

## 2005 No. 367

### EDUCATION

#### The Education Student Fees (Approved Plans) Regulations (Northern Ireland) 2005

*Made* - - - - - *3rd August 2005*

*Coming into operation* - *1st September 2005*

*To be laid before Parliament under paragraph 7(3) of the  
Schedule to the Northern Ireland Act 2000*

The Department for Employment and Learning, in exercise of the powers conferred on it by Articles 6(2) and (4), 7(4), 8(2) and (4), 9(3), 10(a) to (e) and 14(4) of the Higher Education (Northern Ireland) Order 2005<sup>(a)</sup> and of all other powers enabling it in that behalf, hereby makes the following Regulations:

#### Citation and commencement

1. These Regulations may be cited as the Education Student Fees (Approved Plans) Regulations (Northern Ireland) 2005 and shall come into operation on 1st September 2005.

#### Interpretation

2. In these Regulations—

“the 2005 Order ” means the Higher Education (Northern Ireland) Order 2005.

#### Content of approved plans

3. A plan must include provisions requiring the governing body of the institution to do the following—

- (a) to take, or secure the taking of, the measures set out in the plan in order to attract an increased number of 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) to provide, or secure the provision of, bursaries and other forms of financial assistance set out in the plan to students undertaking a course at the institution;
- (c) to make the arrangements set out in the plan to make available to students, undertaking a course at the institution and prospective students wishing to undertake such a course, information about financial assistance available to them from any source;
- (d) to make the arrangements set out in the plan to inform any prospective student before he commits himself to undertake a course at the institution of the aggregate amount of fees that the institution will charge for the completion of the course;

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(a) S.I. 2005/1116 (N.I.5) See Article 2(2) for definitions of “prescribed” and “regulations”

- (e) to monitor the manner set out in the plan its compliance with the provisions of the plan and its progress in achieving its objectives set out in the plan by virtue of regulation 4; and
- (f) to provide the Department with such information as it may reasonably require from time to time.

4. A plan must set out the objectives of the institution, determined by its governing body, relating to the promotion of equality of opportunity in connection with access to higher education.

### **Approval of plans**

5. Where the governing body of an institution applies to the Department for approval of a proposed plan, the following procedure applies—

- (a) the Department must inform the governing body within a reasonable time whether it approves the plan or whether it is minded not to approve the plan, giving reasons in the latter case;
- (b) where the Department informs the governing body under sub-paragraph (a) that it is minded not to approve the plan, the governing body may, within a reasonable time, do either or both of the following—
  - (i) make representations as to why the Department should approve the plan; or
  - (ii) modify the plan.
- (c) where the governing body acts in accordance with sub-paragraph (b), the Department must within a reasonable time consider the representations or modifications (or both) to the plan and, having considered them, inform the governing body whether or not it approves the plan;
- (d) where the governing body does not act in accordance with sub-paragraph (b) within a reasonable time, the Department must, within a further reasonable time, inform the governing body whether or not it approves the plan.

6. Where the Department has approved a plan, the institution must publish it in a manner which makes it conveniently accessible to students and prospective students.

### **Duration of plans**

7. The maximum period of time during which a plan may be in force is five years.

### **Variation of plans**

8. The governing body may at any time within the period during which an approved plan is in force apply to the Department for approval of a variation of the plan. Where the governing body does so, the procedure to be followed shall be as set out in regulations 5 and 6, as if in those regulations all occurrences of the word “plan” were substituted by the word “variation”.

### **Enforcement of plans**

9. The Department must act in accordance with the following procedure in connection with the imposition of any requirements specified in Article 4(2)(a) or (c) of the 2005 Order or the giving of any notification under Article 9(1) of that Order—

- (a) where the Department considers that the governing body may have failed to comply with any provision of the plan, it must inform the governing body of that fact, specifying the provision, and give the governing body a reasonable time within which to make representations;
- (b) where the governing body makes representations within a reasonable time, the Department must consider the representations and, having considered them, inform the

- governing body whether it is satisfied that the governing body has failed to comply with any provision of the plan, and if so, specify the provision;
- (c) where the governing body does not make representations within a reasonable time, the Department must inform the governing body whether it is satisfied that the governing body has failed to comply with any provision of the plan, and if so, specify the provision;
  - (d) where the Department has informed the governing body that it is satisfied that the governing body has failed to comply with a specified provision of the plan, the Department may inform the governing body that it is minded to do either or both of the following—
    - (i) impose on the governing body financial requirements by virtue of Article 4 (4) of the 2005 Order; or
    - (ii) notify the governing body under Article 9 (1) of the 2005 Order that on the expiry of the existing plan it will refuse to approve a new plan under Article 7 of the 2005 Order during the period specified in the notification.
  - (e) where the Department has informed the governing body under sub-paragraph (d), it must give the governing body a reasonable time within which to make representations as to the amount of the specified financial requirements or the financial consequences of the refusal to approve a new plan;
  - (f) where the governing body makes representations in a reasonable time, the Department must consider the representations and, having considered them—
    - (i) where the Department had informed the governing body that it was minded to impose financial requirements by virtue of Article 4 (4) of the 2005 Order, it must either impose such financial requirements or inform the governing body that it has decided not to impose such financial requirements; and
    - (ii) where the Department had informed the governing body that it was minded to notify the governing body under Article 9 (1) of the 2005 Order, it must either so notify the governing body or inform the governing body that it will not issue such a notification.
  - (g) where the governing body does not make representations within a reasonable time —
    - (i) where the Department had informed the governing body that it was minded to impose specified financial requirements by virtue of Article 4 (4) of the 2005 Order, it must either impose such financial requirements or inform the governing body that it has decided not to impose such financial requirements; and
    - (ii) where the Department had informed the governing body that it was minded to notify the governing body under Article 9 (1) of the 2005 Order, it must either so notify the governing body or inform the governing body that it will not issue such a notification.

## **Review of decisions**

**10.** Any of the following decisions of the Department have effect in the first instance as a provisional decision—

- (a) any decision to approve or not to approve a plan under regulation 5(a), (c) or (d);
- (b) any decision to approve or not to approve a variation under regulation 8;
- (c) any enforcement decision under regulation 9(b), (c), (f)(i) or (ii), or (g)(i) or (ii).

**11.** The governing body of the institution may apply for a review of a provisional decision of the Department to a person or panel of persons appointed in accordance with regulations 15 and 16.

**12.** A provisional decision shall become final if the governing body informs the Department that it accepts the provisional decision or if the governing body does not apply for a review within a period of 20 days beginning with the date of that decision.

13. If the governing body does apply for a review, the Department must reconsider its provisional decision having regard to any recommendation made by the person or panel mentioned in regulation 15.

14. The grounds on which the governing body may apply for a review are—

- (a) the governing body presents a material factor for consideration to which for good reason it had not previously drawn the Department's attention;
- (b) the governing body considers that the Department had disregarded a material factor which it should have considered; or
- (c) the governing body considers that the provisional decision is disproportionate in view of all the relevant facts which were considered by the Department.

#### **Appointment and remuneration of person or panel**

15. The review of the provisional decision shall be undertaken by a person or panel of persons appointed by the Department.

16. In making the appointment of the person or panel of persons the Department shall act in accordance with the principles set out in the Office of the Commissioner for Public Appointments in Northern Ireland Code of Practice March 2005.

17. The Department may pay remuneration and allowances to any person appointed in accordance with regulations 15 and 16.

Sealed with the Official Seal of the Department for Employment and Learning on 3rd August 2005.



*D McAuley*

A senior officer of the Department for Employment and Learning

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into operation on 1st September 2005, are the first Regulations made under Articles 6 to 10 of the Higher Education (Northern Ireland) Order 2005 (“the Order”). They prescribe for Northern Ireland various matters in relation to plans defined in Article 3 of the Order. These are plans which a higher education institution must have approved by the Department for Employment and Learning before the institution is allowed to charge fees which exceed the basic amount. This amount is prescribed in the Student Fees (Amounts) Regulations Northern Ireland 2005 (S.R. 2005 No. 290) at £1,200 and the circumstances in which it applies are set out in Article 4 (2) of the Order.

Regulations 3 and 4 set out the required contents of the plans. Regulations 5 and 6 make provisions in relation to the approval of plans. Regulation 7 specifies that the maximum duration of a plan is five years. Regulation 8 provides for the variation of plans. Regulation 9 sets out the procedure for the enforcement of plans.

Regulations 10 to 14 make provision for a review of the Department’s decisions.

Regulations 15 to 17 make provision for the appointment of a person or panel to undertake such reviews.

The Code of Practice issued by the Office of the Commissioner for Public Appointments for Northern Ireland referred to in regulation 16 may be obtained from the Office of the Commissioner for Public Appointments for Northern Ireland, A5,34, Castle Buildings, Stormont Estate, Upper Newtownards Road, BT4 3SR, website address: <http://www.ocpani.gov.uk>.





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