

EXPLANATORY MEMORANDUM TO
THE FURTHER EDUCATION (STUDENT SUPPORT) (ELIGIBILITY) (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2009

S.R. 2009 No. 366

1. This explanatory memorandum has been prepared by the Department for Employment and Learning (“the Department”) and is laid before the Northern Ireland Assembly.
2. **Description**
 - 2.1 These Regulations are made in exercise of the powers conferred by Articles 3(2) and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998, and are required to be laid before the Assembly under Article 8 of that Order for approval by negative resolution of the Assembly.
 - 2.2 These Regulations amend the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2009 (“the 2009 Regulations”).
 - 2.3 Regulation 1 details the citation and commencement date of the legislation.
 - 2.4 Regulation 2 substitutes a new Regulation 5 in the 2009 Regulations which amends the definition of a designated course so providing for financial support towards tuition fees to institutions of further education, in respect of courses of less than one academic years’ duration for certain eligible students.
3. **Legislative Background**
 - 3.1 Article 3(a) of the Education Reform (Northern Ireland) Order 1989 (“the Order”) states that the general duty of the Department is “to promote the education of the people of Northern Ireland”. That duty, insofar as it relates to FE, passed to the Department during previous devolution.
 - 3.2 Following a challenge by the Department of Education & Science in the Republic of Ireland, the Department sought advice from the Attorney General Law Office who considered that the duty contained in the Order, as outlined above, contravenes the UK’s commitment to comply with EU law, specifically Article 12 of the EC Act.
 - 3.3 The removal of the current residence requirement requires an amendment to primary legislation which will be taken forward by the Department of Education. Until these legal issues are resolved permanently, the Department makes annual regulations which allow FE Colleges to enrol EU students on the same basis as NI students, and for the Department to provide funding to the Colleges for those students.

3.4 The purpose of these Regulations is to remove an anomaly in the legislation which does not permit the Department to provide this funding in respect of a course which lasts less than one academic year in duration, by amending the definition of a 'designated course'.

4. Extent

4.1 The Regulations apply to Northern Ireland only.

5. European Convention on Human Rights

5.1 The Department considers the Regulations to be compatible with the European Convention on Human Rights.

6. Policy Background

6.1 The policy intention behind the Regulations is to ensure that, in relation to the provision of further education, students who are domiciled in a part of the United Kingdom other than Northern Ireland, in the European Community, or the European Economic Area are treated the same as their counterparts who are resident in Northern Ireland.

7. Commencement Date

7.1 The Regulations will come into operation on 1 December 2009.

8. Consultation

8.1 As the Regulations are necessary to ensure the Department is not in contravention of European law, no formal consultation has been undertaken.

9. Summary

9.1 These Regulations will ensure the Department is not in contravention of Article 12 of the EC Act by ensuring that EU students are enrolled in FE Colleges on the same basis as NI students and that the Department will provide funding for those students.

10. Impact

10.1 A preliminary Equality Impact Assessment conducted by the Department when the Regulations were first made in 2007 indicated that the legislative change would cause no adverse impact.

11. Contact

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