

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT FEES AND SUPPORT) (AMENDMENT) (No.2)
REGULATIONS (NORTHERN IRELAND) 2021

S.R. No. 85

1. Introduction

- 1.1** This Explanatory memorandum has been prepared by the Department for the Economy (“the Department”) to accompany SR 2021 No.85. 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, Articles 4(8) and 14(4) of the Higher Education (Northern Ireland) Order 2005, paragraph 1(1) and (3) of Schedule 2 to the European Union (Withdrawal) Act 2018 and section 14(1), (2) and (3) of the European Union (Withdrawal Agreement) Act 2020 and is subject to the negative resolution procedure.
- 1.3** The rule will come into operation in accordance with regulation 1.

2. Purpose

- 2.1** This Statutory Rule contains 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.
- 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.

3. Background

3.1 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 support and will be treated like any other 'International' student. However, the following exceptions will apply:

- 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 support though they will be required to have 'pre-settled' or 'settled' status under the EU Settlement Scheme.
- The status quo will continue for RoI nationals who will remain eligible for 'home' fee charges and student 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.

3.2 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:

- EU/RoI nationals who have lived in the UK for three years before their course starts are eligible for 'home' tuition fee charges, fee loans and maintenance support for living costs.
- EU/RoI nationals who don't 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 fee loans.

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

- 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, fee and maintenance support 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.
- 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 support (pre-settled status under the EUSS and 3 years in the UK/Gibraltar/EEA/Switzerland home fee charges and fee loans – or settled status under the EUSS and 3 years in the UK and Islands home fee charges, fee and maintenance support).

- UK nationals and their family members living in Gibraltar will continue to be eligible for home fee status, and for tuition fee support if starting courses before 1/1/2028. This also applies to EU nationals and their family members with a right to reside in Gibraltar arising from the EU Withdrawal Agreement.
- 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, tuition and maintenance support.
- 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, tuition and maintenance support.
- 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.

3.4 These Regulations also:

- Further to announcements by the four UK Departments responsible for Higher Education in 2019, UK nationals and their family members living in the EEA are eligible for home fee charges and full fee and maintenance support for a 7 year transition period for courses started before 1/1/2028.
- 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 and fee loans, 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.

- Non-UK family members of UK nationals who have lived in the UK and Islands for 3 years are eligible for home fee status and fee loans (and would be eligible for maintenance if they gain Indefinite Leave to Remain under existing provisions).
- 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 courses starting in Northern Ireland before 1/1/2028.
- Provision has been made for any students taking up placements on the UK's new domestic alternative to Erasmus, the Turing scheme, to be eligible for the same support package as an Erasmus student.

4. Consultation

There is no statutory requirement to consult on these Regulations.

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 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 changes are as a result of the UK's Exit from the EU and broadly similar changes are being introduced in England, Scotland and Wales. They also comply with the UK's obligation to offer 'protected rights' to persons coming under the scope of the EU withdrawal agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement.

10. Parity or Replicatory Measures

Similar amendments have been made in England. The corresponding English Statutory Instrument, The Education (Student Fees, Awards and Support) (Amendment) Regulations 2021, was laid before Parliament on 8 February 2021 and came into force on 1 March 2021.

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.