EXPLANATORY MEMORANDUM TO

THE FURTHER EDUCATION (STUDENT SUPPORT) (ELIGIBILITY) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2024

SR 2024 No. 128

1. Introduction

1.1 This Explanatory memorandum has been prepared by the Department for the Economy ("the Department") to accompany the Further Education (Student Support) (Eligibility) (Amendment) Regulations (Northern Ireland) 2024, which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under Articles 3(1), 3(2) 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 in accordance with regulation 1 of these Regulations.

2. Purpose

This rule provides support for students taking designated further education courses in respect of the academic year beginning on or after 1st August 2024 and makes amendments to the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012 (S.R. 2012 No.306) ("the Student Support Regulations"). The effect of the rule is to:

a. Change the date of residency requirements from 'first day of the Academic Year' to the 'day on which the first term of the first Academic Year begins' for certain categories of persons, being those that have Humanitarian Protection and their family members; Stateless Persons leave; Calais leave; Section 67 ('Dubs') leave; Afghan Relocations and Assistance Policy; Afghan Citizens Resettlement Scheme; Ukraine scheme leave, indefinite leave to remain for persons who are victims of domestic violence or who are bereaved partners, persons settled in the UK, evacuated or assisted British Nationals from Afghanistan, discretionary leave and persons who are settled in the United Kingdom and have exercised a right of residence elsewhere;

b. Enact the inclusion of three new residency categories of persons eligible for student support without being required to be ordinarily

resident in the UK, the EEA or Switzerland for the three years immediately prior to the start of their course being:

- Those with Domestic Violence Indefinite Leave to Enter (DVILE);
- Family members of individuals entering the UK under the Ukraine Schemes, the Afghan Relocations and Assistance Policy (ARAP) or the Afghan Citizens Resettlement Scheme (ACRS); and
- Children of those granted Indefinite Leave to Enter/Remain as a victim of domestic violence or abuse and Children of those granted Indefinite Leave to Remain as a bereaved partner.

c. Make minor amendments to the legislation to remove remaining redundant references to the grace period, and to insert the definition of eligible student into the interpretation section of the legislation; and

d. Include savings provisions so that family members of persons granted leave under one of the Afghan Schemes who have already qualified for support under The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012, can continue to qualify for support on that basis.

3. Background

The rule makes provision for support available in relation to an academic year beginning on or after 1st August 2024 and amends some of the provisions in the 2012 Regulations.

The policy and technical changes effected by this rule are:

3.1 A change to the date of residency requirements from 'first day of the Academic Year' to the 'day on which the first term of the first Academic Year begins' for certain categories of persons

In recent years the Home Office has introduced a number of forms of leave to remain in the UK, where the recipient is granted almost exactly the same social rights as a UK resident. Following Ministerial approval, a number of these forms of leave have been determined as eligible for further education student support as outlined within The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012 (the Student Support Regulations).

Forms of leave include: Humanitarian Protection; Stateless Persons leave; Calais leave; Section 67 ('Dubs') leave; Afghan Relocations and Assistance Policy; Afghan Citizens Resettlement Scheme; and Ukraine scheme leave. The Home Office has also made provision for the grant of indefinite leave to remain to persons who are victims of domestic violence or who are bereaved partners which are also recognised within the Student Support Regulations.

Currently, to avail of Further Education student support a student must be

resident in Northern Ireland on the first day of the first academic year of their course. In addition, if an individual is granted a form of leave from the Home Office during their studies, the Student Support Regulations stipulate that the student must have been in Northern Ireland on the first day of the first academic year of their course.

The proposed change is that, from Academic Year 24/25, students in the protection-based categories, who are victims of domestic violence or who are bereaved partners who arrive in the UK after the first day of the first Academic Year of the course, but before the start of their course, will qualify for support.

3.2 Domestic Violence Indefinite Leave to Enter (DVILE)

Following a court ruling in England, the Home Office made changes to the Immigration Rules in December 2023 to grant Indefinite Leave to Enter (ILE) to persons overseas who have been the victim of transnational marriage abandonment (TMA). TMA is a form of domestic abuse whereby the abusive party abandons their partner overseas and their permission to stay in the UK expires and/or they are left without access to their passport or immigration documents, preventing their return to the UK.

Previously, immigration rules only provided a route to settlement from within the UK and the current student support regulations provide for student support to persons granted leave under this category – Domestic Violence Indefinite Leave to Remain (DVILR). This change will add a new category to our regulations from academic year 2024/25 – Domestic Violence Indefinite Leave to Enter (DVILE).

3.3 Support for family members of individuals entering the UK under the Ukraine Schemes, the Afghan Relocations and Assistance Policy (ARAP) or the Afghan Citizens Resettlement Scheme (ACRS) scheme

While current student support policy recognises that family members of individuals with a recognised form of leave from the Home Office can avail of student support (such as the child of a person granted leave to remain in the UK), this was not extended to family members of individuals entering the UK under the Ukraine Schemes, the Afghan Relocations and Assistance Policy (ARAP) or the Afghan Citizens Resettlement Scheme (ACRS) scheme.

Given that family members of persons with Ukraine scheme leave, as well as those granted leave under the Afghan Relocations Assistance Policy (ARAP) and/or the Afghan Citizens Resettlement Scheme (ACRS) schemes are in a directly comparable position to family members of other protected categories who can access student support regardless of status and nationality, from Academic Year 24/25 the Student Support Regulations are being amended to ensure fair and equal treatment of all family members.

3.4 Children of those granted Indefinite Leave to Enter/Remain as a victim of domestic violence or abuse and Children of those granted Indefinite Leave to Remain as a bereaved partner.

Currently children of those granted Indefinite Leave to Enter/ Remain (ILE/R) as a victim of domestic violence or abuse; or Indefinite Leave to Remain (ILR) as a bereaved partner are not eligible for student support however we are proposing to change that through these amendments.

England's legislation has been changed from Academic Year 2024/25 so that children of those granted ILE/R as a victim of domestic violence/abuse or ILR as a bereaved partner may be eligible for funding under these categories without any requirement for the applicant to have been granted leave in line. It has come to light that these children can be granted ILR (or ILE for the victims of domestic violence/abuse category) by the Home Office, despite gaps in leave, and should not therefore be treated less favourably than their parent granted ILR/E as a victim of domestic violence/abuse or ILR as a bereaved partner.

In order to avail of support, the child will need to show:

a. that they have been issued ILR (or ILR/E for the victims of domestic violence/abuse category) (for any reason) in their own right,
b. that they were under 18 on the date that the parent applied for ILR/E as a victim of domestic violence/abuse or ILR as a bereaved partner,
c. that their parent was issued ILR/E as a victim of domestic violence/abuse or ILR as a bereaved partner, and

that they were the child/step-child of the parent granted ILR/E as a victim of domestic violence/abuse or ILR as a bereaved partner on the parent's leave application date.

3.5 Minor amendments to the legislation removing remaining redundant references to the grace period, and inserting the definition of eligible student into the interpretation section of the legislation.

During the drafting of these amendments, one remaining redundant reference to the grace period was identified, and it was noted that the definition of "eligible student" had not previously been included in the interpretation section of the legislation. These matters have now been rectified through amendments included in this set of regulations.

3.6 Savings provisions to enable family members of persons granted leave under one of the Afghan Schemes who have already qualified for support under The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012, to continue to qualify for support on that basis

Since the inclusion of the Afghan Scheme in The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2012, the Home Office Immigration Rules have been amended to revise some of the Afghan Scheme definitions/categories. The inclusion of the savings provisions in this set of amendments ensures that the eligibility of those students that have already qualified for support due to having met the definitions/categories that are being, or have now been, revised, will still be determined by reference to the original definitions/categories.

4. Consultation

There is no statutory requirement to consult on those elements of these Regulations which do not give effect to policy changes but facilitate policy implementation or statutory obligations or where Executive commitment was given in relation to over-arching policy such as the ARAP and ACRS Schemes.

5. Equality Impact Assessment

A Section 75 Equality of Opportunity Screening exercise has been carried out and it is our view that the proposals will not have an adverse impact on any of the Section 75 categories.

6. Rural Needs Impact Assessment

A Rural Needs Impact Assessment has been prepared.

7. 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.

8. Financial Implications

The numbers of students impacted by these changes is low and it is expected that there will not be any significant changes in budgets.

9. Section 24 of the Northern Ireland Act 1998

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

10. EU Implications

Not applicable

11. Parity or Replicatory Measures

Similar technical amendments have been made in England. The corresponding English Statutory Instruments are The Education (Student Fees, Awards and Support) (Amendment) Regulations 2023 (2023 No. 74), which were laid before Parliament on 24 January 2023 and came into force on 16 February 2023; The Education (Student Fees, Awards and Support) (Amendment) Regulations 2024 (2024 No. 85), which were laid before Parliament on 23 January 2024 and came into force on 15 February and the corresponding Statutory Instrument laid by Higher Education Division is The Education (Student Support, etc.) (Amendment) Regulations (Northern Ireland) 2024 (2024 No. 19), which were made 2 February 2024 and came into force on 26 February 2024.

12. Contact

Chris Toal at the Department for the Economy, Tel: 028 90 257490 or email: chris.toal@economy-ni.gov.uk can answer any queries regarding this Rule.