migrant worker. In the case of Brown the ECJ set out a definition of a migrant worker.
- ‘Any person who pursues an activity which is effective and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, is to be treated as a worker. The essential characteristic of the employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.’***
17. The ECJ has said that ‘remuneration’ means consideration for the services in question, and therefore if someone works in exchange for, for example free food, free accommodation or an allowance, they may still be considered to be a worker.
18. In effect the test to be applied is as follows:
- Is the person in an employment relationship in which he/she performs services in return for remuneration?
 - Is he/she pursuing an activity, which is effective and genuine?
 - Is this activity on such a small scale as to be regarded as purely marginal and ancillary?
19. In trying to decide whether a person’s employment is ancillary to another activity – applying the third part of the test – it may be relevant to look at, amongst other things, whether his/her employment is full-time and salaried. For example, if a person is employed full-time at a market rate this would be a fairly good indication that his/her employment was not ancillary to their

studies. However, this does not mean that a person must be employed full-time at a market rate in order to be a worker. As already indicated, if the activity were ancillary then the person would not fulfil the criteria for migrant worker status.

Spouses of EEA migrant workers

20. The spouse of an EEA migrant worker is eligible for Hardship Fund support on the same basis as the migrant worker him/herself, provided that the spouse is installed with the migrant worker in the UK. The ECJ requires only that the migrant worker had accommodation available for his/her family, which would be considered normal for the purpose of accommodating the family. However, there was no requirement that the spouses must be permanently living together. The ECJ held that this was consistent with the spirit of Article 11 of the regulation, which gives members of the family the right to take up an activity as an employed person throughout the territory of the member state concerned, even though that activity is exercised at a place some distance from the place where the migrant worker lives. Once migrant workers are divorced, the same rules will not of course apply. But, whilst they are separated, even if they intend to divorce later they are still spouses for the purposes of these Regulations. The spouse must meet the same ordinary residence test as the migrant worker. The nationality of the spouse is not relevant; both EEA and non-EEA nationals are eligible.

Children of EEA migrant workers

21. For the purposes of this provision 'parent' is defined as including a guardian, any other person having parental responsibility for a child and any person having care of a child. In every case the parent must have established migrant worker status in this country and the child must meet the same ordinary residence test as the migrant worker. The child should be able to produce evidence that he or she was admitted to the United Kingdom as a child of a migrant worker. The fact that the migrant worker parent has since died, or that the child is for other reasons no longer dependent on the migrant worker, does not necessarily result in losing entitlement. However, where the parent is still living, they must still be residing within the UK and have retained their migrant worker status.

UK nationals who are migrant workers

22. UK nationals (for this purpose includes British citizens, British subjects who have the right of abode in the United Kingdom, and dependent territories citizens who acquired that citizenship by reason of a connection with Gibraltar) may acquire the status of EEA migrant workers in the same fashion as nationals of any other member state. UK nationals who move to another member state for the purpose of employment, and then return to the UK for the same purpose, will be migrant workers, and they, their spouses and children will not be required to satisfy the three-year ordinary residence requirement in the UK. They do however need to be ordinarily resident in England and Wales on the first day of the first academic year of the course and meet the required three-year ordinary residence in the EEA.

EU nationals

23. EU nationals or the children of EU nationals, who are not an EEA migrant worker or the spouse or child of a migrant worker must be able to show that they have settled status in the UK in order to be eligible for support. Under EC law, nationals of EEA member states (including EU nationals) are granted the right to live and work in the UK. This is called a right of residence. EEA nationals have a right of residence providing they are working in the UK, or they are not economically active

but do have sufficient funds to finance their stay without claiming public funds. EEA nationals do not automatically have settled status in the UK. This is something they may apply for if they wish. It is not compulsory in terms of immigration status, and they may stay in the UK for as long as they want providing they meet the requirements above. Further details are given in the Home Office leaflet 'Information about Nationals of the European Economic Area'.

EU students

24. EU nationals, or the children of an EU national, who do not meet the above criteria may be eligible for fee support but not for any living cost support. Students who become EU nationals within three months of the start of the academic year, because their State joins the EU, will be eligible for fee support for that academic year and any subsequent academic year.
25. Although these students are not required to have settled status or to be ordinarily resident in the UK on the first day of the first academic year of the course, they are required to have been ordinarily resident in the EEA for the three years preceding that day. However, nationals of non-EU members of the EEA or their children are not entitled to Hardship Fund support under this provision.

Nationals of the Republic of Ireland

26. Nationals of the Republic of Ireland are treated as settled in the UK for immigration purposes and therefore do not need to have formal confirmation of their status endorsed in their passports. In order for such a student to be eligible for fees and living costs, they must be ordinarily resident in England and Wales on the first day of the first academic year of the course and must 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. Their residence in the UK during the three-year period must not have been wholly or mainly for the purpose of receiving full-time education. An Irish national, who does not meet the ordinary residence requirement, may be considered to see if he satisfies the requirements to be regarded as a migrant worker or an EU student.

Appendix C to Annex A: 'Ordinarily resident'

Extracts from Lord Scarman's judgement

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

At page 31 H:

'It is my view that LEAs, when considering an application for a mandatory award, must ask themselves the question: has the applicant shown that he has habitually and normally resided in the United Kingdom from choice and for a settled purpose throughout the prescribed period, apart from temporary or occasional absences? If an LEA asks this, the correct, question, it is then for it, and it alone, to determine whether as a matter of fact the applicant has shown such residence. An authority is not required to determine his 'real home', whatever that means: nor need any attempt be made to discover what his long-term future intention or expectations are.

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

At page 27 B-G:

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

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

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

Appendix D to Annex A: Armed Forces personnel

REGULAR MILITARY AND AIR FORCES AND ROYAL NAVY FORCES
CERTIFICATE OF TEMPORARY EMPLOYMENT OUTSIDE THE UNITED KINGDOM
ELIGIBILITY FOR HARDSHIP FUND SUPPORT

I certify that:

NumberSurname.....Initials.....

Rank

Unit.....

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

(date).....

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

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

Signed.....

Name.....

Rank.....

Unit Records Officer

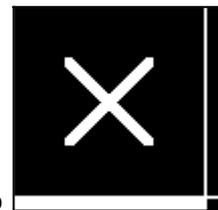
Date.....

Telephone Number.....

Unit Address

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

Unit Stamp



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

Annex B

Definition of registered and accredited childcare

Day care settings that cater for children under the age of 8 and which operate for 2 hours or more per day and more than 5 days per year are required to register with and be inspected annually by local authority social services under the Children Act 1989. From April 2002 legislation and inspection of childminding and other day care services will transfer to the Care Standards Inspectorate for Wales (CSIW), a new arm of the National Assembly. If students are unsure whether the day care for their children is registered or not, they should check with the **Co-ordinator of the Early Years Development and Childcare Partnership in the Local Authority** in which the day care is situated. Because the Children Act only covers children under the age of 8, day care providers which only provide for children aged 8 and above are not required to register but can be accredited.

At time of publication only the Kids Club Network is accredited in Wales

The following are types of day care which require registration:

Day nurseries: these look after under 5s for the length of the adult working day. They may be run by social services departments, voluntary organisations, community groups, private companies, employers or individuals, or a combination of any of these on a partnership basis.

Creches: these are similar to day nurseries

Playgroups/pre-schools: these usually provide education and care for children aged 3-6, although some take children aged 2½. Sessions last no longer than 4 hours.

Extended day playgroups: these provide for children for more than 4 hours a day.

Private nursery school: these deal almost exclusively with children under 5, and differ from a private day nursery in a number of respects, for example children are under the oversight of a qualified teacher.

Out of school clubs: these care for school age children in the absence of the parents or carers from the end of the school day until the parent can collect the child, or sometimes before school starts. They are not open access.

Open Access Schemes and Adventure Playgrounds: these provide open access play facilities for children of all ages but are normally attended by children of school age. There will be some supervision. They will be open all day in the holidays and at half term.

Registered childminders: these look after children under 5 (and school aged children outside school hours and during holidays) in domestic premises. Parents and childminders negotiate the terms and conditions.

Further information about childcare can be obtained from your local authority or from [www.childcarelink.gov.uk].

ANNEX C

ADVICE ON ISSUING SHORT-TERM LOANS FROM THE FINANCIAL CONTINGENCY FUND

1. Institutions will need to make some checks before making a Financial Contingency Fund payment to these students. A suggested checklist is below:

- full name, contact address, telephone number and proof of identity
- student is registered or enrolled on a designated course
- student has applied for a loan (or at least requested an application form from the LEA)
- if student has changed course since original application, that he has informed LEA
- basic eligibility (see below)

2. If these checks suggest a payment should be made, the student should be asked to sign a declaration of eligibility, if their eligibility as a home student has not already been established by the LEA. Some wording is suggested here:

"I, [name of student] hereby certify that to the best of my knowledge I fulfil the following criteria:

- (i) There are no restrictions on my stay and I am therefore "settled" within the United Kingdom (as defined in the Immigration Act 1971). *Anyone with full refugee status or with exceptional leave to remain or enter the UK meets this requirement.*
- (ii) I have been ordinarily resident within the United Kingdom or Islands for three years immediately before the start of my course. *Students with full refugee status do not need to meet this requirement, and EEA migrant workers (or their spouses/children) must have been resident within the European Economic Area, rather than the UK and Islands..*
- (iii) None of this time was wholly or mainly for the purposes of receiving full-time education."

3. If a student gives inconsistent information, or if the institution is aware of contradictory evidence, it should not make a payment. In these circumstances, the student could be asked, for example, to return later, to allow time for further checks, for example with the LEA, to be made. Where necessary, institutions could make a very small payment to tide such students over until the date of the next interview.

4. Institutions should also ask the student to sign a declaration that they will repay the loan. Some recommended wording is below. This gives institutions the flexibility to pursue the non-repayment of loans if a student leaves the course or does not receive a student loan:

" I acknowledge receipt of cash/cheque/(other....) of [£] from [name of institution]. I hereby promise to repay this amount in full (i) within 10 days of receiving the first instalment of my main student loan; or (ii) at the end of the academic year, or (iii) when I leave the course, whichever is the earlier. "

ANNEX D

Form of words for students to give to their JobCentre Plus Office or Local Authority Housing Benefit Office

[Name of student] has received a payment of [£amount] from the Financial Contingency Fund provided by the Government.

Delete as appropriate:

- (i) It is a single payment
- (ii) It is part of a series of [*number of payments*] payments which will be made during the period [*enter period*].
- (iii) The payment is a short-term loan which is repayable when the student receives the first instalment of the student loan.

To the best of my knowledge the student has not applied for this payment to meet every day living costs.

----- (signed)

on behalf of [stamp or other identification of institution]

ANNEX F

2003/04 Monitoring Requirements

The Council is asked to provide the Assembly with a commentary on the use of the Financial Contingency Fund, consulting institutions as necessary. This information will be used to assist in evaluating the performance of the Funds and to inform future decisions on the purpose of the Funds. The Council is also asked to collect the following information in respect of each year from individual institutions, and submit this in summary form to the Assembly by the end of February.

In Table 1:

The number of students applying for assistance from the Financial Contingency Funds and the number to whom assistance was given with the total amounts disbursed and with breakdowns between:

- (i) undergraduate students
- (ii) postgraduate students
- (iii) FE students.

And within these categories, details under the following sub-groups

- full-time and part-time; (and number of students in receipt of an ALG award)
- help with living costs (and whether as part of the bursary scheme, and fee remission for loss of a job);
- young students, young mature (aged 21-24) and mature (aged 25+);
- students with and without dependants;
- students with and without disabilities.

In Table 2:

The total amount of Financial Contingency Funds disbursed during the academic year, and the range of payments made, including the number of grants and loans made in each range group.

In Table 3:

The number of students whose application for assistance from the Financial Contingency Funds was refused and reasons for refusal.

In Table 4:

Information on arrangements made for improving targeting of the Financial Contingency Funds to students in real need.

In Table 5

If known, information on how much has been spent from Financial Contingency Funds on the following categories of expenditure:

- assistance with disability costs
- fees other than tuition (except in cases where part-time students have lost their jobs)
- books and equipment
- accommodation
- childcare
- transport
- utility costs
- personal bank overdrafts.

In Table 6

The amount of funds disbursed to students in the form of loans for repayment, and whether this was paid as an emergency short-term loan for students with no other support at the beginning of term who did not have a loan cheque, or for other reasons. Also to record the funds received as repayments for both these categories.

In Table 7

Details of amounts allocated by institutions, actual amounts disbursed and interest accrued by them over the three terms.

In Table 8

Details of carry - over calculation including funds used for administration/publicity (if not possible to apportion separately record all against Financial Contingency fund).

STUDENTS APPLYING FOR FINANCIAL CONTINGENCY FUNDS

Where number and amount is requested please indicate the total number of successful applications and the total amount spent in each category.

Table 1(i) : UNDERGRADUATE

| Undergraduate | | | |
|--|--|---|------------------------------|
| Total numbers of applications | | Total successful and total amount | |
| Full-time (number and amount) | | Part-time (number and amount) | |
| Number of students in receipt of an ALG award | | Number of students in receipt of an ALG award | |
| Young students (number and amount) | Young mature (aged 21-24) (number and amount) | Mature (aged 25+) (number and amount) | |
| Fee remission for job loss (number and amount) | | Bursary scheme (number and amount) | Other (number and amount) |
| Students with dependants (number and amount) | | Students without dependants (number and amount) | |
| Students with disabilities (number and amount) | | Students without disabilities (number and amount) | |

Table 1(ii): POSTGRADUATE

| Postgraduate | | |
|--|--|---|
| Total numbers of applications | | Total successful and total amount |
| Full-time (number and total amount) | | Part-time (number and total amount) |
| Young students (number and amount) | Young mature (aged 21-24) (number and amount) | Mature (aged 25+) (number and amount) |
| Bursary scheme (number and amount) | | Other (number and amount) |
| Students with dependants (number and amount) | | Students without dependants (number and amount) |
| Students with disabilities (number and amount) | | Students without disabilities (number and amount) |

Table 1 (iii) FE

| Further Education | | |
|--|---------------------------|---|
| Total numbers of applications | | Total successful and total amount |
| Full-time (number and total amount) | | Part-time (number and total amount) |
| Number of students in receipt of an ALG award | | Number of students in receipt of an ALG award |
| Young students | Young mature (aged 21-24) | Mature (aged 25+) |
| Bursary scheme (number and amount) | | Other (number and amount) |
| Students with dependants (number and amount) | | Students without dependants (number and amount) |
| Students with disabilities (number and amount) | | Students without disabilities (number and amount) |

Table 2**Details of payments**

| Less than £100 | | £100 - £499 | | £500 - £999 | | £1000 - £1,999 | |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Grant | Loan | Grant | Loan | Grant | Loan | Grant | Loan |
| Amount & Number |
| £2,000 - £2,999 | | £3,000 and over | | Total payments | | | |
| Grant | Loan | Grant | Loan | Grant | | Loan | |
| Amount & Number | | Amount & Number | |

Table 3**Refusals**

| Reason for refusal | Number of students |
|--|--------------------|
| Insufficient evidence of financial hardship | |
| Application did not meet institution's priority for use of Financial Contingency Funds Student Loan was not taken out | |
| FCF Loan was not taken out | |
| Institution's FCFs allocation was exhausted | |
| Other | |

Table 4

Arrangements made for improving targeting of Financial Contingency Funds to students in real need

Table 5**Reasons for payments**

| a. Undergraduate HE students | Number and amount | | | | | |
|--|--------------------------|----------|-----------|----------|----------------------|---------------------|
| | FT | £ | PT | £ | Total Numbers | Total Amount |
| Assistance with disability costs | | | | | | |
| Fees - other than tuition (except where p/t undergraduate students are eligible for benefits or have lost their job) | | | | | | |
| Books and equipment | | | | | | |
| Accommodation | | | | | | |
| Childcare | | | | | | |
| Transport | | | | | | |
| Utility costs | | | | | | |
| Personal bank overdrafts | | | | | | |
| Totals | | | | | | |

| b. Postgraduate HE students | Number and amount | | | | | |
|------------------------------------|--------------------------|----------|-----------|----------|----------------------|---------------------|
| Category | FT | £ | PT | £ | Total Numbers | Total Amount |
| Assistance with disability costs | | | | | | |
| Fees - other than tuition | | | | | | |
| Books and equipment | | | | | | |
| Accommodation | | | | | | |
| Childcare | | | | | | |
| Transport | | | | | | |
| Utility costs | | | | | | |
| Personal bank overdrafts | | | | | | |
| Totals | | | | | | |

| c. FE students | Number and amount | | | | | |
|--|-------------------|---|----|---|---------------|--------------|
| Category | FT | £ | PT | £ | Total Numbers | Total Amount |
| Assistance with disability costs | | | | | | |
| Fees - other than tuition (except where p/t undergraduate students are eligible for benefits or have lost their job) | | | | | | |
| Books and equipment | | | | | | |
| Accommodation | | | | | | |
| Childcare | | | | | | |
| Transport | | | | | | |
| Utility costs | | | | | | |
| Personal bank overdrafts | | | | | | |
| Totals | | | | | | |

Table 6

Loans for repayment

| Amount of funds disbursed to students as loans for repayment (£) | |
|--|--|
| Amount paid as emergency short-term loan for students without a loan cheque at the beginning of term | Amount loaned for other reasons |
| Funds received as repayment of short-term loans made in the academic year | |
| Amount repaid as emergency short-term loan for students without a loan cheque at the beginning of term | Amount repaid which was paid for reasons other than no loan cheque |

Table 7: periodic information on amount spent and interest earned

| | 1 Aug to 31 Dec | 1 Jan to 31 March | 1 April to 31 July | Total |
|------------------|-----------------|-------------------|--------------------|-------|
| | £ | £ | £ | £ |
| Amount allocated | | | | |
| Amount disbursed | | | | |
| Interest earned | | | | |

Table 8: Calculation of funds which institutions may carry over to 2003-04

Institution:

| | Hardship Fund | Total |
|---|----------------------|--------------|
| Funds allocated in 2003-04 | | |
| plus funds brought forward for 2002-03 | | |
| Plus interest earned during 2003-04 | | |
| less funds returned to HEFCW after initial relocation | | |
| less funds disbursed (including loans) | | |
| Less expenditure on administration and publicity | | |
| Plus loans repaid | | |
| Total funds remaining | | |
| Funds to carry over 2004-05* | | |
| Funds to be returned to HEFCW | | |

*This must be not greater than 10% of the total income for 2003-04 (funds relocated + funds brought forward + interest earned)