
STATUTORY INSTRUMENTS

2005 No. 1116 (N.I. 5)

NORTHERN IRELAND

The Higher Education (Northern Ireland) Order 2005

Made - - - - - 6th April 2005

Coming into operation in accordance with Article

1(2) and (3)

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At the Court at Windsor Castle, the 6th day of April 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I
INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Higher Education (Northern Ireland) Order 2005.

(2) The following provisions come into operation one week after the date on which this Order is made—

this Part;

Article 3;

Article 4(7) to (12);

Articles 6 and 7;

Articles 8 and 9, so far as enabling regulations to be made;

Articles 10 and 11;

Article 13;

Article 14.

(3) The remaining provisions come into operation in accordance with provision made by the Department by order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.

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(2) In this Order—

“the Department” means the Department for Employment and Learning;

“governing body”, in relation to an institution, has the meaning given by Article 30(3) of the 1993 Order;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department;

“university” has the same meaning as in Article 30 of the 1993 Order;

“the 1986 Order” means the Education and Libraries (Northern Ireland) Order 1986 (NI 3);

“the 1993 Order” means Education and Libraries (Northern Ireland) Order 1993 (NI 12);

“the 1998 Order” means the Education (Student Support) (Northern Ireland) Order 1998 (NI 14).

PART II

STUDENT FEES IN HIGHER EDUCATION

Interpretation

Interpretation of this Part

3.—(1) In this Part—

“course” does not include any part-time or postgraduate course other than a course of initial teacher training;

“approved plan” means a plan approved under Article 7;

“fees”, in relation to undertaking a course, means fees in respect of, or otherwise in connection with, undertaking the course, including admission, registration, tuition and graduation fees but excluding—

(a) fees payable to an institution for awarding or accrediting any qualification where the institution does not provide the whole or part of the course and is not a publicly-funded institution (as defined by paragraph (2)),

(b) fees payable for board or lodging,

(c) fees payable for field trips (including any tuition element of such fees),

(d) fees payable for attending any graduation or other ceremony, and

(e) such other fees as may be prescribed;

“general provisions”, in relation to a plan, has the meaning given by Article 6(3);

“plan” means a plan complying with Article 6.

(2) In paragraph (1) “publicly-funded institution” means—

(a) the Queen’s University of Belfast, the University of Ulster, a college of education in Northern Ireland within the meaning of Article 2(2) of the 1986 Order or any institution providing in Northern Ireland further education as defined in Article 3 of the Further Education (Northern Ireland) Order 1997 (N.I. 15);

- (b) any university or other institution receiving grants, loans or other payments under section 65 of the Further and Higher Education Act 1992 (c.13), or under section 5 of the Education Act 1994 (c.30), any institution maintained by a local education authority in the exercise of their further and higher education functions, any institution receiving a recurrent grant towards its costs under regulations made under section 485 of the Education Act 1996 (c. 56) or any institution receiving financial resources under section 5 or 34 of the Learning and Skills Act 2000 (c. 21);
- (c) any institution within the higher education sector for the purposes of the Further and Higher Education (Scotland) Act 1992 (c. 37), any college of further education within the meaning of section 36(1) of that Act or any central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c. 44).

Imposition of conditions as to fees

Power of Department to impose conditions as to student fees, etc.

- 4.—(1) The power of the Department to impose conditions under—
- (a) paragraph (2) of Article 66 of the 1986 Order (training of teachers),
 - (b) paragraph (1) of Article 30 of the 1993 Order (higher education), or
 - (c) paragraph (3) of Article 5 of the Further Education (Northern Ireland) Order 1997 (NI 15) (further education),

in relation to any grant made to the governing body of an institution includes power to impose a condition under this Article.

(2) A condition under this Article requires the governing body of the institution—

- (a) to secure that, in respect of any qualifying course, the qualifying fees in respect of any academic year which begins during the grant period at a time when an approved plan is in force in relation to the institution do not exceed such limit, not exceeding the higher amount, as is provided by the plan for that course and that academic year,
- (b) to secure that, in respect of any qualifying course, the qualifying fees in respect of any academic year which begins during the grant period at a time when no approved plan is in force in relation to the institution do not exceed the basic amount, and
- (c) to comply with the general provisions of any approved plan that is in force in relation to the institution during any part of the grant period during which it is in force.

(3) For the purposes of paragraph (2)—

- (a) an academic year which begins at the same time as the grant period is to be taken to begin during the grant period, and
- (b) an academic year which begins with the day on which an approved plan comes into force is to be taken to begin at a time when the plan is in force.

(4) A condition under this Article may provide in the event of a failure by the governing body to comply with the requirement specified in paragraph (2) for the

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imposition by the Department on the governing body of financial requirements in accordance with principles specified in the condition under this Article.

(5) Any financial requirements imposed by virtue of paragraph (4) must relate to one or more of the following—

- (a) the repayment, with or without interest, of the whole or any part of any sums received by the governing body in respect of the grant in question,
- (b) the withdrawal or reduction of any amount that has been awarded but not yet paid in respect of the grant in question, or
- (c) the refusal to award (or to award to the extent expected) any other grant under paragraph (2) of Article 66 of the 1986 Order, paragraph (1) of Article 30 of the 1993 Order or (as the case may be) Article 5 of the Further Education (Northern Ireland) Order 1997 (NI 5) in respect of the grant period or any subsequent period.

(6) Where—

- (a) a condition is imposed under this Article in connection with any grant made to the governing body of an institution, and
- (b) that grant is to any extent made in respect of persons undertaking a course which is provided in whole or part by any other institution,

then, for the purposes of this Article, fees payable by such persons to the other institution are to be regarded as fees payable by them to the first-mentioned institution.

(7) No condition under this Article applies in relation to any fees which are payable by students not having such connection with the United Kingdom or any part of it or any member State as may be prescribed.

(8) In this Article, Article 5 and Article 6—

“academic year”, in relation to a course, means an academic year applicable to the course;

“the basic amount” means such amount as may be prescribed for the purposes of this Article as the basic amount;

“the grant period” means the period in respect of which the grant to which the relevant condition under this Article relates is made;

“the higher amount” means such amount as may be prescribed for the purposes of this Article as the higher amount;

“qualifying course” means a course of any description prescribed for the purposes of this Article.

“qualifying fees”, in relation to an institution, means the fees payable to the institution by a qualifying person in connection with his undertaking a qualifying course;

“qualifying person” means a person falling within any class of persons prescribed for the purposes of this Article.

(9) The power to prescribe descriptions of course by virtue of the definition of “qualifying course” in paragraph (8) may not be exercised in such a way as to discriminate—

- (a) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given, and
- (b) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate.

(10) The Department may not make the first regulations under paragraph (8) prescribing the basic amount and the higher amount for the purposes of this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(11) Where regulations under paragraph (8) have been made prescribing the basic amount and the higher amount for the purposes of this Article—

- (a) no regulations may be made increasing the basic amount unless—
 - (i) the Department is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms, or
 - (ii) a draft of the regulations has been laid before, and approved by a resolution of, the Assembly, and
- (b) no regulations may be made increasing the higher amount unless—
 - (i) the Department is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms, or
 - (ii) the Assembly has at any time after 1st January 2010 passed a resolution that, with effect from a date specified in the resolution, the higher amount should be increased to an amount specified in the resolution, and the increase is an increase to the specified amount with effect from the specified date.

(12) For the purposes of paragraph (11)(a)(i) and (b)(i) the Department is to have regard to such index of prices as may be specified in, or determined in accordance with, regulations.

Transitional cases in which condition must not allow fees to exceed basic amount

5.—(1) Article 4(2)(b) has effect in relation to the qualifying fees payable by a qualifying person in connection with his undertaking a qualifying course (“the relevant course”) in a case where paragraph (2) or (3) applies, even if those fees are payable in respect of an academic year which begins at a time when an approved plan is in force in relation to the institution.

(2) This paragraph applies where—

- (a) the qualifying person had on or before 1st August 2005 received an offer, whether conditional on obtaining specified qualifications or not, of a place on the relevant course or a similar course, and
- (b) the first academic year of the relevant course begins before 1st September 2007.

(3) This paragraph applies where—

- (a) the qualifying person had received an offer of a place on a qualifying course (whether or not at the same institution as the relevant course) the first academic year of which begins before 1st September 2006,

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- (b) he was unable to take up the offer because a specified qualification or grade was not awarded to him,
 - (c) he appealed against the decision not to award him the qualification or grade,
 - (d) the appeal was allowed after the last date on which he could have taken up the offer,
 - (e) as a result he was offered a place on the relevant course, and
 - (f) the first academic year of the relevant course begins after 31st August 2006 but before 1st September 2007.
- (4) For the purposes of paragraph (2)(a) a course (“the original course”) is similar to the relevant course if—
- (a) it appears to the governing body of the institution providing the relevant course that the subject-matter of the course is in whole or in part the same as the subject-matter of the original course, and
 - (b) except where the original course is no longer being provided, the relevant course is provided by the institution which was to have provided the original course.

Plans authorising fees of more than basic amount

Content of plans

6.—(1) A plan under this Article relating to an institution must, in relation to each qualifying course in connection with which fees are to be payable to the institution by qualifying persons, specify or provide for the determination of a limit (not exceeding the higher amount) which those fees are not permitted to exceed.

- (2) A plan under this Article—
- (a) must also include such provisions relating to the promotion of equality of opportunity in connection with access to higher education as are required by regulations to be included in the plan, and
 - (b) may also include further provisions relating to the promotion of equality of opportunity in connection with access to higher education.

(3) In this Part any reference to the “general provisions” of a plan under this Article is a reference to the provisions included in the plan by virtue of paragraph (2).

- (4) The general provisions that may be required by regulations made by virtue of paragraph (2) include, in particular, provisions—
- (a) requiring the governing body to take, or secure the taking of, measures to attract applications from prospective students who are members of groups which, at the time when the plan is approved, are under-represented in higher education,
 - (b) requiring the governing body to provide, or secure the provision of, financial assistance to students,
 - (c) requiring the governing body to make available to students and prospective students information about financial assistance available to students from any source,

- (d) setting out objectives relating to the promotion of equality of opportunity in connection with access to higher education,
- (e) relating to the monitoring by the governing body of—
- (i) its compliance with the provisions of the plan, and
 - (ii) its progress in achieving any objectives set out in the plan by virtue of sub-paragraph (d), and
- (f) requiring the provision of information to the Department.
- (5) Regulations made under paragraph (2) may not require a plan—
- (a) to include among the general provisions of the plan any provision referring to particular courses or to the manner in which courses are taught, supervised or assessed, or
 - (b) to include any provision relating to the criteria for the admission of students.

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Approval of plans

7.—(1) The governing body of any institution which is or may become eligible to receive grants under Article 66 of the 1986 Order, Article 30 of the 1993 Order or Article 5 of the Further Education (Northern Ireland) Order 1997 (NI 15) may apply to the Department for approval of a proposed plan relating to the institution.

(2) The Department may, if it thinks fit, approve the plan.

(3) The Department may issue guidance to institutions falling within paragraph (1) as to the matters to which the Department will have regard in deciding whether to approve plans.

(4) Regulations may—

- (a) specify matters to which the Department is, or is not, to have regard in making any determination relating to approval;
- (b) require the institution to which any plan approved under this Article relates to publish the plan in the prescribed manner.

Duration and variation of plans

8.—(1) A plan must specify the period during which it is to be in force.

(2) The length of that period must not exceed such maximum as may be prescribed.

(3) Paragraphs (1) and (2) do not prevent the approval of a new plan to take effect on the expiry of a previous plan.

(4) Regulations may make provision enabling an approved plan to be varied with the approval of the Department.

Enforcement of plans

9.—(1) If the Department is satisfied that the governing body of an institution which by virtue of a condition under Article 4 is required to comply with the requirement specified in Article 4(2)(a) or (c) has failed to comply with that requirement, the Department may notify the governing body that on the expiry of

PART II the existing plan the Department will refuse to approve a new plan under Article 7 during a specified period.

(2) The governing body of an institution is not to be regarded for the purposes of paragraph (1) as having failed to comply with the requirement specified in Article 4(2)(c) by reason of its failure to comply with any of the general provisions of an approved plan if the governing body shows that it has taken all reasonable steps to comply with that provision.

(3) Regulations may make provision—

- (a) as to the matters to which the Department must, or may not, have regard in exercising its powers under paragraph (1),
- (b) as to the procedure to be followed in connection with the imposing of any requirement or the giving of any notification under paragraph (1),
- (c) as to the effect of such a notification.

(4) Nothing in this Article affects the power of the Department to enforce the conditions imposed under Article 4 by imposing financial requirements on the governing body in pursuance of any condition imposed by virtue of Article 4(4).

Review of decisions made by Department

10. Regulations made by virtue of Article 7, 8(4) or 9(3)(b) must include provision—

- (a) requiring any decision of the Department under Article 7, 8(4) or 9 affecting the governing body of an institution to have effect in the first instance as a provisional decision;
- (b) enabling the governing body of the institution to apply for a review of the provisional decision to a person, or panel of persons, appointed in accordance with the regulations by the Department;
- (c) enabling the Department to pay remuneration and allowances to any person so appointed;
- (d) prescribing the grounds on which an application for the review of a provisional decision may be made; and
- (e) requiring the Department to reconsider its provisional decision having regard to any recommendation of the person or panel.

PART III

STUDENT SUPPORT

Effect of bankruptcy

11.—(1) In Article 3 of the 1998 Order (arrangements for giving financial support to students), after paragraph (3)(e) insert—

“(f) with respect to the effect of bankruptcy upon a borrower’s liability to make repayments in respect of such a loan (whether the repayments relate to sums which the borrower receives, or is entitled to receive, before or after the commencement of the bankruptcy).”

(2) Paragraph (3) has effect in relation to the Education (Student Loans) (Northern Ireland) Order 1990 (NI 11) to the extent that it continues in force by virtue of any savings made, in connection with its repeal by the 1998 Order, by an order under Article 1(3) of the 1998 Order.

(3) Schedule 2 to the Education (Student Loans) (Northern Ireland) Order 1990 (NI 11)(loans for students) is to have effect as if in paragraph 5(2) (liabilities relating to student loans not to be included in bankruptcy debts) the reference to “any such sum” were a reference to “any sums to which this paragraph applies”.

(4) Nothing in this Article affects any bankruptcy commencing before this Article comes into operation.

Other amendments to the 1998 Order

12.—(1) The 1998 Order (arrangements for giving financial support to students) is amended as follows.

(2) In Article 3(2)(i), for “which have previously made loans of any prescribed description to those persons” substitute “to which those persons are liable to make payments”.

(3) Article 3(7) (which provides that regulations made by virtue of paragraph (2)(b) of that Article are to be subject to approval in draft by the Assembly in certain circumstances) shall cease to have effect.

(4) In Article 8 (regulations) for paragraph (3) substitute—

“(3) Paragraph (1) also does not apply to any other regulations under Article 3 a draft of which has been laid before, and approved by resolution of, the Assembly.”.

Supply of information held by student support authority

13.—(1) Regulations may provide that a student support authority may supply student support information of a prescribed description to a prescribed person for a prescribed purpose.

(2) A person may not be prescribed under paragraph (1) unless the person—

- (a) is the governing body of an institution with which eligible students (as defined for the purposes of the student support scheme) are undertaking courses, or
- (b) is a person who appears to the Department to be exercising functions of a public nature.

(3) Regulations under paragraph (1) may not allow information to be supplied except with the consent of every individual to whom the information relates, given in such manner as may be prescribed.

(4) Paragraph (3) does not apply to the supply of information for the purposes of any civil or criminal proceedings arising out of the student support scheme.

(5) Regulations under paragraph (1) may provide that information may be supplied under such regulations only if prescribed conditions are met.

(6) This Article does not limit the circumstances in which information may be supplied apart from this Article.

PART III

(7) In this Article—

“student support authority” means—

- (a) the Department;
- (b) any board or governing body by which any function of the Department is for the time being exercisable to any extent by virtue of Article 4(1) of the 1998 Order;
- (c) any person or body acting on behalf of the Department to any extent by virtue of Article 4(3) of the 1998 Order;

“student support scheme” means the provisions of regulations under Article 3 of the 1998 Order;

“student support information”, in relation to a student support authority, means any information which the student support authority holds in connection with, or in consequence of, the exercise of any function relating to the operation of the student support scheme.

PART IV
SUPPLEMENTARY

Orders and regulations

14.—(1) Subject to paragraph (2), regulations under any provision of this Order shall be subject to negative resolution.

(2) Paragraph (1) does not apply to—

- (a) regulations to which Article 4(10) or (11)(a)(ii) or (b)(ii) applies, or
- (b) regulations to which paragraph (3) applies.

(3) Regulations which contain (whether alone or with other provisions) provision made by virtue of Article 6(2) or 7 may not be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

(4) Any order or regulations under this Order may contain such incidental, supplemental, saving or transitional provisions as the Department thinks fit.

(5) Nothing in this Order is to be regarded as affecting the generality of paragraph (4).

Repeals

15. The statutory provisions specified in the Schedule are hereby repealed to the extent specified there.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE

Article 15

REPEALS

Short Title	Extent of repeal
The Education (Student Support) (Northern Ireland) Order 1998 (NI 14).	In Article 2(2) the definitions of “publicly-funded institution”. In Article 3, paragraph (7) and, in paragraph (8), the words “or (7)(a)”. Article 7.
The Learning and Skills Act 2000 (c.21)	Section 147(2) and (5).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision about fees payable by students in higher education and about grants and loans to students under the student support scheme.

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