

EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT FEES AND SUPPORT) (AMENDMENT ETC.) (EU EXIT) REGULATIONS (NORTHERN IRELAND) 2020

S.R. No. 295

1. Introduction

- 1.1** This Explanatory memorandum has been prepared by the Department for the Economy (“the Department”) to accompany S.R. 2020 No. 295 which is laid before the Northern Ireland Assembly.
- 1.2** The Statutory Rule is made under Articles 3 and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998, and Articles 4(8) and 14(4) of the Higher Education (Northern Ireland) Order 2005 and is subject to the negative resolution procedure.
- 1.3** The rule will come into operation in accordance with regulation 1.

2. Purpose

This Statutory Rule contains technical amendments to the principal higher education student support Regulations - The Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 and the Regulations which set out the persons and higher education courses eligible for ‘home’ tuition fee charges in Northern Ireland – The Student Fees (Qualifying Courses and Persons) Regulations (Northern Ireland) 2007. It continues the status quo for students taking designated higher education courses after the conclusion of the implementation period.

3. Background

In the absence of an Assembly the Department made The Education (Student fees and Support) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 and laid them in Parliament on 1 March 2019 (“the 2019 Regulations”). Those Regulations made some technical fixes to ensure the status quo would continue after EU Exit. They were originally intended to cover the eventuality of a ‘no deal’ exit. These new Regulations will replace the relevant provisions in the 2019 Regulations and they broadly replicate them, to ensure continuity for academic year 20/21, with some modifications to reflect the Withdrawal Agreement.

Technical amendments are therefore required to be made to student finance regulations. First, to ensure that the current eligibility rules continue to apply on and after Implementation Period (IP) completion day as the Department has already provided assurances that EU nationals who start courses in the

2020/21 academic year or before will continue to be eligible for home fee charges and student support for the duration of their courses. Second, to reflect the fact that from IP completion day the UK will no longer be treated as a member of the EU.

These Regulations:

- 3.1** Update references to the EEA to include the UK and Gibraltar, as appropriate, to reflect the UK's status after IP completion day, and so that these references continue to operate as they do now on and after IP completion day.
- 3.2** Amend the eligibility category relating to EU nationals and their family members to ensure that students, such as UK Nationals resident in Gibraltar, who may have relied on this category before the end of the IP, can continue to access home fee status and student support on the same basis on and after IP completion day.
- 3.3** Amend the definition of 'right of permanent residence' which currently refers to a right arising under Directive 2004/38/EC (the "Directive"). The Directive will no longer have force in the UK on and after IP completion day so the definition would otherwise be defective. In order to retain the same eligibility for the same description of students throughout the academic year, this definition is therefore amended to mean a right which arises under the residence scheme immigration rules (i.e. the EU settlement scheme) to reside in the United Kingdom permanently without restriction but only where, had the facts pertaining to the determination of that right fallen to be considered immediately before IP completion day, a right of permanent residence would have arisen under the Directive.
- 3.4** Amend the eligibility category relating to students who have the right of permanent residence to include students who have the right (under Article 18(2) or (3) of the EU withdrawal agreement, Article 17(2) or (3) of the EEA EFTA separation agreement, or Article 16(2) or (3) of the Swiss citizens' rights agreement) to be treated as if they have settled status under the EU settlement scheme.
- 3.5** Update references to "Member State" and "EEA State" to reflect the status of the UK on and after IP completion day, so that these references continue to operate appropriately after 31 December 2020.
- 3.6** Amend the eligibility category relating to students who are settled in the UK and have previously exercised a 'right of residence' in the EEA or Switzerland to reflect the fact that the Directive will no longer apply to the UK. This category will continue to apply to those who exercised this right before IP completion day.

4. Consultation

There is no statutory requirement to consult on these Regulations as they do not give effect to policy changes.

5. Equality Impact Assessment

A Section 75 Equality of Opportunity Screening exercise has been carried out and it is our view that the proposals will not have an adverse impact on any of the Section 75 categories.

6. Regulatory Impact Assessment

A Regulatory Impact Assessment has not been prepared for this rule as it has no adverse impact on business, charities or voluntary bodies.

7. Financial Implications

No change.

8. Section 24 of the Northern Ireland Act 1998

The Departmental Solicitor's Office has confirmed that the making of this rule complies with Section 24 of the NI Act.

9. EU Implications

These technical changes ensure the students eligible before the end of the Implementation Period remain eligible after that date.

10. Parity or Replicatory Measures

Similar technical amendments have been made in England. The corresponding English Statutory Instrument, The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2020, was laid before Parliament on 29 October 2020.

11. Contact

Linda Meldrum at the Department for the Economy, Tel: 028 90 257424 or email: linda.meldrum@economy-ni.gov.uk can answer any queries regarding this Rule.