Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

The Higher Education (Northern Ireland) Order 2005

Made - - - - 2005
Coming into operation in accordance with Article 1(2) and (3)

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:ñ

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Higher Education (Northern Ireland) Order 2005.

(2) The following provisions come into operation one week after the date on which this Order is made—

this Part;

Article 3;

Article 4(7) to (12);

Articles 6 and 7;

Articles 8 and 9, so far as enabling regulations to be made;

Articles 10 and 11;

Article 13;

Article 14.

(3) The remaining provisions come into operation in accordance with provision made by the Department by order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

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

"governing body", in relation to an institution, has the meaning given by Article 30(3) of the 1993 Order;

"prescribed" means prescribed by regulations;

"regulations" means regulations made by the Department;

"university" has the same meaning as in Article 30 of the 1993 Order;

"the 1986 Order" means the Education and Libraries (Northern Ireland) Order 1986 (NI 3);

"the 1993 Order" means Education and Libraries (Northern Ireland) Order 1993 (NI 12);

"the 1998 Order" means the Education (Student Support) (Northern Ireland) Order 1998 (NI 14).

PART II

STUDENT FEES IN HIGHER EDUCATION

Interpretation

Interpretation of this Part

3.—(1) In this Part—

"course" does not include any part-time or postgraduate course other than a course of initial teacher training;

"approved plan" means a plan approved under Article 7;

"fees", in relation to undertaking a course, means fees in respect of, or otherwise in connection with, undertaking the course, including admission, registration, tuition and graduation fees but excluding—

(a) fees payable to an institution for awarding or accrediting any qualification where the institution does not provide the whole or part of the course and is not a publicly-funded institution (as defined by paragraph (2)),

(b) fees payable for board or lodging,

(c) fees payable for field trips (including any tuition element of such fees),

(d) fees payable for attending any graduation or other ceremony, and

(e) such other fees as may be prescribed;

"general provisions", in relation to a plan, has the meaning given by Article 6(3);

"plan" means a plan complying with Article 6.

(2) In paragraph (1) "publicly-funded institution" means—

(a) the Queen's University of Belfast, the University of Ulster, a college of education in Northern Ireland within the meaning of Article 2(2) of the 1986 Order or any institution providing in Northern Ireland further education as defined in Article 3 of the Further Education (Northern Ireland) Order 1997 (N.I. 15);

(b) any university or other institution receiving grants, loans or other payments under section 65 of the Further and Higher Education Act 1992 (c. 13), or under section 5 of the Education Act 1994 (c. 30), any institution maintained by a local education authority in the exercise of their further and higher education functions, any institution receiving a recurrent grant towards its costs under regulations made under section 485 of the Education Act 1996 (c. 56) or any institution receiving financial resources under section 5 or 34 of the Learning and Skills Act 2000 (c. 21);

(c) any institution within the higher education sector for the purposes of the Further and Higher Education (Scotland) Act 1992 (c. 37), any college of further education within the meaning of section 36(1) of that Act or any central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c. 44).

Imposition of conditions as to fees

Power of Department to impose conditions as to student fees, etc.

4.—(1) The power of the Department to impose conditions under—

(a) paragraph (2) of Article 66 of the 1986 Order (training of teachers),

(b) paragraph (1) of Article 30 of the 1993 Order (higher education), or

(c) paragraph (3) of Article 5 of the Further Education (Northern Ireland) Order 1997 (NI 15) (further education),

in relation to any grant made to the governing body of an institution includes power to impose a condition under this Article.

(2) A condition under this Article requires the governing body of the institution—

(a) to secure that, in respect of any qualifying course, the qualifying fees in respect of any academic year which begins during the grant period at a time when an approved plan is in force in relation to the institution do not exceed such limit, not exceeding the higher amount, as is provided by the plan for that course and that academic year,

(b) to secure that, in respect of any qualifying course, the qualifying fees in respect of any academic year which begins during the grant period at a time when no approved plan is in force in relation to the institution do not exceed the basic amount, and

(c) to comply with the general provisions of any approved plan that is in force in relation to the institution during any part of the grant period during which it is in force.

(3) For the purposes of paragraph (2)—

(a) an academic year which begins at the same time as the grant period is to be taken to begin during the grant period, and

(b) an academic year which begins with the day on which an approved plan comes into force is to be taken to begin at a time when the plan is in force.

(4) A condition under this Article may provide in the event of a failure by the governing body to comply with the requirement specified in paragraph (2) for the imposition by the Department on the

governing body of financial requirements in accordance with principles specified in the condition under this Article.

(5) Any financial requirements imposed by virtue of paragraph (4) must relate to one or more of the following—

(a) the repayment, with or without interest, of the whole or any part of any sums received by the governing body in respect of the grant in question,

(b) the withdrawal or reduction of any amount that has been awarded but not yet paid in respect of the grant in question, or

(c) the refusal to award (or to award to the extent expected) any other grant under paragraph (2) of Article 66 of the 1986 Order, paragraph (1) of Article 30 of the 1993 Order or (as the case may be) Article 5 of the Further Education (Northern Ireland) Order 1997 (NI 5) in respect of the grant period or any subsequent period.

(6) Where—

(a) a condition is imposed under this Article in connection with any grant made to the governing body of an institution, and

(b) that grant is to any extent made in respect of persons undertaking a course which is provided in whole or part by any other institution,

then, for the purposes of this Article, fees payable by such persons to the other institution are to be regarded as fees payable by them to the first-mentioned institution.

(7) No condition under this Article applies in relation to any fees which are payable by students not having such connection with the United Kingdom or any part of it or any member State as may be prescribed.

(8) In this Article, Article 5 and Article 6—

"academic year", in relation to a course, means an academic year applicable to the course;

"the basic amount" means such amount as may be prescribed for the purposes of this Article as the basic amount;

"the grant period" means the period in respect of which the grant to which the relevant condition under this Article relates is made;

"the higher amount" means such amount as may be prescribed for the purposes of this Article as the higher amount;

"qualifying course" means a course of any description prescribed for the purposes of this Article.

"qualifying fees", in relation to an institution, means the fees payable to the institution by a qualifying person in connection with his undertaking a qualifying course;

"qualifying person" means a person falling within any class of persons prescribed for the purposes of this Article.

(9) The power to prescribe descriptions of course by virtue of the definition of "qualifying course" in paragraph (8) may not be exercised in such a way as to discriminate—

(a) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given, and

(b) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate.

(10) The Department may not make the first regulations under paragraph (8) prescribing the basic amount and the higher amount for the purposes of this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(11) Where regulations under paragraph (8) have been made prescribing the basic amount and the higher amount for the purposes of this Article—

(a) no regulations may be made increasing the basic amount unless—

(i) the Department is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms, or

(ii) a draft of the regulations has been laid before, and approved by a resolution of, the Assembly, and

(b) no regulations may be made increasing the higher amount unless—

(i) the Department is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms, or

(ii) the Assembly has at any time after 1st January 2010 passed a resolution that, with effect from a date specified in the resolution, the higher amount should be increased to an amount specified in the resolution, and the increase is an increase to the specified amount with effect from the specified date.

(12) For the purposes of paragraph (11)(a)(i) and (b)(i) the Department is to have regard to such index of prices as may be specified in, or determined in accordance with, regulations.

Transitional cases in which condition must not allow fees to exceed basic amount

5.—(1) Article 4(2)(b) has effect in relation to the qualifying fees payable by a qualifying person in connection with his undertaking a qualifying course ("the relevant course") in a case where paragraph (2) or (3) applies, even if those fees are payable in respect of an academic year which begins at a time when an approved plan is in force in relation to the institution.

(2) This paragraph applies where—

(a) the qualifying person had on or before 1st August 2005 received an offer, whether conditional on obtaining specified qualifications or not, of a place on the relevant course or a similar course, and

(b) the first academic year of the relevant course begins before 1st September 2007.

(3) This paragraph applies where—

(a) the qualifying person had received an offer of a place on a qualifying course (whether or not at the same institution as the relevant course) the first academic year of which begins before 1st September 2006,

(b) he was unable to take up the offer because a specified qualification or grade was not awarded to him,

(c) he appealed against the decision not to award him the qualification or grade,

(d) the appeal was allowed after the last date on which he could have taken up the offer,

(e) as a result he was offered a place on the relevant course, and

(f) the first academic year of the relevant course begins after 31st August 2006 but before 1st September 2007.

(4) For the purposes of paragraph (2)(a) a course ("the original course") is similar to the relevant course if—

(a) it appears to the governing body of the institution providing the relevant course that the subject-matter of the course is in whole or in part the same as the subject-matter of the original course, and

(b) except where the original course is no longer being provided, the relevant course is provided by the institution which was to have provided the original course.