

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT SUPPORT, etc) (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2021

S.R. No. 50

1. Introduction

- 1.1** This Explanatory memorandum has been prepared by the Department for the Economy (“the Department”) to accompany S.R. 2021 No. 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 rule provides support for students taking designated higher education courses in respect of the academic year beginning on or after 1st September 2021 and makes amendments to the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 (“the 2009 Regulations”). It also makes amendments to the Student Fees (Qualifying Courses and Persons) Regulations (Northern Ireland) 2007 (S.R. 2007 No. 328) (“the QCP Regulations”) and the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 128) (“the Repayment Regulations”). The effect of the rule is to:

- a. increase the amounts of grants for tuition fees (for those students still eligible for such grants) and student loans for tuition fees in line with inflation for the 2021/22 academic year for full-time students;
- b. maintain grants and loans for living costs for academic year 2021/22 at 2020/21 levels for full-time students and freeze grants for fees, course grants and disabled students’ allowances for part-time and full-time in-attendance and distance learning students;
- c. increase student loans for tuition fees for part-time and distance learning students in line with inflation for the 2021/22 academic year;
- d. maintain disabled students’ allowances and tuition fee loans for postgraduate students for academic year 2021/22 at 2020/21 levels;

- e. make changes to the residency categories to clarify some policy aspects, add 3 new residency categories and remove the 3 year Ordinary Residency requirement for certain residency categories;
- f. clarify the requirements on notifying an absence that would affect entitlement to support;
- g. amend the Repayment Regulations to allow the issuing of information notices to borrowers either by post or digitally as determined suitable. It also clarifies the responsibility for the setting of the date of repayment; and
- h. remove and replace references to two institutions in the Republic of Ireland which have merged into one institution.

3. Background

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 2009 Regulations.

The policy and technical changes effected by this rule are:

3.1 Make changes to residency categories to clarify policy position.

This Rule amends the Student Support Regulations and the QCP 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.

These amendments will align the Northern Ireland regulations on residency more closely with those currently defined within DfE England’s regulations.

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 2 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.

Persons granted humanitarian protection and their family members will be added as a separate eligible residency category.

Persons granted stateless leave and their family members will be added as a separate eligible residency category.

Persons granted leave to remain following a long connection with the United Kingdom will be added as a separate eligible residency category of Long Residence.

3.2 Addition of 3 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.

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 Schedule 2 to the Student Support Regulations for the 2021/22 academic year so that Calais Children and their dependent children qualify for student support.

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 student 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 student support for a higher education course.

This instrument introduces a new eligibility provision in Schedule 2 of Student Support 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 support.

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 student support in Northern Ireland, home fee status and are “qualifying persons” for the purposes of tuition fee limits. 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.

3.3 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 Student Support Regulations and the QCP Regulations, 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 fee loans and living costs 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.

3.4 Clarifying requirements to notify of an absence that impacts on entitlement to support

Student Support Regulations currently stipulate that a student is not entitled to grants and loans for living and other costs where the student is absent from their course unless the Department determines that support should be paid for the period of absence. The Regulations make clear that an eligible student is not to be considered absent from the course if the student is unable to attend due to illness and the student's absence has not exceeded 60 days.

The Student Support Regulations also currently require students to inform the Department (in practice, the Education Authority) if they are absent from their course for more than 60 days due to illness or for any period for any other reason

This Rule amends the Student Support Regulations from the date this instrument comes into force to make it clear that the Department only needs to be informed by the student of any absence that will affect the student's entitlement to support. So in addition to notifying the Department if they abandon or withdraw from their course or are expelled from it, applicants and students will have to notify the Department if: (a) they are absent from their course due to illness for more than 60 days (whether or not they have suspended their studies), (b) they are suspended from their course by the institution providing it, or (c) they suspend their studies for any other reason not mentioned in (a) or (b).

It also amends the Student Support Regulations to place a corresponding obligation on the institution to inform the Department where a student withdraws from, is suspended or expelled from their course, where the student is absent from their course due to illness of more than 60 days or otherwise has suspended their studies. This brings the Regulations into line with policy intent and current practice.

3.5 Clarifying requirements on issuing information notices and setting the date of repayment.

This Rule amends the Repayment Regulations to allow the issuing of information notices to borrowers either by post or digitally as determined suitable.

It also makes amendment to clarify the setting of the date of repayment and remove the implication that HMRC has discretion to select the date of the deemed receipt of repayment where an adjustment is made. Under MFDS,

HMRC notifies the SLC of the date of adjusted repayment(s) and this date will have been determined by the actions of the employer. HMRC does not exercise a discretion in deciding the date of an adjusted repayment. Where employers make adjustments to student loan deductions within a tax year, HMRC will apply the date of the adjustment, as reported by the employer. Where the employer makes an adjustment after the end of a tax year, HMRC cannot know the date to which the adjustment applies and will default to applying the last day of the relevant tax year as the date of the adjustment.

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. Rural Needs Impact Assessment

A Rural Needs Impact Assessment has been prepared

7. 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.

8. Financial Implications

The financial implications of the student support package for academic year 2021/22 have been costed and take into account the financial restrictions in the current CSR period.

9. 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.

10. EU Implications

Not applicable.

11. Parity or Replicatory Measures

Historically, our Regulations were made in broad parity with England and Wales but following the wholesale changes that were implemented in England and Wales from academic year 2012/13 as a result of the Browne Review;

this is no longer necessarily the case.

12. Contact

Siobhan Martin at the Department for the Economy, Tel: 028 90 257469 or email: siobhan.martin@economy-ni.gov.uk can answer any queries regarding this Rule.