

EXPLANATORY MEMORANDUM TO

The Further Education (Student Support) (Eligibility) (Amendment etc.) (EU Exit) Regulations (Northern Ireland) 2021 2021 No. 202

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for the Economy (“the Department”) to accompany the Further Education (Student Support) (Eligibility) (Amendment etc.) (EU Exit) Regulations (Northern Ireland) 2021 which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 3 (1) and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998.

2. Purpose

- 2.1 This Statutory Rule contains amendments to the principle further education student support regulations - The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012.
- 2.2 These amendments mean that eligibility for ‘home’ tuition fee charges and student financial support for courses in Northern Ireland starting in academic year 2021/22 will be removed for EU, other EEA and Swiss nationals with the following exceptions:
 - EU, other EEA and Swiss nationals and family members in the UK at the end of the Implementation Period on 31 December 2020 who are therefore covered by the citizens’ rights provisions of the EU Withdrawal Agreement, EEA EFTA Separation Agreement and Swiss Citizens’ Rights Agreement (‘the Withdrawal Agreements’) and therefore have ‘protected rights’.
 - The status quo will continue for RoI nationals under the Common Travel Area arrangements.
- 2.3 These amendments also make changes to the residency categories to clarify some policy aspects, add three new residency categories and remove the three year Ordinary Residency requirement for certain residency categories.

3. Background

- 3.1 The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012 contain eligibility criteria, pursuant to which

certain groups subject to meeting the relevant residency requirements, are eligible for 'home' fee charges, and student financial support.

3.2 The rule makes provision for support available in relation to an academic year beginning on or after 1st September 2021 and amends some of the provisions in the 2012 Regulations. The policy and technical changes effected by this rule are:

- (i) EU students starting courses in academic year 2021/22 are required by the Home Office to apply under the new Points Based Immigration System and will no longer be eligible for 'home' fee charges and student financial support and will be treated like any other 'International' student.

However, the following exceptions will apply:

- (ii) EU nationals living in the UK before the end of the IP completion period have 'protected rights' under the EU Withdrawal Agreement and will remain eligible for 'home' fee charges and student financial support although they will be required to have 'pre-settled' or 'settled' status under the EU Settlement Scheme.
- (iii) The status quo will continue for RoI nationals who will remain eligible for 'home' fee charges and student financial support. Under Common Travel Area arrangements, RoI nationals are not required to apply under the Home Office's EU Settlement Scheme. Nor do they have to have been living in the UK on IP completion day.

3.3 From academic year 2021/22 EU students with 'protected rights' under the Withdrawal agreement and RoI students will continue to fall into one of the following two main categories:

- (i) EU/RoI nationals who have lived in the UK for three years before their course starts are eligible for 'home' tuition fee charges and student financial support.
- (ii) EU/RoI nationals who do not have three full years residency in the UK but have been living somewhere in the territory comprising the UK/EEA/Gibraltar/Switzerland for three years before their course starts are eligible for 'home' tuition fee charges and student financial support.

3.4 These Regulations also make provision for the following persons with protected rights:

- (i) EEA and Swiss migrant (and frontier workers) who exercised a right to live (or work) in the UK under EU law by 31 December 2020, and who continue to work in the UK after that. Also family members of migrant/frontier workers. (home fee charges and

student financial support will continue). The status quo also continues to apply for RoI national migrant/frontier workers/family members and they are not required to be living/working in the UK on 31 December 2020 or to have applied under the EU Settlement Scheme.

- (ii) Non-EU family members of EU nationals in the UK before the end of the IP completion period also have 'protected rights' under the Withdrawal Agreement and remain eligible for home fees and student financial support (pre-settled status under the EUSS and 3 years in the UK/Gibraltar/EEA/Switzerland home fee charges or settled status under the EUSS and 3 years in the UK and Islands home fee charges and student financial support).
- (iii) UK nationals and their family members living in Gibraltar will continue to be eligible for home fee status, and for 'home' fee charges, and student financial support if starting courses before 1 January 2028. This also applies to EU nationals and their family members with a right to reside in Gibraltar arising from the EU Withdrawal Agreement.
- (iv) Children of Swiss nationals with protected rights under the Swiss citizens' rights agreement with 3 years in the UK/Gibraltar/EEA/Switzerland remain eligible for home fee charges and student financial support.
- (v) Children of Turkish workers where the Turkish worker and the child were living here before the end of the transition period remain eligible for home fee charges and student financial support.
- (vi) Family members of persons of Northern Ireland who obtain settled or pre-settled status under the EUSS will be treated as having protected rights. This group is not covered by the citizens' rights provisions of the EU Withdrawal Agreement but under Home Office rules they may apply to the EUSS, should they wish to. We understand this Home office policy has its origins in the Good Friday Agreement, and the right of the people of Northern Ireland to identify, and be accepted as, Irish or British or both, as they may so choose. Those with 'family member' of a person of Northern Ireland status will have access to home fee status and student financial support on the same basis as family members of EU nationals covered by the Withdrawal Agreement.

3.5 These Regulations also:

- (i) Further to announcements by the four UK Departments responsible for Further Education in 2019, UK nationals and their family members living in the EEA are eligible for home fee

charges and student financial support for a seven year transition period for courses started before 1 January 2028.

- (ii) Provision is also made for UK nationals who have been resident in the area comprising the UK/Gibraltar/ EEA/ Switzerland, for the 3 years before their course starts to remain eligible for 'home' fee charges, unlike the scenario above, there is no time restriction and it would benefit people who go to live in the EEA after the IP completion period, or persons returning to the UK to take up courses after the 7 year transition period has expired.
- (iii) Non-UK family members of UK nationals who have lived in the UK and Islands for three years are eligible for home fee status.
- (iv) To align with the position of UK nationals living in the EEA and Switzerland, UK nationals and their family members ordinarily resident in the EU overseas territories who meet the residency criteria will continue to be eligible for home fee status for designated courses starting in Northern Ireland before 1/1/2028.

- 3.6 These Regulations also amend the 2012 Student Support Regulations to clarify the Northern Ireland policy position on residency by amending the existing eligible residency category of "leave to enter or remain" and adding individual eligible residency categories for each of the additional statuses currently covered under this category.

The existing leave to enter or remain category within NI regulations will remain, however, it will be much narrower in its definition and will include two specific residency categories, those who following an application for refugee status and have been refused but it is thought right to allow that person to remain on the grounds of discretionary leave and those who have not applied for refugee status but it is thought right to allow that person to remain on the grounds of discretionary leave.

- 3.7 The following are added as separate eligible residential categories:

- (i) Persons granted humanitarian protection and their family members;
- (ii) Persons granted stateless leave and their family members;
- (iii) Persons granted leave to remain following a long connection with the United Kingdom is added as a separate eligible residency category of Long Residence.

- 3.8 **Addition of three new residency categories Calais Leave, Indefinite Leave to Remain as a victim of Domestic Violence or Domestic Abuse and Indefinite Leave to Remain as a Bereaved Partner.**

(i) Introducing a new Eligibility Category in Regulations for children granted leave to remain under Paragraphs 352J, 352K, 352L or 352T of Part 11 of the Immigration Rules: 'Calais Children'.

In November 2018 the Home Office introduced a new category of limited leave to enter and remain in the UK for individuals who were transferred to the UK as part of the Calais camp clearance and who do not qualify for leave to remain under existing rules, 'Calais Children.' Individuals granted leave under paragraphs 352J, 352K, 352L or 352T of Part 11 of the Immigration Rules and their dependent children granted "leave in line" will have the right to study, work, access public funds (claim benefits and housing support) and access healthcare for five years, and if their Calais leave is renewed after five years, apply for a further residence permit and indefinite leave to remain without paying a fee after ten years. A new eligibility category is being added to the Schedule to the Student Support Regulations for the 2021/22 academic year so that Calais Children and their dependent children qualify for home fee status and student financial support.

(ii) Introducing a new Eligibility Provision in Regulations for victims of domestic violence or domestic abuse who have been granted Indefinite Leave to Remain on this basis.

The Home Office makes special provision to grant Indefinite Leave to Remain for victims of domestic violence or domestic abuse who are in the UK by virtue of a partner visa or sponsorship by a British citizen or settled person. Where an individual's relationship has broken down with their partner/sponsor as a result of domestic violence or controlling behaviour, such that they have been prevented from renewing their temporary leave to remain and they have provided evidence of this, they will be granted Indefinite Leave to Remain (ILR). Partners of refugees and those of certain armed forces personnel may also be granted ILR on the basis of being victims of domestic violence or domestic abuse. Unlike most categories of application for leave, victims of domestic violence or domestic abuse can be granted ILR without an existing grant of leave. This is in recognition that a person may have been subject to controlling, coercive and threatening behaviour, violence or abuse, which affected their ability to renew their leave. Victims of domestic violence or domestic abuse who have been granted ILR on this basis may not satisfy the three year ordinary residence requirement for home fee status and student financial support in Northern Ireland, because they need to show three years ordinary residence immediately prior to the start of their course. While they may have had three years' lawful residence in the past, and have been in the UK for a significant time, there could be gaps in their lawful residence as a result of the violence they have suffered which prevent them from qualifying for home fee status and student financial support for a designated further education course. This

instrument introduces a new eligibility provision in Schedule of the Further Education (Student Support)(Eligibility) Regulations (Northern Ireland) 2012 regulations for victims of domestic violence or domestic abuse granted ILR who are starting courses from 2021/22 so that they will qualify for student financial support.

- (iii) Introducing a new Eligibility Provision in Regulations for people granted Indefinite Leave to Remain as a bereaved partner.** A new eligibility provision is being introduced so that students granted Indefinite Leave to Remain (ILR) as a bereaved partner may qualify for home fee status and student financial support. Students who are in this category will not need to satisfy a three year ordinary residence requirement. Bereaved partners granted ILR are predominantly women and are less likely to meet the three year ordinary residence requirement than others granted ILR (as is the case with those granted ILR as a victim of domestic violence or abuse). This category of students will need, however, to have been resident in the UK and Islands since the grant of such leave. These changes will apply to new students starting full-time or part-time courses in the 2021/22 academic year.

3.9 Removal of the 3 year Ordinary Residence requirement for certain residency categories

The Home Office has introduced a number of forms of leave to remain in the UK, where the recipient is deemed to be in need of some form of protection, which grant them almost exactly the same social rights as enjoyed by refugees: Humanitarian Protection, Stateless Persons leave, Calais leave and Section 67 ('Dubs') leave ('protection based categories'). In contrast to refugees, however, students with these forms of leave and, in relevant cases, who are family members of a person with one of these forms of leave ('protection based category students') can currently only access support if they can satisfy a three year ordinary residence requirement in the United Kingdom and Islands before the first academic year of a course (with the exception of Calais Leave in Northern Ireland which has been added without the ordinary residence requirement for A/Y 21/22).

Recent legal cases in England challenged the requirement that persons granted Humanitarian Protection need to be lawfully resident in the UK for three years prior to the first academic year a course before being eligible for student support. They stated that the differential treatment was discriminatory under the European Convention on Human Rights (ECHR), given that those granted Refugee Status can immediately access support upon being granted leave to remain.

This Rule amends the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012, to align with changes to the English Regulations, so that protection based category students in both the existing and newly added categories, do not need to be ordinarily resident in the United Kingdom and Islands throughout the three year

period preceding the first day of the first academic year of their course to qualify for student support. These students will need to have been resident in the UK and Islands since the grant of their relevant leave. These changes will apply to students starting or continuing full-time or part-time courses in the 2021/22 academic year.

4. Consultation

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

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

Most of the EU students studying in NI are RoI nationals and the status quo continues for these students. The numbers of other EU and international students impacted by these changes is low, so no significant changes in budgets are anticipated but we do expect marginal cost savings in the coming years.

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 Instruments are The Education (Student Fees, Awards and Support) (Amendment etc.) (EU Exit) Regulations 2021, was laid before Parliament on 8 February 2021 and came into force on 1 March 2021 and The Education (Student Fees, Awards and Support etc.)

(Amendment) Regulations 2019 (2019 No 142), laid before Parliament on 31 January 2019 and came into force on 21 February 2019

11. Contact

Shauna Mullan at the Department for the Economy, Tel: 028 90 257437 or email: shauna.mullan@economy-ni.gov.uk can answer any queries regarding this Rule.