STATUTORY RULES OF NORTHERN IRELAND

2010 No. 234

EDUCATION

The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2010

Made - - - -	*7th July 2010*
Coming into operation -	*1st September 2010*

The Department for Employment and Learning(**a**) makes the following Regulations in exercise of the powers conferred on it by Articles 3(2) and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998(**b**), and now vested in it(**c**):

Citation and commencement

1. These Regulations may be cited as the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2010 and shall come into operation on 1 September 2010.

Interpretation

2. In these Regulations—

"the Order" means the Education (Student Support) (Northern Ireland) Order 1998;

"the 1997 Order" means the Further Education (Northern Ireland) Order 1997(**d**);

"further education" has the meaning assigned by Article 3 of the 1997 Order;

"the Department" means the Department for Employment and Learning;

"designated course" means a course designated by regulation 5;

"higher education" has the meaning assigned by Article 2(2) of the 1997 Order;

"institution of further education" means an educational establishment which is recognised by the Department as an institution of further education under Article 8 of the 1997 Order;

"support" means financial support by way of grant made by the Department to an institution of further education pursuant to Regulations made by the Department under Article 3 of the Order.

(**a**) Formerly the Department of Higher and Further Education, Training and Employment; *see* 2001 c. 15 (N.I.)
(**b**) S.I. 1998/1760 (N.I. 14)
(**c**) Article 5(b) and Part II of Schedule 3 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) (S.R. 1999 No. 481) transferred functions under the Education (Student Support) (Northern Ireland) Order 1998 from the Department of Education to the Department of Higher and Further Education, Training and Employment, now renamed the Department for Employment and Learning
(**d**) S.I. 1997/1772 (N.I. 15)

Application

3. These Regulations apply in relation to the provision of support in relation to the academic year which begins on or after 1st September 2010 and ends on 31st August 2011.

Eligible Students

4.—(1) A person is an eligible student in connection with a designated course if the Department determines that the person falls within one of the categories set out in Part 2 of the Schedule.

(2) A person ceases to be an eligible student if he abandons or is expelled from a designated course.

Designated courses

5. A course is a designated course for the purposes of Article 3(1) of the Order if it is—

(a) a further education course or a higher education course; and

(b) wholly provided by an institution of further education in Northern Ireland.

Applying for support and provision of information

6.—(1) An institution of further education shall apply for support in respect of each eligible student on a designated course by completing and submitting to the Department such documentation as the Department may require.

(2) The Department may take such steps and make such inquiries as it considers necessary to determine whether an application for support is in respect of an eligible student.

(3) If the Department is satisfied that an institution of further education has failed to comply with any requirement to provide information under these Regulations or has provided information which is incomplete or inaccurate in a material particular, the Department may—

(a) determine that the institution no longer qualifies for any particular support or particular amount of support; and

(b) treat any support paid to the institution as an overpayment which may be recovered by such means as the Department considers appropriate.

Payments

7.—(1) Support shall not be paid to an institution of further education until the Department has received a valid request for payment from the institution.

(2) If the Department is satisfied that an application for support is valid for an eligible student on a designated course, then the Department will provide support to the institution of such amounts as it considers appropriate.

(3) Any amount payable under paragraph (2) may be paid in such instalments as the Department considers appropriate.

Revocations

8. The following Regulations are revoked—

(a) The Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2009(**a**); and

(b) the Further Education (Student Support) (Eligibility) (Amendment) Regulations (Northern Ireland) 2009(**b**)

(**a**) S.R. 2009 No. 211
(**b**) S.R. 2009 No. 366

Sealed with the Official Seal of the Department for Employment and Learning on 7th July 2010.



Sir Reg Empey
Minister for Employment and Learning

SCHEDULE

Regulation 4

ELIGIBLE STUDENTS

PART 1

Interpretation

1.—(1) For the purposes of this Schedule—

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(**a**) as adjusted by the Protocol signed at Brussels on 17th March 1993(**b**);

"EEA frontier worker" means an EEA national who—

(a) is a worker in Northern Ireland; and

(b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to his residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

"EEA migrant worker" means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

"EEA national" means a national of an EEA State other than the United Kingdom;

"European Economic Area" means the area comprised by the EEA States;

"family member" unless otherwise indicated, means—

(c) in relation to an EEA frontier worker or an EEA migrant worker—

(i) his spouse or civil partner;

(ii) his child or the child of his spouse or civil partner; or

(iii) dependent direct relatives in his ascending line or that of his spouse or civil partner;

(d) in relation to a Swiss worker—

(i) his spouse or civil partner; or

(ii) his child or the child of his spouse or civil partner;

(e) in relation to an EC national who falls within Article 7(1)(c) of Directive 2004/38(**c**)—

(**a**) Cm. 2073
(**b**) Cm. 2183
(**c**) Directive 2004/38/EC of the European Parliament and of the Council of 29th April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

(i) his spouse or civil partner; or

(ii) direct descendants of his or of his spouse or civil partner who are—

(aa) under the age of 21; or

(bb) dependants of his or his spouse or civil partner;

(f) in relation to an EC national who falls within the meaning of Article 7(1)(b) of Directive 2004/38—

(i) his spouse or civil partner;

(ii) direct descendants of his or of his spouse or civil partner who are—

(aa) under the age of 21; or

(bb) dependants of his or his spouse or civil partner; or

(iii) dependent direct relatives in his ascending line or that of his spouse or civil partner;

(g) in relation to a United Kingdom national—

(i) his spouse or civil partner; or

(ii) direct descendants of his or his spouse or civil partner who are—

(aa) under the age of 21; or

(bb) dependants of his or his spouse or civil partner;

"person with leave to enter or remain" means a person—

(h) who has been informed by a person acting under the authority of the Secretary of State for the Home Department that, although he is considered not to qualify for recognition as a refugee, it is thought right to allow him to enter or remain in the United Kingdom;

(i) who has been granted leave to enter or remain accordingly;

(j) whose period of leave to enter or remain has not expired or has been renewed and the period for which it was renewed has not expired or in respect of those whose leave to enter or remain an appeal is pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002(**a**); and

(k) who has been ordinarily resident in the United Kingdom and Islands throughout the period since he was granted leave to enter or remain;

"refugee" means a person who is recognised by Her Majesty's government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951(**b**) as extended by the Protocol thereto which entered into force on 4th October 1967(**c**);

"settled" has the meaning given by section 33(2A) of the Immigration Act 1971(**d**);

"Swiss Agreement" means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1994(**e**) and which came into force on 1st June 2002;

"Turkish worker" means a Turkish national who—

(l) is ordinarily resident in the United Kingdom and Islands; and

(m) is, or has been, lawfully employed in the United Kingdom; and

"worker" means a worker within the meaning of Article 7 of Directive 2004/38 or the EEA Agreement as the case may be.

(**a**) 2002 c. 41 Section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19, Schedules 2 and 4) and the Immigration, Asylum and Nationality Act 2006 (c. 13) section 9

(**b**) Cmnd. 9171

(**c**) Cmnd. 3906

(**d**) 1971 c. 77; Section 33(2A) was inserted by paragraph 7 of Schedule 4 to the British Nationality Act 1981 (c. 61)

(**e**) Cm. 4904

(2) For the purposes of this Schedule, "parent" includes a guardian, any other person having parental responsibility for a child and any person having care of a child and "child" is to be construed accordingly.

(3) For the purposes of this Schedule, a person is to be treated as ordinarily resident in Northern Ireland, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area, Switzerland and Turkey if he would have been so resident but for the fact that—

(a) he;

(b) his spouse or civil partner;

(c) his parent;

(d) in the case of a dependent direct relative in the ascending line, his child or child's spouse or civil partner,

is or was temporarily employed outside the area in question.

(4) For the purposes of sub-paragraph (3), temporary employment outside of Northern Ireland, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area, Switzerland and Turkey includes—

(a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces;

(b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside of the territory comprising the European Economic Area and Switzerland as members of such forces; and

(c) in the case of members of the regular armed forces of Turkey, any period which they serve outside the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

PART 2

Categories

Persons who are settled in the United Kingdom

2. A person who on the first day of the course—

(a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence; and

(b) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the course.

3. A person who—

(a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence; and

(b) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the course.

Refugees and their family members

4.—(1) A person—

(a) who is a refugee; and

(b) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was recognised as a refugee.

(2) A person—

(a) who is the spouse or civil partner of a refugee;

(b) who was the spouse or civil partner of the refugee on the date on which the refugee made his application for asylum; and

(c) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was given leave to enter or remain in the United Kingdom.

(3) A person—

(a) who is the child of a refugee or the child of the spouse or civil partner of a refugee;

(b) who, on the date on which the refugee made his application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date;

(c) who was under 18 on the date on which the refugee made his application for asylum; and

(d) who is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since he was given leave to enter or remain in the United Kingdom.

Persons with leave to enter or remain and their family members

5.—(1) A person—

(a) with leave to enter or remain; and

(b) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the course.

(2) A person—

(a) who is the spouse or civil partner of a person with leave to enter or remain;

(b) who was the spouse or civil partner of the person with leave to enter or remain on the date on which that person made his application for asylum; and

(c) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the course.

(3) A person—

(a) who is the child of a person with leave to enter or remain or the child of the spouse or civil partner of a person with leave to enter or remain;

(b) who, on the date on which the person with leave to enter or remain made his application for asylum, was the child of that person or the child of a person who was the spouse or civil partner of the person with leave to enter or remain on that date;

(c) who was under 18 on the date on which the person with leave to enter or remain made his application for asylum; and

(d) who has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the course.

Workers and their family members

6. A person who—

(a) is—

(i) an EEA migrant worker;

(ii) a Swiss worker; or

(iii) a family member of a person mentioned in paragraph (i) or (ii); and

(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the course.

EC nationals

7. A person who—

(a) is either—

(i) an EC national on the first day of the course; or

(ii) a family member of such a person;

(b) is attending a designated course in Northern Ireland; and

(c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the course.

Children of Swiss Nationals

8. A person who—

(a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of Article 3(6) of Annex 1 to the Swiss Agreement; and

(b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

Children of Turkish Workers

9. A person who—

(a) is the child of a Turkish worker; and

(b) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the three-year period preceding the first day of the course.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for financial support towards tuition fees to institutions of further education for students who are domiciled in a part of the United Kingdom other than Northern Ireland, in the European Community, or the European Economic Area, but are studying at Colleges of Further Education in Northern Ireland, in respect of the academic year beginning on or after 1st September 2010 and ending on 31st August 2011.

Regulation 4 and the Schedule describe eligible students.

Regulation 5 describes a designated course.

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.

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.

Regulation 8 revokes the Further Education (Student Support) (Eligibility) Regulations (Northern Ireland) 2009 and the Further Education (Student Support) (Eligibility) (Amendment) Regulations (Northern Ireland) 2009.

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