EXPLANATORY MEMORANDUM TO

THE FURTHER EDUCATION (STUDENT SUPPORT) (ELIGIBILITY) REGULATIONS (NORTHERN IRELAND) 2009

S.R. 2009 No. 211

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 allow the Department to continue funding Further Education (FE) provision for EU-domiciled students, on the same basis as for NI students, for the 2009/10 academic year.

2.3 Regulation 1 details the citation and commencement date of the legislation.

2.4 Regulation 2 details the interpretation to be applied to the legislation.

2.5 Regulation 3 explains that the Regulations apply in relation to the 2009/10 academic year.

2.6 Regulation 4 sets out the criteria students must meet in order to be eligible for funding and explains that the categories are listed in Part 2 of the Schedule.

2.7 Regulation 5 details what constitutes a 'designated course' for the purposes of eligibility.

2.8 Regulation 6 provides that an institution is required to send to the Department, such documentation as the Department may require in respect of an eligible student on a designated course.

2.9 Regulation 7 provides for the payment of financial support to the institutions in respect of eligible students who are on designated courses. The amount of such support is to be such as the Department considers appropriate and payments may be made by instalments.

2.10 Regulation 8 revokes the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2008.

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 is making these Regulations which are renewed every academic year.

3.4 The purpose of this Rule is to 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.

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 September 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 these amending Regulations were first made in 2007 indicated that the legislative change would cause no adverse impact.

11. Contact

11.1 Yvonne Croskery at the Department for Employment and Learning on telephone: 028 9025 7690 or e-mail: Yvonne.croskery@delni.gov.uk