EXPLANATORY MEMORANDUM TO

EDUCATION (STUDENT SUPPORT) (No.2) REGULATIONS (NORTHERN IRELAND) 2009 (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010

SR 2010 No. 383

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Employment and Learning ("the Department") to accompany SR 2010 No. 383 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 is subject to the negative resolution procedure.

1.3 The rule will come into operation on 23 December 2010.

2. Purpose

This rule provides for support for students taking designated higher education courses in respect of the academic year beginning on or after 1 September 2011 and make amendments to the Education (Student Support) (No. 2) Regulations (Northern Ireland) 2009 ("the 2009 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 2011/12 academic year for full-time students;

b. freeze grants and loans for living costs at academic year 2010/11 rates for full-time students and freeze grants for fees, course grants and disabled students' allowances for part-time and full-time distance learning students;

c. freeze disabled students' allowances for postgraduate students; and

d. introduce technical changes required to tighten up existing policy.

3. Background

The rule makes provision for support available in relation to an academic year beginning on or after 1st September 2011 and amends some of the provisions in the 20009 Regulations.

The policy changes effected by this rule are;

3.1 Increase to fee loan and grant maximum amounts

The maximum fee loan, fee contribution loan and fee grant for eligible full-time students

will be increased by 2.7% from 1st September 2011.

Maximum amounts and household income thresholds for loans and grants for living costs that are available for eligible full-time students, will be maintained at 2010/11 levels from 1st September 2011. Maximum amounts and, where applicable, household income thresholds for grants for fees, course grants and disabled students' allowances that are available for eligible part-time and full-time distance learning students will be maintained at 2010/11 levels from 1st September 2011. Maximum amounts for disabled students' allowances that are available for postgraduate students will also be maintained at 2010/11 levels from 1st September 2011.

The Schedule to these Regulations set out the new payment rates for fee loans, grants for fees and fee contribution loans that will apply from 1st September 2011.

3.2 Restricting the number of years' fee and Maintenance Grant support for students already holding certain lower level higher education qualifications who wish to "top-up" their qualification to an honours degree.

Full-time students holding a lower level higher education ("HE") qualification are eligible to apply for fee and maintenance grant support to 'top up' their qualification to an honours degree. The general policy intention for students holding a lower level qualification is that they should be eligible to apply for a limited number of years' fee and maintenance grant support to achieve a higher level qualification.

The amendment clarifies the policy intention that students holding any lower level HE qualification who wish to 'top-up' to an honours degree should only be eligible to apply for a limited number of years' fee and maintenance grant support rather than for the full duration of their honours course.

These Regulations amend the definition of an 'end-on course' in Regulation 2(1) of the 2009 Regulations to include only courses mentioned in paragraphs 2, 3 or 4 of Schedule 3 or foundation degree courses in the list of courses that are completed and where a qualification is achieved immediately before a student starts a full-time first degree course beginning on or after 1st September 2009.

Also, the definition of a 'preliminary course' in Regulation 2(1) of the 2009 Regulations is amended to include only courses mentioned in paragraphs 2, 3 or 4 of Schedule 3 or overseas equivalents and foundation degrees or overseas equivalents.

An amendment is also made to Regulation 23(2)(b) of the 2009 Regulations to ensure that the provisions in this regulation only apply to courses listed in paragraphs 2, 3 or 4 of Schedule 3 of the 2009 Regulations or overseas equivalents and foundation degrees or overseas equivalents that are completed and where a qualification is achieved before a student begins their current course on or after 1st September 2009.

These changes will ensure that fee and maintenance grant support for students holding other lower level HE qualifications who wish to receive further support for an honours degree is limited.

3.3 Excluding students who already hold an honours degree from receiving fee

and maintenance grant support for a further degree course.

Full-time students studying for a first degree are eligible to apply for fee and maintenance grant support as well as loans for living costs. However, students are not entitled to receive fee and maintenance grant support to pursue a qualification at a level that is equivalent to or lower than one they already hold, referred to as an equivalent or lower qualification (ELQ). For example, the policy intention is to prevent a student who already has a qualification at honours degree level from receiving fee and maintenance grant support to take a second undergraduate degree course.

Regulation 2(5) of the 2009 Regulations allows the Department to determine that a qualification is an ELQ where a qualification already held by the student is of a level equivalent to or higher than the level of the qualification to which the current course leads. It is amended to make explicit that this will apply where a student holds a UK honours degree.

3.4 Defining a family member in line with Article 2 of EU Directive 2004/38.

Schedule 2 to the 2009 Regulations defines various categories of students and their relatives who may be eligible for elements of the student support package. In relation to European Economic Area (EEA) workers, Schedule 2 of the 2009 Regulations refers to a child of the worker or the child of the worker's spouse or civil partner.

An amendment to paragraph 1 to Schedule 2 of the 2009 Regulations is made to replace references to 'a child' with one that refers to direct descendants of the worker, the worker's spouse or civil partner who are under the age of 21 or dependent on the worker or worker's spouse or civil partner.

This change aligns the definition of a family member for EEA workers with that for other categories of students in the 2009 Regulations and the definition of a family member in Article 2 of EU Directive 2004/38.

3.5 Amendment to ensure that where the student applies for a current year income assessment, the correct financial year's income is used.

Under the 2009 Regulations, where parental income is assessed to determine a student's entitlement to full-time grants and loans for living costs, the income used is that based on the financial year before the financial year that precedes the start of the academic year (the prior financial year).

However, if the income for the financial year in which the start of the course falls (the current financial year) is not likely to be more than 95% of prior year income, students can ask for the means-test to be based on an estimate of income for the current financial year. Using a "current year assessment" prevents students suffering hardship that might prevent them continuing their studies when household income drops significantly.

Where a current year assessment has been allowed, the financial year assessed becomes the reference year for the assessment of support in the following academic year, with actual, rather than estimated, income now being considered. The income used for the

following academic year will therefore be based on the previous financial year.

Schedule 5, paragraphs 5(3) and (4) of the 2009 Regulations are amended to clarify the policy intention where a student requests a second or subsequent current year assessment in consecutive academic years. The amendment ensures that the previous year's financial income is used for such cases.

3.6 Technical amendment to ensure that full-time students eligible for a means-tested healthcare bursary qualify for a reduced rate loan for living costs only and part-time and full-time distance learning students eligible for a healthcare bursary do not qualify for support.

Students who are studying for certain health care qualifications have their tuition fees paid by the Department of Health and are eligible to apply for related bursaries and other support such as disabled students' allowances under Department of Health provisions. Because they have access to this support, their eligibility for student support is reduced. Where a means tested healthcare bursary is available, the policy intention is that students are eligible to apply for a reduced rate loan for living costs, but not for a tuition fee loan or grants for living costs. Where a bursary that is not means tested is available, the policy intention is that students do not qualify for any full-time grants and loans. In addition, students studying for healthcare qualifications do not qualify for support for part-time or full-time distance learning courses or for postgraduate disabled students' allowances.

The 2009 Regulations are amended to clarify the general policy intention that support under the Student Support Regulations is restricted for all students who are eligible to apply for healthcare bursaries, rather than just those who actually receive them.

The definition of a 'bursary year' in Regulation 2(1) of the 2009 Regulations is amended to clarify that all full-time students eligible to apply for a means-tested healthcare bursary or Scottish healthcare allowance, whether or not they receive a payment, can only apply for the reduced rate loan for living costs.

Regulation 5(3)(c) of the 2009 Regulations is amended to clarify that students who are eligible to apply for a non means-tested healthcare bursary or any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, do not qualify for full-time fee loans and grants and loans for living costs.

Regulation 105(3)(a) of the 2009 Regulations is amended to clarify that students who are eligible to apply for healthcare bursaries or any allowances under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, do not qualify for full-time distance learning fee grants, course grants and disabled distance learning students' allowances.

Regulations 105(4), 109(3) and 112(3) of the 2009 Regulations are removed to clarify the policy intention that disabled students who are eligible to apply for a means-tested healthcare bursary do not qualify for full-time distance learning fee grants, course grants and disabled distance learning students' allowances. Previously, Regulation 105(4) created an exception for disabled students receiving means tested bursaries to a general disqualification from eligibility for distance learning support, but Regulations 109(3) then disqualified these students from receiving fee and grants and Regulation 112(3)

disqualified them from receiving disabled students allowances. Removing the exceptions delivers the policy intention in a simpler way.

Regulation 122(3)(a) is amended to clarify that students who are eligible to apply for healthcare bursaries or allowances under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, do not qualify for part-time fee grants, course grants and disabled part-time students' allowances.

Regulation 139(4)(a) is amended to clarify that students who are eligible to apply for healthcare bursaries, allowances under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 or certain other allowances, bursaries or awards of similar description do not qualify for postgraduate disabled students' allowances.

3.7 Technical amendment to ensure students undertaking work placements under the European Action Scheme for the Mobility of University Students (ERASMUS) are eligible to apply for the full-time maintenance support package.

ERASMUS is an EU scheme that enables higher education students in 31 European countries to study for part of their degree in another country. During an academic year that is an "Erasmus year", the policy intention is that these students may study at an institution or attend a work placement in their chosen country.

For clarification purposes, these Regulations amend the 2009 Regulations by referring to students attending a work placement as part of an "Erasmus year". Therefore "Erasmus year" students on work placements have the same entitlement to support as other ERASMUS students, rather than a reduced entitlement that applies to other students on work placements as part of a sandwich course.

The definition of an "Erasmus year" in Regulation 2(1) of the 2009 Regulations is amended to include periods of work placement attended at a workplace outside the United Kingdom. The definition of a sandwich course in Regulation 2(10) of the 2009 Regulations is amended to exclude an academic year that is an "Erasmus year".

Regulation 40(2) of the 2009 Regulations is amended to clarify that students on a period of study or work placement as part of an "Erasmus year" are treated as being in attendance on their course for the purpose of qualifying for grants for living and other costs. Regulations 49, 50 and 53 of the 2009 Regulations are amended to clarify that students undertaking ERASMUS work placements are eligible to apply for a grant for travel.

Regulation 75(2) of the 2009 Regulations is amended to clarify that students on a period of study or work placement as part of an "Erasmus year" are treated as being in attendance on their course for the purpose of qualifying for loans for living costs.

Regulation 87(c) of the 2009 Regulations is amended to clarify that students undertaking a work placement as part of an "Erasmus year" are eligible to apply for the overseas rate of loan for living costs.

3.8 Technical amendment to correct a typographical error.

Regulation 25 amends a typographical error in regulation 146(2).

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 preliminary Equality Impact Assessment has been carried out and it is the Department's view that the proposals do not have an adverse impact on the Section 75 categories.

6. 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.

7. Financial Implications

The financial implications of the policy changes have been costed and funding secured through the Department's current student finance budget provision.

8. Section 24 of the Northern Ireland Act 1998

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

9. EU Implications

Not applicable.

10. Parity or Replicatory Measures

This rule is made in broad parity with the Statutory Instrument, the Education (Student Support) Regulations 2009 (Amendment) Regulations 2010, S.I 2010 No.2546 which was made on November 2010, laid before Parliament on 21st October 2010 and came into force on 12 November 2010.

11. Additional Information

Not applicable.

12. Contact

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.