

HIGHER EDUCATION (NORTHERN IRELAND) ORDER 2005

S.I. 2005 1116

EXPLANATORY MEMORANDUM

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Introduction

1. The Higher Education (Northern Ireland) Order (“the Order”) was made on 6th April 2005.
2. This Explanatory Memorandum has been prepared by the Department for Employment and Learning (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.
3. The Order replicates certain Sections in the Higher Education Act 2004.

Background and Policy Objectives

4. This Order is intended to assist in the implementation of policies which are aimed at increasing the funding available to higher education institutions. It requires higher education institutions that are charging tuition fees above a basic rate to have an approved plan and allows students taking a gap year to pay the fees that would have been in place had they started their course in 2005.
5. The Order also contains provisions relating to new powers to share information relating to student support and to the effect of bankruptcy on the liability to repay student loans. The Higher Education (Northern Ireland) Order 2005 provides the same treatment for higher education institutions and students as the Higher Education Act 2004. The main elements of the Higher Education (Northern Ireland) Order 2005 are that it gives powers to:-
 - require providers of higher education courses charging variable fees above the basic rate to have a plan (known informally as an Access Agreement) approved by the Department and to abide by that plan;
 - establish an independent panel to consider appeals by institutions whose plans are not approved;
 - introduce a requirement that student support authorities share information;
 - allow students taking a gap year to pay fees at the rate that would have been in place had they started their course in 2005.

Consultation

6. A consultation document entitled “Proposals to Introduce Variable Deferred Fees, Access Agreements and a Review of the Student Complaints System” was issued to a wide range of interested parties in April 2004 for a 12 week consultation period. The policy consultation revealed that the majority of respondents were in agreement with the need to raise additional funding for higher education but the response was more

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divided over who should pay. Of those not in favour of graduates making an increased contribution towards the cost, none suggested an alternative method apart from taxation. The majority of respondents also agreed that the existing arrangements for handling student complaints should be changed.

7. Nine responses were received to the consultation on the Proposal for an Order in Council. The respondents raised no new issues and reinforced their position as stated during the policy consultation.

Main Elements of the Order

Part 11 – Student Fees in Higher Education

8. The level of student fees in higher education is set at a standard rate which rises annually with inflation. This Order enables higher education institutions to set their own fees, up to a basic amount specified in regulations. Institutions that wish to charge fees above this rate will only be able to do so if they have in force a plan under this Part of the Order, approved by the Department. If institutions have such an approved plan, they may charge up to a higher amount (within the bounds of their plan), also specified in regulations. It is intended that loans will be made available, with repayments on an income-contingent basis and with no real rate of interest, to allow students to defer payment of fees.
9. The Department will approve and monitor plans made by institutions that wish to set fees higher than the basic amount. The matters to be covered by these plans - which will remain in force for up to five years - will be specified in regulations. Should an institution breach its plan, the Department may choose not to renew that plan or, where there is a need for more immediate action, it may impose financial requirements, including reducing its grant to that institution.

Part 111 – Student Support

10. Preventing student loan debt forming part of a bankrupt's estate - the Order makes it possible to prevent student loan debt being written off on discharge from bankruptcy.
11. Facilitating the deferral of payment of tuition fees - the Order contains a measure to support the deferral of the payment of tuition fees, by allowing student loan payments to be made directly to institutions, so that they can receive fee payments up front and students can repay later.
12. Supply of information - this provision gives the Department powers to make regulations empowering the specified supply of data to higher education institutions or other bodies exercising functions of a public nature.

Part IV - Supplementary

13. This Part contains supplementary provisions.

Commentary on Articles

Part 11 – Student Fees in Higher Education

Imposition of conditions as to fees

14. [Article 4](#) gives the Department power to impose conditions under the Education and Libraries (Northern Ireland) Order 1986, the Education and Libraries (Northern Ireland) Order 1993 and the Further Education (Northern Ireland) Order 1997 so that when making grants to the higher education institutions it imposes the following condition:
 - For institutions with an approved plan, the condition is that the fees payable do not exceed the amounts specified in the plan, and also that the institution complies with

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the rest of the plan. The fees set out in the plan may not exceed the fee cap set by regulations, referred to in the legislation as 'the higher amount'.

- For institutions without an approved plan, the condition is that fees do not exceed the 'basic amount' (equivalent to the present standard fee) which will also be specified in regulations.
15. The condition must set out that, for institutions with an approved plan, if the fee limit in the plan is exceeded; the Department is to impose financial sanctions relating to the institution's grant, unless fees exceed the higher amount. In that case, in addition to any sanction imposed, the Department may impose further sanctions, the principles governing which will be set in regulations. In addition, where the conditions of the plan other than those relating to fee levels are breached, the Department may also impose financial requirements.
 16. Similarly, the Department may impose sanctions on any institution without an approved plan which charges fees higher than the basic amount.
 17. [Article 4 \(7\)](#) covers the exclusion of international students from the provisions limiting fees.
 18. [Article 4 \(8\)](#) provides that the basic and higher amounts are to be prescribed by regulations made by the Department.
 19. [Article 4 \(9\)](#) places restrictions on the Department's power to discriminate between certain classes of courses in prescribing descriptions of courses covered by these sections, and disapplying some elements of previous Orders with respect to these sections.
 20. [Article 4 \(10\)](#) provides that the first regulations setting the basic and higher amounts must be laid in draft and approved by a resolution of the Assembly. The same procedure will apply to any further regulations increasing the basic amount by more than is needed to keep up with inflation.
 21. [Article 4 \(11\)](#) also provides that once the first set of regulations setting a higher amount have been made, that amount cannot be raised in real terms until 2nd January 2010 at the earliest. After that date, regulations raising the higher amount in real terms can only be made once a resolution has been passed in the Assembly that the amount should be raised to a specified level.
 22. [Article 5](#) makes a transitional provision which prevents fees above the basic amount being charged for students receiving offers of a place in 2005, whether for immediate entry or for deferred entry in 2006, or for students unable to accept a place in sufficient time because of the delay caused by a successful appeal against A-level results affecting entry to higher education.

Plans authorising fees of more than the basic amount

23. Before higher fees can be charged by higher education institutions, a plan will have to be approved by the Department. The Department has the power to make regulations setting out what must be contained in these plans. The plan will have to make clear what the maximum fee charged for each course will be.
24. [Article 6](#) makes provision about the contents of plans. It sets out that plans must specify, or provide for the determination of, a fee limit for each qualifying course. Plans must also include any provisions relating to the promotion of equality of opportunity which are required by regulations.
25. [Article 6 \(4\)](#) (a) allows regulations to require institutions to include in their plans provision for outreach measures. These are measures, such as the provision of summer schools or work with schools and colleges, which are designed to widen participation by attracting students who might otherwise not consider entering higher education at all

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or not consider applying to particular institutions. The reference to under-represented groups in the provision is not intended to have a strict statistical interpretation.

26. Examples are given in Article 6 (4) of other matters which regulations may require to be included in the plans, such as requiring financial assistance to be provided to students or requiring the institution to set out its own objectives. Article 6 (5) makes clear that regulations may not require plans to contain measures referring to particular courses or the manner in which they are taught or relating to admissions criteria.
27. [Article 7](#) provides that the relevant authority must exercise its functions in accordance with regulations which may, in particular, specify what the relevant authority must, or may not, have regard to in approving a plan. Regulations under this section may also require institutions to publish their plans. The Department may issue guidance to institutions.
28. [Article 8](#) enables regulations to set out the maximum period a plan can be in force, and enables plans to be varied with the approval of the relevant authority. Plans must specify the period during which they are to be in force.
29. [Article 9](#) provides that the Department may, if an institution breaches the conditions of its plan, impose financial sanctions relating to the grant to the institution, or refuse to renew the plan for a specified length of time. The Department may not apply such a sanction if an institution can demonstrate that it has done all it reasonably could to comply with the provisions of its plan.
30. The Department may make regulations setting out the nature of the financial penalties that may apply, and the procedures for using these sanctions.
31. [Article 10](#) provides that regulations about the approval of plans, variation of plans, or imposing sanctions, must include provision for a mechanism for review of the Department's decisions on those matters.

Part 111 – Student Support

32. [Article 11 \(1\)](#) inserts a new paragraph (f) into Article 3 of the 1998 Order. With this new paragraph, it will be possible for regulations under Article 3 to include provision relating to the effect of bankruptcy on the liability to repay student loans provided under the 1998 Order. It is intended to use this power to ensure that the liability to repay student loans is not cancelled by the bankruptcy of the borrower. Regulations under Article 3 (3) (e) of the 1998 Order already provide that funds advanced under student loans cannot be taken by a student's trustee in bankruptcy to pay off other debts. The changes made by Article 11 will not affect the position of any borrower whose bankruptcy commences before the section comes into effect.
33. By virtue of Article 255 of the Insolvency (Northern Ireland) Order 1989, when a bankrupt is discharged, he is released from all his bankruptcy debts. The amendment to Article 3 of the 1998 Order, together with the regulations proposed to be made under section 22 as amended, and the amendment of the Education (Student Loans) Order 1990, will have the effect of excluding student loans from bankruptcy debt. It follows that student debt in relation to both types of loan will not be written off on discharge from bankruptcy.

Other amendments to the Education (Student Support) (Northern Ireland) Order 1998

34. [Article 12 \(2\)](#) amends Article 3 (2) (i) of the 1998 Order. It provides that a loan payable to a student in relation to deferral of fees may be paid direct to the institution at which the student is studying. This is a key part of the machinery for students to defer payment of their fees by taking out income contingent loans on which no interest will be charged in real terms.

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35. [Article 12 \(3\)](#) amends Article 3 (7) of the 1998 Order by repealing it, thereby removing the requirement that regulations relating to the increase in the maximum grant for fees should be subject to the approval of the Assembly where the increase in the grant in respect of fees is above the rate of inflation. This requirement was a consequence of the close link between the level of the standard fee and the maximum grant for fee. In this Order, that link no longer exists: there is no need for the increase in the maximum grant for fees to be approved by the Assembly since such an increase will no longer automatically increase the level of the standard fee.

Supply of information held by student support authority

36. [Article 13](#) permits the Department to make regulations allowing student support authorities to supply information collected in connection with the operation of the student support scheme to prescribed persons, with the consent of the individuals in relation to whom information is to be supplied. The intention is to be able to simplify the interactions of citizens with other government or higher education authorities. The regulations will specify the conditions under which information may be supplied including what information may be supplied and the authority to which it may be supplied. They may also specify further constraints such as restrictions on passing on information received and the manner in which consent must be obtained.

Part IV- Supplementary

37. This Part contains general provisions including those relating to the exercise of powers to make orders and regulations.

Commencement

38. The commencement section provides for some provisions to come into force one week after the Order is made, and the remainder to be commenced by order by the Department. The reasons for early commencement are to ensure that systems for producing plans in relation to the charging of higher fees can be put in place in time for students to have adequate notice of fee arrangements before applying for entrance in 2006, and to safeguard public funds in relation to bankruptcy.