

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT FEES AND SUPPORT) (AMENDMENT)
(NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 387

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for the Economy, Northern Ireland, and is laid before Parliament by Command.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Education (Student Support) (No 2) Regulations (Northern Ireland) 2009 to ensure that students who are currently eligible to receive support for tuition, living and other costs continue to be eligible on the same basis when the United Kingdom leaves the European Union without a deal, even if their course concludes after the UK's exit from the European Union.
- 2.2 It also makes corresponding amendments for the same purposes to (i) the Student Fees (Qualifying Courses and Persons) Regulations (Northern Ireland) 2007 and (ii) the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The Education (Student Support) (No 2) Regulations (Northern Ireland) 2009 and other regulations relating to student finance contain eligibility criteria for certain groups. These groups include EU nationals (including Republic of Ireland nationals), UK nationals who have exercised free movement rights to reside elsewhere in the European Economic Area ("EEA") or Switzerland and EEA migrant and frontier workers. Subject to meeting the relevant requirements these groups are eligible for student finance support including higher education 'home fee status' – which means they must be charged the same tuition fees as domestic students. International students do not have their fees capped in this way.
- 2.4 The Further Education (Student Support) (Eligibility) (Regulations (Northern Ireland) 2012 contain eligibility criteria for financial support towards further education tuition fees for students who are domiciled in the UK, EU, and the European Economic Area and attend a Further Education College in Northern Ireland.

Why is it being changed?

- 2.5 When the United Kingdom leaves the European Union, it will no longer be a Member State nor part of the EEA for the purposes of these regulations, and UK nationals will no longer be EU nationals.
- 2.6 This instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") to make necessary changes to the

domestic secondary legislation referred to above. It makes minor and technical changes which are necessary to ensure the domestic laws in Northern Ireland which give effect to and provide for student eligibility for higher and further education finance products will continue to operate effectively after the UK leaves the EU for the academic year 2019/2020.

- 2.7 The instrument is essential for Northern Ireland to have an operable legislative framework for student finance eligibility post EU Exit. Without this instrument, domestic legislation as it currently stands would disqualify the groups mentioned at paragraph 2.3 from accessing student finance products for the academic year 2019/2020.

What will it do now?

- 2.8 The amendments ensure that the current eligibility rules continue to apply after exit until such time as substantive changes to eligibility of EU nationals are introduced. The Department for the Economy in Northern Ireland has already provided assurances that EU nationals who start courses in the 18/19 and 19/20 academic years will continue to be eligible for student finance support for the duration of their courses.
- 2.9 The purpose of this instrument is to ensure that the tuition fee and student support arrangements for certain students such as EU nationals (including Republic of Ireland nationals), UK nationals who have exercised free movement rights to reside elsewhere in the European Economic Area (“EEA”) or Switzerland and EEA migrant and frontier workers, studying higher and further education courses in Northern Ireland will remain unchanged after EU Exit.
- 2.10 Any longer term changes to policy regarding the eligibility of EU nationals would require another set of amending Regulations in the future. At that point, amendments would be needed to ensure the continued provision of support for Republic of Ireland nationals studying in Northern Ireland Higher and Further education institutions as part of the Common Travel Area arrangements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Education (Student Fees and Support) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 31 January 2019. On 14 February 2019 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in Parliament, though one may still occur. The instrument will therefore remain subject to the negative resolution procedure.

Matters relevant to Standing Orders Nos. 83P of the standing orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The amendments made include:

- a. updating references to the EEA to include the UK and Gibraltar, as appropriate, so that these references continue to operate appropriately after exit;
- b. amending the eligibility category relating to EU nationals and their family members to ensure that students, such as British citizens resident in Gibraltar, who may have relied on this category before exit, can continue to access home fee status and student support on the same basis as now;
- c. amending the definition of “Erasmus year” to clarify that this definition may apply in relation to academic years beginning before or after exit day, and to students who were participating in the Erasmus scheme immediately before exit day; and
- d. updating references to “Member State” and “EEA State” so that these references continue to operate appropriately after exit.

- 6.2 This instrument amends the Education (Student Support) (No.2) Regulations (Northern Ireland) 2009 (S.R. 2009/373) (the “Student Support Regulations”), which prescribe the amount of support for tuition, living and other costs for students taking designated higher education courses. The Student Support Regulations are made under Articles 3 and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998, which empowers the Department for the Economy, Northern Ireland, to make regulations to provide financial support for students in higher education.

- 6.3 This instrument also amends:

- a. the Student Fees (Qualifying Courses and Persons) Regulations (Northern Ireland) 2007 (S.R. 2007/328) (the “Qualifying Courses and Persons Regulations”), which set out the persons and courses to whom maximum fee limits apply, and are made under Articles 4(8) and 14(4) of the Higher Education (Northern Ireland) Order 2005; and
- b. the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012 (S.R. 2012/306), which provides financial support towards tuition fees for students studying at Further Education Colleges in Northern Ireland, and are made under Articles 3(1) and (2) and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998.

7. Policy background

What is being done and why?

- 7.1 On 10 July 2018, the Department for the Economy, Northern Ireland, announced that EU nationals (including their family members) who commence a course in Northern Ireland in the 2019/20 academic year will remain eligible for home fee status and financial support for the duration of their course subject to meeting the relevant eligibility requirements. Similar assurances have been made for earlier academic years. This applies to Further Education in addition to Higher Education Student Support.

- 7.2 This instrument gives effect to that announcement so that the EU nationals (including Republic of Ireland nationals) and others who meet the current eligibility requirements continue to be eligible for home fee status and student finance support in the 2019/20 academic year on the same basis as now (and that assurance would last for the duration of their course).
- 7.3 To comply with legal obligations, the Department for the Economy in Northern Ireland provides support to EU students on broadly the same basis as available to UK nationals. EU students currently benefit from home fee status, capped tuition fees, and tuition fee loans after three years' residence in the EEA and Switzerland, and maintenance loans, after three years' residence in the UK and Islands (unless they are EEA migrant workers, who require three years' residence in the EEA and Switzerland only to access maintenance support). International students do not have their tuition fees capped in this way and are not eligible for student support. As education is devolved, the precise entitlement to student support differs across the different parts of the UK.
- 7.4 When the United Kingdom leaves the European Union, it will no longer be a Member State nor part of the EEA for the purposes of the regulations (outlined at 6.1) UK nationals will no longer be EU nationals. As such, the Department for the Economy's legal obligation falls away and there will no longer be a requirement to continue to provide student finance support for EU nationals.
- 7.5 The amendments under this instrument support the guarantees that the Department for the Economy made on 10 July 2018 to ensure EU nationals that start a course in Northern Ireland in 2019/20 academic year or before can do so as planned with confidence that they will be eligible for student finance support for the duration of their course. This assurance was made to give certainty to students, institutions and the Student Loans Company (SLC), which, amongst other things, provides loans and grants to EU students at universities and colleges in Northern Ireland. Doing so allows each of them to plan sensibly in advance of the 2019/2020 academic year and make necessary related decisions (e.g. about place of study in the case of students, financial planning in the case of institutions and about the appropriate operational systems in the case of the SLC). The amendments under this instrument are therefore necessary when the UK leaves the EU.
- 7.6 The amendments to the references to the EEA to include Gibraltar (as outlined at 6.1a) and to the eligibility category relating to EU nationals and their family members (as outlined at 6.1b) are necessary because currently students from Gibraltar derive their entitlement to home fee status and tuition fee loans by virtue of being EU nationals. When the UK leaves the EU they will no longer be able to rely on their EU status. Accordingly, if these amendments were not made under this instrument there would be a risk that those with British citizenship resident in Gibraltar would lose their existing rights when commencing a course in Northern Ireland, potentially subjecting them to higher university fees.
- 7.7 The amendment to the definition of "Erasmus year" (as outlined at 6.1c) is necessary to ensure access to student finance is preserved for students currently on an Erasmus year or who, having otherwise planned to commence their Erasmus study during academic year 2018/19, do so after exit day. (An Erasmus year is an academic year of a course where a student is participating in the European Union programme, Erasmus+, for education, training, youth and sport.)

7.8 This instrument applies to financial support for higher and further education students which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day in the absence of a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the paragraph 21 of Schedule 7 powers in the Withdrawal Act 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 There is no statutory requirement to consult on these amendment regulations. The Devolved Administration in Northern Ireland has been consulted about this instrument. The Student Loans Company have been consulted and are aware of this policy. Given its technical nature, no public consultation was considered necessary.

11. Guidance

11.1 The Department for the Economy's announcement of 10 July 2018 confirmed EU nationals commencing a higher education courses in Northern Ireland in the 2019/20 academic year would continue to qualify for home fee status and be eligible to apply for student support for the remainder of their course.

11.2 The Department for the Economy does not propose to issue any guidance in relation to this instrument at this time, however the Student Loans Company (who administer the government funded loans/ grants to higher education learners on behalf of Student Finance Northern Ireland) may revise their own guidance on access to student finance support for prospective students and institutions as a part of their business as usual communication updates.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there are no, or no significant impacts on business or the public sector. The instrument maintains the current position in terms of access to home fee status and student finance support.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 We will review the impact of maintaining the status quo in terms of access to student finance support more generally. Further regulatory amendments for future academic years 2020/21 and beyond will be captured in a further set of EU exit related regulations. These will set out the longer term position for access to student finance support in Northern Ireland.

14.2 We will also be monitoring the number of students who receive tuition fee loans and loans for living costs. This information is published in the Student Loans Company's Statistical First Releases.

15. Contact

15.1 Linda Meldrum at the Department for the Economy, Northern Ireland email: linda.meldrum@economy-ni.gov.uk can be contacted with any queries regarding the instrument. Telephone 02890 257424.

15.2 Eugene O'Loan at the Department for Finance, Northern Ireland can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Education (Student Fees and Support) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: this instrument addresses only technical deficiencies which arise from EU withdrawal.

2. Appropriateness statement

- 2.1 The Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Education (Student Fees and Support) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 2.2 This is the case because the amendments are being made to correct deficiencies to ensure that the student support legislation in Northern Ireland continues to operate in the event of a no deal scenario.

3. Good reasons

- 3.1 The Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are: It is important to ensure that student support legislation in Northern Ireland continues to operate effectively after the UK’s withdrawal from the EU.

4. Equalities

- 4.1 The Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, has made the following statement:

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 4.2 The Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.3 In relation to the instrument, I Minister of State for Universities, Science, Research and Innovation, Chris Skidmore, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010. This Act does not extend to Northern Ireland, and as the Education (Student Fees and Support) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland.”

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.