

EXPLANATORY MEMORANDUM TO
THE STUDENT FEES (QUALIFYING COURSES AND PERSONS) (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2013

SR 2013 No. 37

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Employment and Learning (“the Department”) to accompany SR 2013 No. 37 which is laid before the Northern Ireland Assembly.

1.2 The statutory rule is made under powers conferred by Articles 4 and 14 of the Higher Education (Northern Ireland) Order 2005 and is subject to the negative resolution procedure.

1.3 The rule will come into operation on 22nd March 2013.

2. Purpose

2.1 This rule amends the Student Fees (Qualifying Courses and Persons) Regulations (Northern Ireland) 2007 (the “principal Regulations), making three amendments to the definitions in the Schedule, the first two below have already been approved and incorporated into the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 (S.R. 2009, No. 373).

- An amendment is being made to the interpretation of ‘parent’ to make clear that only natural parents and those who are legally responsible for a “child” will be treated as “parents” for the purpose of these Regulations.
- “Ordinarily resident” is not currently defined in the Regulations but it is implicit that the term should be interpreted to include only lawful residence. The Regulations are therefore being amended to make it clear that “ordinarily resident” means “lawfully” resident.
- The definition of “overseas territories” has been amended to include St Barthélemy. On 1 January 2012, the status of St Barthélemy changed from one of the “outermost regions” of the EU to an overseas territory of France. The amendment ensures that eligible students from St Barthélemy will continue to fall within the Schedule of these Regulations. This means that they will continue to be subject to maximum fee caps and will benefit from home fee status.

2.2 These Regulations are also amended that, in relation to regulated fees, non-EU family members of EU nationals would no longer be required to satisfy a three year residency requirement, if the EU nationals from whom they derived their rights satisfied this requirement. This change removes any possibility of indirect discrimination against non-EU family members of EU nationals.

3. Background

3.1 The principal Regulations define what a “qualifying person” and a “qualifying course” is for the purpose of Article 4 of the Higher Education (NI) Order 2005. A qualifying person on a qualifying course will have their fees regulated through the condition of grants imposed on Higher Education Institutions (HEIs) by the Department when it is made for each academic year. In general, these Regulations define “qualifying persons” as eligible students and “qualifying courses” as designated courses under the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009. In practice, this means that most undergraduate home and EU students will have their fees regulated.

4. Consultation

4.1 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

5.1 A preliminary Equality Impact Assessment (EIA) was not considered necessary as a full EIA was carried out as part of the consultation process relating to preparation of the primary legislation, the Higher Education Order in 2005. It is judged that these changes do not impact adversely on any groups of students.

6. Regulatory Impact Assessment

6.1 A Regulatory Impact Assessment has not been prepared for this rule as it has no adverse impact on business, charities or voluntary bodies.

7. Financial Implications

7.1 There is no cost implications associated with any of the amendments to the QCP Regulations.

8. Section 24 of the Northern Ireland Act 1998

8.1 Departmental Solicitor’s Office has confirmed that the making of this rule complies with Section 24 of the NI Act.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measures

10.1 This amendment is included in England’s equivalent Statutory Instrument, the Education (Student Fees, Awards and Support) (Amendment) Regulations 2012 which was laid before Parliament on 26 June 2012 and came into force on 1 September 2012.

11. Additional Information

11.1 Not applicable.

12. Contact

12.1 John Neill at the Department for Employment and Learning, Tel: 028 90 257712 or email: john.neill@delni.gov.uk can answer any queries regarding this Rule.