

To: Heads of higher education institutions in Wales

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FINANCIAL CONTINGENCY FUND (HE) 2004/05

Circular letter W04/53HE provided the guidance and terms and conditions for the Financial Contingency Fund (FCF) for 2004/05. This circular letter provides the final allocations to individual institutions for 2004/05.

The Assembly has made £5.103m available to the Council for distribution as Financial Contingency Funds in 2004/05: £5m for general Financial Contingency Funds; and £103k to take account of the non-medical NHS students now eligible to apply to the Fund. It should be noted, however, that it is not necessary to ring-fence the £103k when distributing funds. The allocations are shown at Annex A to this letter.

As in previous years, the Assembly has requested that the Council allocate a proportion of the FCF using postcode data as an indicator of need. Therefore, of the £5m available for general Financial Contingency Funds, 25% has been allocated on the basis of the numbers of students from less affluent backgrounds as indicated by postcode data. The remaining 75% has been allocated on the basis of total student numbers as shown in 2002/03 HESA data. The numbers of non-Welsh domiciled students at institutions have also been taken into account given that such students are ineligible for an Assembly Learning Grant. A weighting of 1.5 has therefore been applied to each non-Welsh domiciled student. The £103k has been allocated on the basis of the proportions of non-medical NHS students at relevant institutions in 2002/03, as provided by the Assembly.

Students who attend a franchised course at an FE college remain the responsibility of the HEI and allocations to the HEIs concerned take account of such students. Students who attend a directly funded HE course at an FE college are the responsibility of the FE college. Each FE college with directly funded provision has been given an allocation of FCFs to provide help to these students.

Payment of the 2004/05 Financial Contingency Fund allocations will be made in September 2004. Payment will be made via CHAPS into the separate interest bearing account which institutions have set up for Hardship Funds.

Yours sincerely

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Head of Funding and Research

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TERMS AND CONDITIONS FOR PAYMENT OF GRANTS FOR THE PURPOSES OF FINANCIAL CONTINGENCY FUNDS 2004/05

1. This document sets out the terms and conditions for the payment by the Council to institutions of grant specifically earmarked for the purposes of providing assistance for students in particular need ("grant for Financial Contingency Funds") in respect of the academic year beginning August 2004. These Terms and Conditions supersede any previous Terms and Conditions imposed by the Council for the payment of grant for Financial Contingency Funds/Hardship Funds to institutions.
2. The Terms and Conditions set out below do not override the duties and powers of the Council under the Further and Higher Education Act 1992 ("the Act"). They are in addition to, and not in substitution for

(a) the Terms and Conditions set out in the Financial Memorandum between the Council and higher education institutions (HEIs) dated December 1996, and

(b) the general conditions as set out in the Schedule to the Funding Agreement between the Council and further education institutions (FEIs),

and any revised versions thereof subsequently agreed and any guidelines or directions issued by the Council in respect of any of the individual functions, powers and duties of institutions.

3. The definitions in paragraph 2 of the Financial Memorandum, and paragraph 1 of Annex A to the Schedule to the Funding Agreement shall for the purposes of this document and, unless the context otherwise requires, expressions in this document shall have the meanings given to them in the Act.
4. Grant for Financial Contingency Funds shall be subject to such conditions and requirements as the Council may from time to time prescribe. The institutions shall ensure that any grant for Financial Contingency Funds is used only in accordance with the Terms and Conditions which apply to that grant. In addition, the Council will require institutions to have regard to the guidance set out in the attached document entitled: Financial Contingency Funds (HE): 2004/05 in relation to the use of grant for Hardship Funds.

Purpose of Grant

5. Any grant for Financial Contingency Funds is to be used by institutions to pay grants to provide financial help to those whose access to higher education might be inhibited by financial considerations or who, for whatever reason, including physical or other disabilities, face financial difficulties associated with their living costs. It may not be given to full-time students to help them meet tuition fees (with exception to that in 6.a of the attached guidance).

Accountability

6. In HEIs the designated officer, whose responsibilities are described in the Financial Memorandum, has been notified to HEFCW. In FECs comparable responsibilities are

assumed to be borne by the principal of the college. Specifically in respect of Financial Contingency Funds allocations, the designated officer shall:

- (i) advise the Governing Body on the discharge of its responsibilities under this document; and
- (ii) ensure that the uses to which the institution puts grant for Financial Contingency Funds are consistent with the purposes for which such grant was given by the Council and comply with any Terms and Conditions attaching to it.

7. The institution shall take such steps as the Council may require from time to time for the purposes of ensuring that the systems of financial control and management are such as to enable it to fulfil its obligations under this document.

Payment of the Grant for Financial Contingency Funds to institutions

8. Grant for Financial Contingency Funds will be paid to institutions in September in respect of that academic year.
9. The amount of grant which the Council shall make available to institutions for the purposes specified in paragraph 5 above shall be in aggregate not less than the amount of grant for Financial Contingency Funds specifically earmarked by the National Assembly for Wales.

Terms and Conditions for payment of grant to institutions

10. The institution shall comply with these Terms and Conditions and shall have regard to any policy guidance or directions issued by the Council in making for the purpose specified in paragraph 5 above.
11. Payments to institutions funded by the grant for the purpose specified in paragraph 5 above in respect of each academic year shall be made by the Council in September of that year.
12. Grant for the purpose specified in paragraph 5 above shall be paid to institutions subject to Terms and Conditions which, subject to approval by the Assembly, shall be issued by the Council. The Terms and Conditions shall be in addition to the Financial Memorandum between the Council and the HEIs, and the Schedule to the Funding Agreement between the Council and FEIs. These Terms and Conditions shall include the following:
 - (i) such grant is to be used only for the purpose specified in paragraph 5 above;
 - (ii) such grant is to be made available only to eligible students as defined in paragraph 15 below;
 - (iii) each institution shall operate a separate, interest-bearing account into which such grant shall be paid; and
 - (iv) the interest on such grant may be paid to students, as part of the normal allocation of the resource available, used for publicity or administration costs or used to defray audit costs.

13. The Council shall require each institution to which it has paid grant for Financial Contingency Funds to present, by 31 December, audited accounts in respect of the previous academic year and such information as the Council shall from time to time prescribe, showing how grant for Financial Contingency Funds was used in the previous academic year. The Council shall ensure that each institution's audited accounts includes a note showing the receipt, any payments, any repayments and closing balance of the grant for Financial Contingency Funds provided by the Council. Auditors shall be required to certify whether the Funds provided by the Council and any interest earned on them have been applied in accordance with the Terms and Conditions of the grant. Where an institution makes a Financial Contingency Fund payment to a student in the form of a loan, repayments may only be used in furtherance of the purpose of the funds as set out in this guidance, or for further payments which shall be documented in the same way as original payments.
14. The Council shall, by the end of February each year, provide the Assembly with a report on the use of grant for the purpose specified in paragraph 5 above in the preceding academic year. This will include the information specified in Annex E of the attached document Financial Contingency Funds (HE): 2004/05.

Eligible students

15. Grant for the purpose specified in paragraph 5 above shall be used only to assist students falling within the following three groups:
 - (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.
16. In paragraph 15 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.
17. Grant shall not be used to assist those students eligible for a student loan in the relevant academic year but who have decided not to take one out. Except where a student is applying for FCF support to cover a preliminary dyslexia diagnostic test, then it may not be necessary. However the student should show a need for financial help to pay for the cost of the test.
18. In each case a 'home' student is defined as one who meets the residence conditions

for living costs set out in the Student Support Regulations, and includes students from Scotland, Wales and N Ireland but not the Channel Islands or the Isle of Man. Where a student is not in receipt of statutory student support, it is for the institution to determine their residency status.

Revision

19. After consultation with the Council the Assembly may at any time revise, revoke or add to any of the terms and conditions in this document. The Council itself may make representations to the Assembly for revision, revocation or addition to the Terms and Conditions of payment.

Interpretation

20. Questions arising the interpretation of the arrangements in this document shall be resolved by the Council after consultation with the Assembly.

Introduction

21. Following DfES' 'Review of Targeted Support' and their 'Student Funding Review' a number of changes come into effect for the academic year 2004/05 which change the way in which full and part-time students are funded in England and Wales. These include:
 - A new package of support available for both new and continuing part-time (HE) students, including fee support of up to £575 and a grant of up to £250 towards books, travel and other course costs.
 - A new Higher Education (HE) grant worth up to £1,000 a year for those students from lower income backgrounds (up to £15,200). Students from a household with an income between £15,201 and £21,185 a year would be eligible for some grant on a sliding scale. It is estimated that around 30% of students in England and Wales are expected to benefit from the full grant.
 - The level of FCF funding available to HEI's across Wales in 2004/05 remains the same as in 2003/04, this together with the above mentioned changes have enabled the HE Student Support Group to look at ways in which to target existing support to the most vulnerable groups.

Main changes

22. Fee remission for part-time undergraduate students is no longer available from the Fund. Those who require support with the cost of their undergraduate part-time tuition fees should be directed to their local education authority (LEA) which administers the new part-time statutory support package. Transitional arrangements apply (see 6.a).
23. Hardship Loans are no longer available to students from 2004/05. Special consideration can be given, at the institution's discretion, to existing students for support from the Fund. (see paragraph 6.d of the main guidance).

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, and includes students from Scotland, Wales and N Ireland but not the Channel Islands or the Isle of Man. Where a student is not in receipt of statutory student support, it is for the institution to determine their residency status. Full details on eligibility and residency rules are in Annex A.*

***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

All students who receive a NHS bursary (both means-tested and non means-tested) are eligible to apply for help from the Financial Contingency Fund.

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 other significant support e.g. Assembly Learning Grant (ALG), HE Grant and part-time statutory support package.

Institutions should be aware that being in receipt of other significant financial support such as an ALG, HE Grant and the part-time statutory package, does not prevent the student from applying for or being awarded financial support from the Financial Contingency Fund. However the amount awarded 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 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 Government 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 identifies 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 extra 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 (including those unable to work due to academic pressures);
- 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 or part-time students, except in cases where continuing part-time undergraduates received a FCF fee waiver in 2003/04 and are receiving the full amount of the statutory support package in 04/05 but whose fees exceed the maximum level of statutory support.

b) Where eligible, students must have applied for their full entitlement of student loan and received the first instalment before receiving any payment from FCFs. In cases where a student is applying for FCF support to cover a preliminary dyslexia diagnostic test then it may not be necessary for the student to have taken out their student loan first, however he/she should show a need for financial help to pay for the costs.

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.

The majority of students receive their student loan through the BACs credit transfer paid directly into their bank or building society account. Administrators will have the discretion to offer short-term loans to eligible students who have not received a loan instalment through no fault of their own. Payment should be recovered once the student loan payment is received. More detailed advice on making these loan payments is at Annex B.

d) Hardship Loans: Special consideration can be given, at the institution's discretion, to existing students (i.e. 2nd, 3rd & 4th years) who previously qualified for a Hardship Loan and where there is clear evidence of hardship and no other financial resources being available. However, students should be advised that they should not expect to automatically be supported to the same level that they would have had in 2003/04 from a combined Hardship Loan & FCF award.

e) The Fund should not normally be used to repay arrears of student loan repayments. However, where access to a further student loan is blocked because a student is in default on a previous student loan, institutions have the discretion to make a short-term loan from the Fund. Institutions should assess the benefit to the student of making such a loan. Payment of the loan would be conditional upon the student using the money to clear their student loan debt with the SLC and enable the student to access their full statutory support package.

f) 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.

g) 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 studying at least 50% FTE who have lost their jobs

Should administrators receive any enquiries from part-time students for help with the cost of undergraduate part-time tuition fee support, the student should be directed to their local education authority (LEA) which administers the new statutory support package for part-time students i.e. fee support of up to £575 and a grant for books, travel and other expenditure of up to £250.

Transitional arrangements: Continuing students who received a FCF fee waiver in 2003/04 and who qualify for the maximum fee support in 2004/05 but whose fee exceeds the maximum fee support available (£575) are eligible for the difference between the statutory fee support and the actual fee. These should be recorded as transitional fee waivers in Table 1 of monitoring returns. New part-time students are not eligible for transitional protection.

Note: Where a student is studying less than 50 % FTE they should be directed to the ‘Part-time Undergraduate Fee Waiver Scheme’ operated through HEFCW.

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

The DfES in conjunction with HEFCE have produced a Good Practice checklist which is available from the DfES website. 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 minimum individual payment should not normally be less than £100, unless the institution believes this is appropriate. e.g. emergency short-term loan.

We recommend the maximum total payment to any student should not exceed £3,500 in any one year, but institutions may make exceptions to these levels in exceptional circumstances, such as disabled students who are not eligible for a DSA, where a payment larger than £3,500 may be merited.

However, those responsible for administering the Fund should ensure, as far as possible, all vulnerable groups having fair access to the Funds. Institutions should not commit themselves to large year on year levels of awards to students.

Financial Contingency Fund awards 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. 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 (at paragraph 13).

Students can apply more than once during the academic year for help from the Fund. However the level of any subsequent award(s) should take into account the amount awarded previously.

To prevent unnecessary drop out due to hardship, the Assembly expects students to be able to receive the help they need in a timely fashion. 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.

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.

Where a student owes money to the institution, the Fund can be used directly to reimburse the institution but only with the student's consent. Institutions must not make payments from the Financial Contingency Fund conditional on a student first settling their debt to the institution, nor should they require the student to use any payment from the Fund to settle the debt. 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.

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, e.g. 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 C.

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

The Fund is not intended to provide additional study support that is available from the Disability Students' Allowance (DSA), unless the DSA is insufficient to cover the whole cost or the cost cannot be met from the DSA. 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. Assistance in meeting the cost of the test, and associated costs such as travel to the assessment centre, may be provided through the Financial Contingency Fund. In this circumstance it may not be necessary for a student to have taken out a student loan however, he/she should show a need for financial help to pay for the costs of the test. (See paragraph 6b of the main guidance).

Institutions also have a duty under the Disability Discrimination Act to provide certain facilities or assistance for disabled students to enable them to access their course and to take part in the university 'experience'. Specific funding (disability premium funding) has been provided by DfES to help institutions in modifying or adapting buildings or buying specialist equipment. The FCF should not be used to fund facilities/services etc where it is the institution's legal responsibility to provide this.

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 eligible for the Financial Contingency Fund provided that they study at least 25% fte.

Where the institution has made a purchase of equipment for a disabled student from FCF provisions that equipment should normally remain the property of that institution.

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.

Institutions are reminded that no more than 15% of the total FCF allocation can be held back for this purpose. However, if not spent, only 10% of the total allocation can be carried forward to the next academic year.

17. Discretionary Bursaries

In 2004/05 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.

18. What the Financial Contingency Fund cannot be used for

The Financial Contingency Fund should not be used to help students meet their tuition fees. Except in cases where continuing part-time undergraduates received a fee waiver in 2003/04 and are receiving the full amount of the statutory support package in 04/05 but whose fees exceed the maximum level of statutory support. Neither should it be used to make adaptations to buildings nor be used to provide communal facilities such as a crèche or mini bus.

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

Existing 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.

Where an existing student has been 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.

Note: There will be no new Opportunity Bursaries in 2004/05 as they are being phased out with the introduction of the new HE Grant in 2004/05.

20. 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.

21. 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 2003/04 is attached at Annex D. Please provide the information requested at Annex E using the forms shown.

Section 2

Total amounts available in the Fund

1. The sums of money which the Council is allocating to institutions for 2004/05 is as follows:
 - £5.103 million is available for the Financial Contingency Fund. This amount includes a notional amount of £103,000 (an additional resource provided in 2003/04) for non-means tested NHS bursary students.
 - 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 the Financial Contingency Fund 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 2004/05.

RESIDENCY REQUIREMENTS

Normal eligibility criteria for FCF support:

Schedule 1 of the Education (Student Support) No.2 Regulations (as amended by SI2004/06) sets out the residency conditions that govern the provision of support from FCFs.

To be personally eligible the student must normally satisfy three requirements relating to their residence and immigration status on the first day of the first academic year of their course. On that date they must:

- be settled in the United Kingdom under the terms of the Immigration Act 1971, in other words not being subject to any restriction on the period for which they may stay;
- 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.

EXCEPTIONS TO THE NORMAL RESIDENCE REQUIREMENTS

The exceptions to the normal residence requirements are:

- refugees, their spouses, children or step-children;
- 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, or Humanitarian Protection or Discretionary Leave, their spouses, children or step-children;
- EEA and Swiss migrant workers, their spouses and children and step-children;
- nationals of the Republic of Ireland

SETTLED STATUS

Settled status means a person should have no restriction on their stay (the period for which they 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.
- A person who has been granted indefinite leave to remain (ILR/ILE).
- A person who has the right of abode. This means there are no immigration controls on the person.

BRITISH OVERSEAS TERRITORIES

Under the British Overseas Territories Act 2002, from 21st May 2002 all existing British Overseas Territories Citizens (BOTC), except those from the sovereign base areas of Cyprus, automatically became British citizens with the right of abode in the UK. Eligible students will therefore hold both British Citizenship and their British Overseas Territories status at the same time.

The list of overseas territories that this applies to is: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar,

Montserrat, Pitcairn Islands, St Helena and Dependencies, South Georgia and the South Sandwich Islands and the Turks and Caicos Islands.

Therefore, anyone now entering the UK from the above countries (provided they have not chosen to renounce their British Citizenship, or have not naturalised in an overseas territory after 21 May 2002) will be doing so as a British Citizen and will not be subject to immigration control. They also have the same rights as any other EEA national.

However, even though they are overseas territories, the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus are not covered by the Act and do confer a route to British citizenship.

Holders of BDTC*/BOTC passports were allowed to present their BDTC*/BOTC (*British Dependant Territories Citizens) documents as evidence of right of abode in the UK prior to obtaining full British Citizen passports until 21 May 2003. These students still have to meet the ordinary residence criteria.

ORDINARY RESIDENCE

“Ordinarily resident” has been defined by the courts as habitual and normal residence from choice and for a settled purpose throughout the prescribed period, except for temporary or occasional absences of the student, their spouse or parent. Extracts from the judgment (Lord Scarman’s) can be found at the end of this chapter. 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

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 the student has been resident here "wholly or mainly" for full time education purposes. This provision does not apply to refugees, their spouses, children or step-children who have been ordinarily resident in the UK and Islands since being granted refugee status by HM Government, as they are exempt from the three year residence requirement.

However, a student is not disqualified from help simply because they have been receiving full-time education during some or all of the three year prescribed period. Full-time education must have been the main purpose of the student's residence for some or all of the period, to be disqualified. For example, the child or spouse of a foreign business person or diplomat ordinarily resident in the UK and Islands may be receiving full-time education, but may be here mainly to be with their parent or spouse 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 their residence here may be mainly for the purpose of remaining in the UK with relatives rather than mainly for the purpose of attending school in the UK.

Students who 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.

A student 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 resulted in the granting of "exceptional leave to remain" or Humanitarian Protection or Discretionary Leave (rather than full refugee status), institutions may conclude that that particular

student's residence ceased to be primarily for educational purposes from the date of their asylum application.

The main purpose of a student's residence must be determined individually in all cases.

TEMPORARY OR OCCASIONAL ABSENCES FROM ORDINARY RESIDENCE

When considering whether a student 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 student'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. LEAs should judge each case on its individual merits. Institutions should not apply rules of thumb or specified periods of time in order to determine what constitutes a temporary or occasional absence. In making a decision, each institution should consider whether it would be confident that their decision would be upheld if it were challenged in Court.

A student undertaking a gap year before entering a higher education course does not break his 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 they are still abroad.

TEMPORARY EMPLOYMENT ABROAD

The criteria for temporary absences also apply in cases where a student, their spouse, parent(s), guardian or any other person having parental responsibility or care of them 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.

Particular cases

Armed forces personnel

Armed forces personnel on active service abroad, and their children and spouses, automatically satisfy the temporary employment provision, in all cases. This group are in a special situation because of the unique nature of their employment, namely that they are bound by military law to accept overseas postings. The provision is only intended for service personnel families who follow them on postings; students who had been living overseas but not with the parent on active service would not be able to take advantage of this provision.

Emigrants

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

Children whose parents are temporarily employed outside the UK will normally retain the relevant connection with the UK, and therefore be eligible for the Access to Learning Fund, 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

In other cases it is for institutions to decide whether a student 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 the Fund. Administrators should ensure their judgments are internally consistent but also ensure they use their discretion to determine individual cases.

In reaching a judgment, 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.), they would have met the ordinary residence and settled status criteria. In making its decision, the institution should take into account, 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.

The onus is on the student to satisfy the institution that: their absence was due to employment abroad; and this employment was temporary; and were it not for temporary employment abroad they would be ordinarily resident here.

In determining whether the absence was for purposes of employment but the student was not in employment immediately after moving overseas the LEA should consider:

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

In determining whether the employment was temporary or permanent, the institution should consider:

(a) The nature of the contract:

- does the contract include liability for UK tax on earnings?
- is the posting for a specified period? If it is for an unspecified period, what is the reason for this?
- how long is the contractual period?
- is the contract renewable? Would it be normal or unusual for the contract to be renewed on its completion? Has the contract already been renewed or is it one of a succession of contracts abroad?
- does the contract convey automatic rights of return to this country from time to time?
- if there is no contractual period, how long has the employee already been resident abroad?

(b) 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?

(c) A right of return:

- does the student (or parent, spouse etc.) have an automatic right of return to work in their organisation (or a related one) on completion of the duty abroad?

(d) Periods between overseas postings:

- have such periods been spent in this country, i.e. in the employer's HQ or UK offices?

(e) Previous contracts:

- 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.

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 student. 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 a student would have been ordinarily resident but for his temporary employment abroad

The student should be able to demonstrate that, other than for the temporary employment abroad, they 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 institutions will require something more substantive. 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 UK and Isles should not be taken to exclude an applicant;
- holidays - where a student spent any long periods of holiday or study leave;
- other business interests - does the student have interests, which could lead to a conclusion that they would be likely to return here on completion of their 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

A student who has been ordinarily resident in either 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.

SEPARATE PROVISIONS IN PARTICULAR CASES

Asylum seekers who have been granted Refugee status

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. The Government has therefore granted them refugee status.

Refugees, their spouses, children and step-children are eligible for 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 (ILR/ILE) the UK as a refugee recognised under the 1951 United Nations Convention relating to the status of refugees. 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 for support from the Access to Learning Fund during their course after they, their spouse or parent is granted refugee status.

Definition of a child of a refugee

A claim for asylum means one that falls within the UK's obligations under Article 3 of the European Convention of Human Rights or the UN Refugee Convention of 1951. A dependant of an asylum seeker is defined in the 1999 Act as including a child of his or his spouse who is under 18 years old and dependent on him. Therefore, the Department takes the view that any reference to a child of a refugee refers to someone who is currently below the age of 18 or was under 18 when their parent's application was submitted, heard and decided on.

Exceptional leave to enter or remain (ELE/R), humanitarian protection (HP) and discretionary leave (DL)

Prior to 1 April 2003 the Home Office granted "exceptional leave to enter or remain" (ELE/R) to some unsuccessful asylum seekers. From 1 April 2003 the Home Office replaced the granting of ELE/ELR with Humanitarian Protection or Discretionary Leave. Persons awarded either of these statuses continue to be unsuccessful asylum seekers who are nevertheless in genuine need of international protection or have other truly compelling reasons for not being removed from the UK.

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

ELE/R terms and conditions

After completing four years exceptional leave to enter or remain a person may apply for settlement at which point indefinite leave to remain is usually granted. The Regulations do not require the student's ELE/R to be current. They only require that ELE/R should have 'been granted' at some point in the past. Nor do they impose a requirement that the student should continue to have ELE/R throughout their course.

HP and DL terms and conditions

A person who qualifies for HP would normally be granted leave for three years. However, shorter periods of leave may be granted in certain circumstances, for example where a particular country's situation is fluid. Those granted HP will be eligible to apply for indefinite leave to remain (ILR) after three years. Individuals will be subject to an active review of their application by the Home Office when they apply for further leave.

A person will not become eligible to apply for ILR until they have completed six years on DL. Some grants of DL are for only six months at a time and in these cases they would not be considered for ILR until they have spent ten years on DL. Individuals will be subject to an active review of their application by the Home Office when they apply for further leave.

ELE/R, HP, DL and ordinary residence

Students with ELE/R, HP or DL must meet the usual three-year residence requirement before the first day of the first academic year of the course. However, they, 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 for support during their course, once they, their spouse or parent is granted HP or DL.

Temporary refuge

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

EEA migrant workers

Any reference to an EEA migrant worker is a reference to a person who is a national of a member state of the European Economic Area or Switzerland who has taken up an activity as an employed person in the United Kingdom.

In the Department's view the criteria which must be fulfilled for a student to qualify for support under the migrant worker provision are as follows;

- At the time the application for support was made the student, their spouse, their parent or step-parent was a worker.
- The student was ordinarily resident in England and Wales on the first day of the first academic year of the course. (Institutions are reminded that student's living in the UK wholly or mainly for the purpose of education should not be viewed as ordinarily resident)
- The student was ordinarily resident within the EEA or Switzerland for the three years prior to the start of the course.

NB: Working or seeking work does not have to be the sole reason for coming to the UK.

In deciding whether an EEA or Swiss national can be classed as a migrant worker, the test which should be applied is as follows:

- Is the student in an employment relationship in which they perform services in return for remuneration?
- Are they pursuing an activity which is effective and genuine?

- Is this activity on such a small scale as to be regarded as purely marginal and ancillary ?
- Did the student cease work in order to start studying or will they continue to work whilst studying?

A person could lose their migrant worker status if:

- they left work voluntarily without good reason.
- they left work to begin a course of study which had no link to their previous employment.

The current legal position remains that an EEA national will not be a worker if they are not genuinely seeking to exercise a right to free movement in order to work but instead are simply trying to artificially create a situation where they appear to be a worker in order to obtain EC benefits, which include financial support in the payment tuition fees etc.

Students who cease work before starting the course

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 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".

Students who continue to work whilst studying

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. Many of the issues raised in the Grzelczyk case including this one remain the subject of legal challenge in Europe. Currently institutions are advised to carefully consider the circumstances of each case in the light of this opinion. If a student's application shows that his or her circumstances are the same or similar to that of Grzelczyk consideration should be given to the Advocate General's opinion.

Employment which is ancillary to their studies

A student is not eligible for assistance from the Fund if they have 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 their employer if they had not already been accepted for admission to the course in respect of which they have applied for support (As in the Brown case).

In the Lair case the Court stated that "where objective factors enable it to be established that a worker is entering a member state solely for the purpose of benefiting in that country, after a very brief period of employment, from the system of student grants, such abuses are not covered by the Community provisions at issue". In the Department's view, this means that where it appears to an LEA, having regard to all the circumstances that a person has taken up employment in the UK solely for the purpose of becoming eligible for student support it will be under no duty to bestow such support on him.

The Department's view is that an EEA or Swiss national is generally entitled to be classified as a migrant worker 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 Community 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 seek work comparable to their qualifications and to take the necessary steps to be engaged. A period of six months is generally considered sufficient. However, where an individual has not found employment within six months, they may still be classified as a migrant worker if they can provide evidence that they are continuing to seek, and have genuine chances of finding, employment. The eligibility of such a student will remain subject to them complying with the residency requirements of three years ordinary residence in the EEA.

Remuneration for work

EEA or Swiss 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 European Court of Justice (ECJ) set out a definition of a migrant worker:

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

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

In trying to decide whether a person's employment is ancillary to another activity – applying the third part of the test explained earlier in this chapter - it may be relevant to look at, amongst other things, whether their 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 their 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 is ancillary then the person would not fulfil the criteria for migrant worker status.

Spouses of EEA migrant workers

The spouse of an EEA or Swiss migrant worker is eligible for support on the same basis as the migrant worker him or herself, provided that the spouse is installed with the migrant worker in the UK. In the case of *Diatto* the ECJ held that Article 10 of Regulation 1612/68 required 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 the Student Support 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

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 - this includes a step-parent. Any reference to the child of a migrant worker, is a reference to someone up to the age of 21. If the child is 21 or over they must prove that they are still dependent on their parents.

In every case the parent must have established migrant worker status in this country and the child must meet the same residence conditions outlined earlier. For evidence of this an LEA could ask the child of a migrant worker to produce the documentation they might be asked to provide as evidence of their right to a residence permit, such as their passport, their birth certificate and the migrant worker's contract of employment. 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 disentitlement. However, where the parent is still living, they must normally be residing within the UK and have retained their migrant worker status. However, the child of a migrant worker retains their status in the UK even when that student's family returns to their Member State of origin, even after a certain period of absence, in order to continue studying, where that study could not be pursued in the State of origin.

UK nationals who are migrant workers

United Kingdom 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 then return to the UK and take up employment, 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 or Switzerland.

EU nationals

EU nationals or the children of EU nationals, who are not migrant workers 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 fee, supplementary grant and loan support. Under EC law nationals of EEA member states (including EU nationals) and Switzerland are granted the right to live and work in the UK. This is called a right of residence. EEA or Swiss 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 or Swiss 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.

Accession of new EU states

From 1st May 2004 the following countries will join the European community:

Cyprus	Lithuania
Czech Republic	Malta
Estonia	Poland
Hungary	Slovak Republic
Latvia	Slovenia

From this date the newly acceded states can be considered to have always been part of the EEA. This will mean that students, who have lived within the new member states for 3 years or more (or a combination of new and existing EEA countries, including Switzerland), prior to the commencement of their course, will be able to satisfy the EEA residence requirements. This includes both EU students and students who can be considered under the migrant worker provisions.

Nationals of the Republic of Ireland

Nationals of the Republic of Ireland who 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 FCFs, 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.

Guide to assessing residence status

The flowchart to be found on page 24 of the 'Assessing Eligibility Guidance' chapter on the LEA section of the DfES student support website:

www.dfes.gov.uk/studentsupport/administrators/dsp_section_63.shtml

and its accompanying notes indicate the basis on which students' residence status should be assessed. It is, however, only a guide and should not be taken as an authoritative statement of the law. Responsibility for assessing eligibility in individual cases rests with the institutions.

'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".'

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

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)

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:

Either

- (i) There are no restrictions on my stay and I am therefore "settled" within the United Kingdom (UK) (i.e. have the Right of Abode in the UK or have Indefinite Leave to Enter/Remain (ILE/R) in the UK.)

Or

- (ii) I have been recognised by the UK Government as a Refugee and have Full Refugee Status/ILE/R as a result.
- (iii) I have Exceptional Leave to Enter/Remain in the UK (ELE/R) Humanitarian Protection (HR) or Discretionary Leave (DL).
- (iv) I began my course of study before 1 September 1997.
- (v) I am the child/spouse of an EEA Migrant Worker.

**settled' – on the first academic year of your course.

Plus

I have been 'ordinarily resident' within the United Kingdom or Islands for three years immediately before the start of my course. *(Anyone with ELE/R or HP/DL or anyone recognised by the UK Government as a Refugee should have maintained 'Ordinary Residence' from the date this status was granted).*

- (vi) None of this time was wholly or mainly for the purposes of receiving full-time

education.

And

I confirm that I am registered and in attendance on the course described in the application for support from the Financial Contingency Fund.

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.

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. “

**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]

2004/05 Monitoring Requirements

HEFCW 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.

In table 1: The number of students to whom assistance from FCFs was given with total amounts disbursed for the following categories of students:

- a) Undergraduates
- b) Postgraduates
- c) FE students

Also record details of full-time and part-time, including the amount given within each of the categories of support.

In table 2: Student details including numbers of applications made and the numbers to whom assistance was given. Broken down by age, numbers in receipt of an ALG and amounts paid from FCFs.

In table 3: The total amount of FCFs disbursed during the academic year, and the range of payments made, including the number of grants made in each range group.

In table 4: The number of students whose application for assistance from FCFs was refused and reasons for refusal.

In table 5: The amount of Funds distributed 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:

- amount repaid within year
- amount repaid from previous year
- amount outstanding

In table 6: Details of carry-over calculation including funds used for administration/publicity (if not possible to apportion separately record all against Financial Contingency Fund).

In table 7: Arrangements made for improving targeting of FCFs to students in real need

FINANCIAL CONTINGENCY FUNDS MONITORING INFORMATION: 2004/05 ACADEMIC YEAR

Please complete this form and return to HEFCW by 31 January 2006 for submission in summary to the National Assembly for Wales by the end of February 2006.

Institution:	
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Table 1: Reason for Payment

a) Undergraduate students

<u>Categories of support</u>	Numbers of successful F/T	£	Numbers of successful P/T	£	Total amount of support
Assistance with Disability costs					
Fee remission-transitional arrangements (see 8.)					
Books & equipment					
Accommodation					
Childcare					
Transport					
Utility costs					
Other or unspecified hardship					
Bursary scheme					
Totals					

b) Postgraduate students

<u>Categories of support</u>	Numbers of successful F/T	£	Numbers of successful P/T	£	Total amount of support
Assistance with Disability costs					
Fee remission – transitional arrangements (see 8.)					
Books & equipment					
Accommodation					
Childcare					
Transport					
Utility costs					
Other or unspecified hardship					
Bursary scheme					
Totals					

c) FE students

Categories of support	Numbers of successful F/T	£	Numbers of successful P/T	£	Total amount of support
Assistance with Disability costs					
Fee remission – transitional arrangements (see 8.)					
Books & equipment					
Accommodation					
Childcare					
Transport					
Utility costs					
Other or unspecified hardship					
Bursary scheme					
Totals					

Table 2: Student details (including payments made as loans)

Level	Mode	Number of applications	Number of successful applications			Numbers in receipt of an ALG	Payments made (£)
			Under 21	21 to 24	25 +		
Undergraduate	F/T						
	P/T						
Postgraduate	F/T						N/A
	P/T						N/A
F/E	F/T						
	P/T						
Total							

Table 3: Total FCFs distributed by number and amount

	Number of students	Amount (£)
Under £100		
£100 - £999		
£1,000 - £3,499		
£3,500 and over		
Total		

Table 4: Reason for Refusal and numbers

Reason	Numbers
Insufficient evidence for financial hardship	
Did not meet institution's priority for use of funds	
Student in receipt of support from other sources	
Institution's FCF allocation exhausted	
Other	
Total	

Table 5: Loans for repayment

	Number successful	Paid out (£)	Repaid within year (£)	Repaid from previous year (£)	Outstanding within year (£)
Loans to students whose loan cheques from the SLC is delayed					
Other loans					
Total					

Table 6: Financial Data

Add	i	Funds allocated in 2004/05	£	
Add	ii	Plus funds brought forward	£	
Add	iii	Plus interest earned	£	
Less	iv	Less funds distributed (plus loans)	£	
Less	v	Less expenditure on admin & publicity	£	Up to 2.5% of total allocation or £500 (whichever is the greater)
Add	vi	Plus loans repaid	£	
	vii	Total funds remaining	£	
	viii	Funds to carry forward	£	No greater than 10% of the total income (i + ii + iii)
	ix	Funds to be returned to HEFCW	£	

Table 7. Arrangements for improving targeting of FCFs to students in real need.

2004/05 Monitoring Requirements

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Books & equipment					
Accommodation					
Childcare					
Transport					
Utility costs					
Other or unspecified hardship					
Bursary scheme					
Totals					

b) Postgraduate students

<u>Categories of support</u>	Numbers of successful F/T	£	Numbers of successful P/T	£	Total amount of support
Assistance with Disability costs					
Fee remission – transitional arrangements (see 8.)					
Books & equipment					
Accommodation					
Childcare					
Transport					
Utility costs					
Other or unspecified hardship					
Bursary scheme					
Totals					

c) FE students

Categories of support	Numbers of successful F/T	£	Numbers of successful P/T	£	Total amount of support
Assistance with Disability costs					
Fee remission – transitional arrangements (see 8.)					
Books & equipment					
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	P/T					N/A	
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	P/T						
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