



Northern Ireland
Assembly

**COMMITTEE
FOR EMPLOYMENT
AND LEARNING**

**OFFICIAL REPORT
(Hansard)**

**Student Fees (Qualifying Courses and
Persons) (Amendment) (No. 2)
Regulations (Northern Ireland) 2011**

25 October 2011

points and the overall purpose of and policy rationale behind the proposed change. Article 4 of the Higher Education Order 2005 sets out the power of the Department to impose conditions on student fees. Under that article, the Department can prescribe in regulations what are known as qualifying courses and qualifying persons.

Currently, under the principal regulations, all eligible students from the UK are treated as qualifying persons, which means that the fees set by the higher education institutions within the overall fee caps apply to all those students. The proposed amendment redefines the qualifying person to exclude GB students, including those from the islands. As a result, the fee cap will not apply.

The Minister's statement last month indicated that differential charging would be introduced here to allow higher education institutions to charge higher fees to students from GB. The key policy rationale is to ensure that local students are not squeezed out of higher education here because of a potential influx of GB students who might choose to study here, primarily to avail themselves of cheaper fees. The introduction here of broadly the same fee levels as GB students face should they opt to study in other parts of the UK would help to ensure that anyone choosing to study in Northern Ireland would do so because of the course, the quality of our institutions and related issues, not simply because of the cost.

The regulations will protect GB students who have already started their higher education in Northern Ireland and ensure that they continue under the existing fee regime until the completion of their studies. A fee cap will not be set in legislation for students outside the qualifying persons' category, but the Minister has said that fees should not exceed £9,000 per annum. We are confident that that will not be exceeded. That confidence derives from our discussions with the higher education institutions and from the fact that the other Administrations will provide fee loans only up to £9,000.

Ms Gildernew:

Thank you for providing such a concise explanation, Andrew. I have not been across the detail, but it seems a perfectly obvious way of dealing with the issue. We were concerned about the impact that higher tuition fees would have on our students, especially those from working families or lower socio-economic groups who would be priced out of the market for higher education.

This is the right thing to do. If, for example, a student from Liverpool would pay £9,000 for a course in Liverpool, it is right for the same price to apply should the same student take that course in Belfast. The Executive have found a creative and very innovative solution to our tuition fees issue. It is the right thing to do, and I will support the statutory rule.

Andrew, how much would it cost should the amendment not to go through? What would be the impact on students for whom getting a place might be marginal already? I am sure that, in September, all elected representatives were approached by young people trying to find a place on the course that they wanted. At times, we have had to contact institutions to try to help smooth the path for constituents. If the SL1 is not agreed today, how will those people be dealt with?

Mr A Hamilton:

Our assessment is that, if it does not go through, more students from GB would utilise our local capacity and cost would be a main driver in their decision to do so. The consequences would be that Northern Ireland students would either be squeezed out altogether or forced to look to GB for higher education and pay the higher fees there. That would affect students from our lower socio-economic groups disproportionately, so there could also be an adverse impact on participation rates. We have the best participation rates in GB, but not pushing through this change would, I think, begin to challenge that.

Ms Gildernew:

I have a supplementary question, a Chathaoirleach. Given that the Department already pays an additional fee for students who go across the water to study because, for example, they cannot get a place here, do you have any idea of how much additional funding the Department for Employment and Learning (DEL) would need to meet any additional demand? Where would that money come from?

Mr A Hamilton:

You are quite right. The technicality is that students who go to GB are entitled to a student loan. Assuming that their fees are £9,000, we would bear the cost of subsidising that by around 30%. Should the numbers increase beyond those whom we finance currently, we would have to resource £3,000 for each additional student.

Ms Gildernew:

Is that included in the DEL budget? Have you costed a number of options?

Mr A Hamilton:

It has not been costed; it would be a pressure.

Ms Gildernew:

So that is £3,000 a student.

Mr A Hamilton:

Yes, roughly that for each additional student who goes to GB.

Ms Gildernew:

So the cost would ratchet up fairly considerably in a short space of time.

Mr Douglas:

Thank you, Andrew, for that briefing. I was going to ask about the potential cost, but Michelle covered that.

A precedent has been set in Scotland not to charge fees to Scottish students, and, from what I know, an appeal or a judicial review is ongoing. Can you provide an update on that case? Would the outcome have an impact on Northern Ireland?

My second question —

The Chairperson:

Perhaps we should take the two questions separately, Sammy, starting with the legal one.

Ms Claire Thompson (Department for Employment and Learning):

The media have indicated that there will be a challenge on behalf of two English students to the fee that will be levied in Scotland. The latest information from our counterparts in Scotland is that papers have not yet been filed, so there is no detail on the exact basis of that challenge. Obviously, we are monitoring the situation and staying in touch with them. Similar reports appeared in our media that, if the process were to go forward, someone would challenge our fees

structure. We will continue to monitor that to see what happens. The Minister has clearly stated that we have received legal advice, we are confident in that, and the intention is to proceed. We will keep an eye on what is happening in a legal context, but, currently, there is no concrete case for us to follow.

Mr Douglas:

Your paper states:

“In accordance with European Community law, non-UK EU students will continue to be categorised as qualifying persons”.

Given that students from England and Wales can be excluded but the category is open to every other EU country, how does the UK fit with that aspect of European Community law?

Ms Thompson:

Under EU legislation on freedom of movement, the advice to us and, previously, to Scotland was that, essentially, we have to provide the same level of support to students from the rest of the EU as we provide to home students. Therefore, if someone were to apply to one of our institutions, whether from the Republic of Ireland, France or another EU state, the fee that applies here would apply to them and, indeed, the fee loan that we provide would also be available to them. In turn, the same would apply to our students should they choose to study in another EU country.

The Chairperson:

Why is that?

Ms Thompson:

It is covered under the EU directive on the freedom of movement, which has applied and been tested in other legal cases. We have been advised that we have to follow that.

The Chairperson:

So there have been a number of legal cases to challenge the freedom of movement and anti-discrimination.

Ms Thompson:

I do not know about the anti-discrimination element. It is to do with freedom of movement and the provision of the same level of support as is available to the home student.

The Chairperson:

So freedom of movement is allowed within Europe but not within the United Kingdom.

Ms Thompson:

The legal advice to us and Scotland was that it did not apply within the UK. It is treated as national law, and differences can apply in a devolved context. From a Northern Ireland point of view, we have to look at the other EU countries, but, when considering the UK, a different approach applies.

The Chairperson:

May I put the contrary position to you? What would happen if we did not make this statutory rule, kept the status quo, whereby all members of the United Kingdom are charged the same amount, but increased the fees for students from Dublin? We would then be charging £3,000-odd to students from the United Kingdom and £9,000 to students from Dublin? What is your view of that?

Ms Thompson:

That would be contrary to the advice that we have been given. It would mean that we were not applying the same fee to EU students as we apply to students from here.

The Chairperson:

Yes, that would be illegal. For those who argue about equality, anti-discrimination and anti-sectarianism, it seems that it is OK to do that to one section of the European population but not to others. Whatever the legal position, that seems to be rank hypocrisy.

Sorry, Sammy, I interrupted you.

Mr Douglas:

Claire, are you saying that, in this instance and situation, European Union law means that students from England and Wales would not be treated the same as students from the rest of Europe?

Ms Thompson:

Yes.

Mr A Hamilton:

The key issue is that each devolved Administration must treat students from the EU in the same way as they treat their own students. However, as this is a devolved matter, it is up to each of the territories — England, Scotland, Wales and Northern Ireland — to determine their own position on fees.

Mr Allister:

There is no doubt that this is a difficult conundrum, which is not made any easier by the folly of EU law. However, that is where we are.

There is an expectation of a huge influx of GB students. Let us leave the finances aside for a moment and measure how attractive we have been to GB students: it seems that we have not been very attractive. I do not have the figures with me, but I got them recently. I think that, out of the huge student body in the two main universities, only 1,500 to 1,600 students come from GB. Given that our starting point is that we are not very attractive to GB students, can we translate the potential of lower fees into saying that we would be swamped and overwhelmed? Is there a real fear of that happening?

Mr A Hamilton:

Cost has never been a factor in influencing decisions here. However, there would be a significant differential between the cost of attending university in GB and attending university in Northern Ireland.

Mr Allister:

It might depend whether GB students could live at home and pay their fees. If they came here, they would need to expend a considerable amount on living costs.

Mr A Hamilton:

Yes, for which maintenance grants and support are available.

The risk is real, but it is too early to say. Recent statistics from the Universities and Colleges

Admissions Service (UCAS) show that the numbers of GB students applying to universities in Northern Ireland remain small but that there has been a sizeable increase compared with this time last year.

Mr Allister:

How small are those numbers?

Mr A Hamilton:

We have the figures here. They are not statistically exact, but, in each case, there was an increase in the number of students applying. We are talking about small numbers, with Scottish applicants increasing from 33 last year to 57 this year, Welsh applicants increasing from eight to 16 and English applicants increasing from 305 to 345. Those figures are for only a small proportion, less than 25%, of places.

The risk is there. The trouble is that, if we do not do anything, we could, potentially, take places from home students in 2012-13. We must respond to the risk and manage it in a proportionate way, which, I think, we are.

Mr Allister:

There is, however, also a risk that the legal action might succeed. Where would you be then?

Mr A Hamilton:

We would have to cross that bridge when we came to it.

Mr Allister:

By then, you would be in the neck of it.

Mr A Hamilton:

The approach is based on legal advice, and we are confident in that.

Mr Allister:

I hope that you are right because the Human Rights Act 1998 provides certain rights to education, and GB students could say that, in the Northern Ireland context, they were being denied those rights. I hope that your advice is right because, if not, you have a huge financial problem down

the track, have you not?

Mr A Hamilton:

I accept that that is your view, Mr Allister.

Mr Allister:

Although the natural influx of students from GB is very small, the natural influx from the Republic of Ireland is, comparatively, very large. I think that the same figures show that we already have approaching 4,000 students from the Republic in our university system. By virtue of the EU provisions, we now afford them the same low fees as our own students, so that number is likely to increase. Do you have an estimate of by how much?

Mr A Hamilton:

No, although that must be set in the context of the fees that apply in the Republic. As you know, no fee applies, but there is a registration fee of between €1,500 and €2,000. So it would still be cheaper for a student from the Republic to attend university locally than in Northern Ireland.

Mr Allister:

However, it is not a lot more expensive to come to Northern Ireland. Currently, 4,000 students obviously think that it is worth it.

Mr A Hamilton:

Indeed.

Mr Allister:

So we come back to the conundrum: the regulation creates a level playing field for foreign students from within the EU and disadvantages indigenous students from elsewhere in the UK.

Mr A Hamilton:

I am not sure that it should be considered a disadvantage, because students from the UK are being treated in exactly the same way as their local Administrations are treating them.

Mr Allister:

I mean disadvantaged vis-à-vis other EU citizens. EU citizenship is said to bring a commonality

of rights — there is not much commonality here.

Mr A Hamilton:

It is a matter for each local Administration to determine a position on fees.

Mr Allister:

Yes, I understand that.

The Chairperson:

The point is that they must do so within the framework of an overarching agreement to the Human Rights Act. Local devolved Administrations cannot act in isolation from the sovereign Parliament in Westminster or higher authority in Europe. Those are the laws that we are looking at. I did not mean to interrupt you, Jim.

Mr Allister:

I had finished.

The Chairperson:

Nobody doubts that we have arrived at the differences in student fees in a rather bizarre way. Have you considered any other way to restrict the number of students from different parts of the United Kingdom? Does the restriction have to be on the basis of cost, or could you apply quotas?

Ms Thompson:

No. The Minister, in his statement to the Assembly in September, made clear that we are keen to have a diverse student population in Northern Ireland and a diverse student body. So this is not about stopping people from Scotland, England or Wales coming to Northern Ireland. In fact, we are keen to see more people coming into the system here, so we did not look at quotas —

The Chairperson:

I have to say, Claire, that that is one of the stranger statements that I have heard. You want to encourage people to come by putting the price up to £9,000? That does not seem at all encouraging.

Mr A Hamilton:

You should not assume that, as a result of this, the local institutions will set a fee of £9,000.

The Chairperson:

They have indicated that the figure will be close to that.

Mr A Hamilton:

They will set a fee that will represent the competitive student offering that they want to make available. They will not want to price themselves out of the market.

The Chairperson:

Let us go back to the issue of quotas. The numbers that you just outlined were fairly modest; round about 300 from England, eight from Wales and 30 from Scotland, which is less than 500. If, as the Minister said, you genuinely want to increase diversity, why would you not just set the quota at 1,000 — double the number — but say to those students that they will pay the same amount of money that they pay anywhere else? That would achieve your aim of encouraging people to come to Northern Ireland but would not involve a huge sum of money. I agree that it would have to be managed by the universities, but it would keep to certain principles. Did you consider any options like that?

Mr A Hamilton:

We did not. If we were to go down that road we would have to consider whether a quota was an appropriate method. What happens to the candidates who have applied with the same grades? Is it right? Are they being discriminated against by not being accepted simply because the quota is full? That is a key issue.

The Chairperson:

So you can discriminate against people by putting up the fees that you are going to charge them, but you cannot discriminate against them on the basis of where they are domiciled?

Mr A Hamilton:

As I say, it would not be our view that we are discriminating against people by way of the fees that are being charged. We are simply making available the option of a higher education place in Northern Ireland at, approximately, the same cost as that charged by their local Administration.

The Chairperson:

Would you care to define “discriminate”?

Mr A Hamilton:

I can explain the policy and its rationale. We believe that, if we do not offer differential fees, the capacity that is available locally will be used up by people from GB, which will squeeze out Northern Ireland students.

The Chairperson:

I will come back to that point, but I do not want to —

Mr A Hamilton:

The Executive’s position on that was to protect the participation rates of people from Northern Ireland. There was a feeling that, if fees were increased beyond inflation, it would begin to impact on those decisions. The policy drive is intended to not create additional barriers, which would impact particularly on students from lower socio-economic groups, so that we continue to have the participation rates that we have. Those decisions are the will of the Executive.

The Chairperson:

I suspect that you are going to have an issue anyway. I say that only because I think that it is imminent. Has your analysis reached any conclusion yet as to what proportion of people that may have been going to Great Britain will not now go, therefore pushing out people with lower economic standing from Northern Ireland? Has your analysis taken any cognisance of the people from the Republic of Ireland who used to go to university in England but may not now go because of the difference in fees and may look to Northern Ireland? Has your analysis taken any cognisance of the people from England and the rest of Great Britain who traditionally go to the Republic of Ireland but may now go in much larger numbers because the differential is high, thereby transplanting people from the Republic of Ireland who may then look to Northern Ireland? Has the Department looked at how that displacement issue can be managed properly? Do you have a strategy in place for that?

Mr A Hamilton:

You are talking about a very detailed analysis of future student flows. Anyone would say that the

details of that are very difficult to forecast. What we had anticipated having different fee rates between Northern Ireland and Great Britain would mean was that there would be an essential requirement to increase capacity in Northern Ireland. As you know — we briefed you previously on the issue — we had hoped to set aside £10 million to accommodate an additional 2,000 places. In the event, that resource had to be diverted to the cost of maintaining fees at the current level, and the Executive instead approved an additional bid of £3 million, so that we could make a start on expanding student places here. However, there was a recognition that that would have to be closely monitored and that the possibility of future bids in that regard may well be put forward. That is the current position.

The Chairperson:

I want to move on to Alastair, who has been waiting patiently.

Mr Ross:

I need to leave after this question because I have to attend an Electoral Commission event, but, hopefully, I will get back again. I have a couple of quick points and then a brief question.

In terms of EU law, Jim is right that there is nothing that we can do about that. We all have frustrations about how decisions are taken in Brussels, and I think that yesterday's debate in the House of Commons made that very clear. However, we have to deal with the fact that, if we could charge higher rates for students from Dublin, Paris, Milan or elsewhere in Europe, we would do so, but we cannot do that.

When the Executive took the decision to freeze rates, it was welcomed by all the main parties in Northern Ireland. As Michelle said, the logical next step was to ensure that a decision taken by a devolved Administration benefited students in Northern Ireland. If we had taken a decision that, ultimately, did not benefit students in Northern Ireland, there would be outrage, and rightly so. Therefore, it is important that Northern Ireland students benefit from the decision that the Executive have taken. I also take the point that Andrew has made about whether students from England will be disadvantaged. They will not be disadvantaged, because if they stay in England, they will pay upwards of £9,000, but if they come to Northern Ireland, they will pay no more than that. Therefore, they are no worse off by coming to study in Northern Ireland.

The other point, which is absolutely crucial, is that we want to encourage people from

elsewhere in the United Kingdom to come to study at Queen's University or the University of Ulster, but not because it is seen as the cheap option. People have to want to come here because they see the quality of education and teaching in our two institutions as being good enough. It should not be about cost; it should be about the quality of the education.

Northern Ireland has different circumstances from England, Scotland and Wales in a vast array of areas. That is what devolution does. It means that we will have different circumstances. In Northern Ireland, pensioners are better off than they are elsewhere in the United Kingdom. That is a good thing. I do not buy the line of argument that some people have gone down that says that none of the benefits that devolution has brought to the people of Northern Ireland should be there if we are to be equally fair across the United Kingdom. Devolution means that we will have different circumstances.

I have one quick question before I have to run off. In respect of the rule about excluding individuals who are domiciled in England, Wales, Scotland or the Islands, what is the definition of domiciled? To ensure that that is not exploited, how long would an individual need to have lived in Northern Ireland before they would qualify for the lower rate of fees?

Mr A Hamilton:

We think that it is three years, but we will confirm that to you if it is not.

Mr Ross:

OK. Thank you.

Mr Allister:

You have to demonstrate a settled intention. Therefore, it is a bit flexible.

The Chairperson:

I know that you have to go, Alastair, but this matter will go to a division.

Mr Ross:

Hopefully, I will be back.

Mrs Overend:

A lot of my questions have been covered, but I would like some statistics. You provided estimated figures for the number of people who were applying to come to Northern Ireland from other parts of GB. Can you give the same estimated figures for the Republic of Ireland? You are assuming that the increase is because of the cheaper fees, but, if there is a similar increase from the Republic of Ireland or other parts of Europe, you cannot assume that that is the case. Do you have those figures?

Ms Thompson:

I should stress that the figures we have relate to the closing date that has just passed; that is, the October deadline for applications for medicine, dentistry, veterinary and all Oxford and Cambridge courses. They are very early indicators. The deadline for the majority of other courses is January. Some people apply sooner, but they do not have to apply until January. Therefore, the figures have to be taken with a health warning, and UCAS has been very clear that we cannot read into them a future projection.

The numbers of EU students who have applied for those courses, at this stage, have reduced by just over 18% compared with last year. Last year, at this point, there were 257 applications; this year, there are 210. However, there has been an increase in the number of non-EU students applying. That is one area in which there has been an increase of applications, but it is specific to certain courses or to people who have chosen to apply before the deadline, which, I think for the majority of courses, is 15 January.

Mrs Overend:

What about the number of people applying to Northern Ireland?

Ms Thompson:

That is the number of EU students applying to Northern Ireland. There are 210 at this stage this year, compared with 257 last year.

Mrs Overend:

You said veterinary places.

Ms Thompson:

The deadline relates to Oxford, Cambridge, veterinary, medicine and dentistry. So the figures are all together. In the Northern Ireland context, people have applied to the medicine and dentistry-related courses, but it is how you class-group their statistics.

Mrs Overend:

What do the statistics include?

Ms Thompson:

They are statistics that come out across the board for all of the UK. The figures for the people who have applied to Wales or Scotland, and so on, will include the applicants to veterinary courses, if that is on offer in the area. The number of applications for the courses that are on offer in Northern Ireland, to date, is 210.

Mrs Overend:

What has that reduced from?

Ms Thompson:

At this time last year, it was 257.

Mrs Overend:

So we are saying that the number of people applying to come to Northern Ireland is down.

Ms Thompson:

Yes, it is down.

Mr A Hamilton:

To pick up on the detail of your question: it is important to note that keeping student fees constant, except for inflationary increases, means that the decisions by people from the Republic are not influenced. The issue about fees has not impacted on that decision. It is the same decision today as it was last year, with regard to cost.

Mrs Overend:

That is what I am trying to differentiate.

Ms Gildernew:

Thank you, a Chathaoirligh. You mentioned the rank hypocrisy. I do not know if it was me you were talking about. I will check Hansard to make sure that it was not.

The Chairperson:

It was not. I was directing it to the person who made the statement. It was an observation. For the record, I think that people who stand firmly, as I do, on anti-discrimination of any sort still believe that it is no less wrong to discriminate against people from the United Kingdom than it is to discriminate against people from the rest of Europe. That is my position on the matter. You have the floor, so you can take the conversation wherever you like.

Ms Gildernew:

During the session, we established that there are quite a number of students from the South studying in the North. Many of my constituents choose to study in the South. Do we have a figure for that?

In my previous job, I made decisions that had a big bearing on EU directives. There were times when the boundaries of EU law were pushed. Every time I tried to push the boundaries, my permanent secretary pulled me back, or did his best to. The point is that we know the parameters in which we are dealing. We cannot do anything about non-UK EU students, if that is how you want to term them, studying here. The only area in which we have flexibility is students from England, Scotland and Wales. Like Scotland, which took the decision to do the right thing by their students before us, this is where we are at.

I want to reiterate that I welcome the fact that the Executive have tried to find a creative solution for students from the Six Counties to study here. It has long been the reality that students can get into university courses across the water with much lower grades than are required here. The differentiation on the cap on student numbers means that, now, students have to get much higher grades to get a university place here, compared with grades required for a place in England, Scotland and Wales. Students can get into a university degree course in England, Scotland and Wales with much lower points than are required here. Is that still the case, Andrew? I know that it was when I was applying through UCAS.

Mr A Hamilton:

Yes. A large proportion of the people who decide to go to university in GB are, if you like, determined leavers. However, there will also be a number of others who apply to GB because they do not meet the entry criteria for Queen's University Belfast or the University of Ulster.

Ms Gildernew:

Have you any idea what the points differential is?

Mr A Hamilton:

I have not got those numbers, unfortunately.

Ms Gildernew:

In the past, it would have been three Cs. If you did not have three Cs or better, you would not have got a university place here.

Mr A Hamilton:

I do not have those details.

Ms Gildernew:

OK.

Mr Buchanan:

I have more of a statement than questions, because many of the issues have been covered. If our devolved Government want to make a difference to our people, we need to move forward rather than continually look over our shoulders to see whether we are doing the right thing. We need to stand on our own feet and move forward. This is something that the Executive have said and done; they have taken the initiative and moved forward in this direction. As Alastair said, if we carry the logic through from beginning to end, we should not be taking any decision here that differs in any way from what is happening across the UK because to do so would discriminate against people there. I commend the Executive for their decision. We should fall in behind them, because let us remember that all parties on the Executive agreed to this when it was discussed. Everyone and every party agreed to it, but there seems to be some division here. We will certainly support the SL1 that is before the Committee.

The Chairperson:

I have a few questions of my own. People may then want to have a debate rather than to ask more questions, or we can go straight to a vote.

On the issue of protecting people from lower socio-economic backgrounds in Northern Ireland, is there a danger that, as things stand, there will be grade inflation and some of the people who may have gone to Great Britain will not now go but stay in Northern Ireland? Therefore, given that the number of places is more or less the same, it may become even more difficult to get into university or college in Northern Ireland. Is that an issue?

Mr A Hamilton:

We have said that we believe that the capacity in Northern Ireland should be expanded because we believe that more of the cohorts that go to Great Britain will want to look to Northern Ireland as their preferred source of higher education.

The Chairperson:

So, do you think that we will have a problem, regardless?

Mr A Hamilton:

We will come back to the issue of the number of places in Northern Ireland. We believe that the £3 million allocated by the Executive is very much a first step in that process, and we will return to that issue in due course.

The Chairperson:

You said £3 million, but what was the bid? How much did you want?

Mr A Hamilton:

As part of our forward planning, we earmarked £10 million to finance 2,000 additional places, the cost of which would have to be negotiated with the sector. However, that was the policy intent at that time.

The Chairperson:

If not all universities in England, Wales and Scotland had put up their fees to the full £9,000 and had we put up fees by a modest amount to, for the sake of argument, £4,500 — a figure that was

in a paper put to the Executive by a previous Minister — would the reduction in the differential have helped us to manage the situation more easily? Would the £4,500 fee have increased the number of students we could have had here, so that we might have increased the number of students at Magee in Londonderry or elsewhere?

Mr A Hamilton:

It is our view that the higher the fee differential, the more impact that it will have on student flows. A very modest difference would not have the same impact. However, once you open up a significant difference of many thousands of pounds, it will impact on individual student choices and those of their families. Issues of affordability come in to play.

The Chairperson:

What legal advice did you seek? Did you just say that that is the policy that you intend to carry out and ask whether it is legal? How did you frame the question to your legal representatives?

Mr A Hamilton:

The legal advice is a matter for the Department.

The Chairperson:

You do not have to tell us. You have told us that you are satisfied, but I want to know what legal advice you asked for.

Mr A Hamilton:

We are confident of the legality of our position. That is all that I can say.

Mr Allister:

Not to be disparaging, but is the legal advice just from the departmental solicitors?

Mr A Hamilton:

I am not willing to disclose that in the current environment.

Mr Allister:

Why not?

Mr A Hamilton:

The source of the legal advice is a matter for the Minister.

Mr Allister:

Presumably, the attorney was asked. Was he?

Mr A Hamilton:

You have my position on that.

Mr Allister:

I have not. That is the problem.

The Chairperson:

I think that it is in order for us to ask. We could write to you and ask who you got your legal advice from. You do not have to tell us what the legal advice is, but it seems reasonable to ask who gave it.

Mr A Hamilton:

If you write to us, we will agree the response to you at that time.

The Chairperson:

I will write and ask.

We have come to a close on the information. Unless there are any other questions, I am happy to let our colleagues leave. Thank you very much for coming and giving us the information.

I will have to put the question. Are there any comments that people want to make? If not, I will make some, but I do not want to stymie anybody's —

Mr Allister:

I said that it was a conundrum, and it is. It is very difficult. Fundamentally, I am uncomfortable with the idea that we are dragooned into giving preferential treatment to students from across the EU but choose to — I will not say discriminate — apply a differential policy to students from our own country. I find that a difficult concept. It is pretty clear that the statutory rule will go

through on a party vote. Perhaps some of the people who vote for it will have reservations. Certainly, my reservations are such that I will not vote for it.

Mr Ross:

A number of us are uncomfortable about the fact that we cannot charge higher rates to those EU students, but the reality is that we cannot do that. Scotland has already taken a decision that Scottish students benefit from. Devolution is about making sure that our local students get the best possible deal. The discussion that we have had today is about ensuring that students in Northern Ireland benefit from the decision that our local Assembly has taken. Therefore, to me, this is not about not extending the lower rates to elsewhere in the United Kingdom; it is about making sure that local students get the best deal possible. That is why I will be supporting it.

The Chairperson:

We have a statement coming forward that says that we want to increase the richness of the university experience by bringing people from different parts of the world. That statement was given in evidence. It seems to me that the route now will change significantly the structures that might encourage people to come from other parts of the United Kingdom. The argument has been put forward that they will not be any worse off if they come to Northern Ireland than if they had gone to a university in England. However, I wonder how that works with Scotland.

I will not take too long, but I want to put to you why I personally take such a strong view on this. To me, it is about equity. If somebody had put forward a proposal to charge our fellow citizens in the United Kingdom £3,600 — the same as Northern Ireland, because we are part of the United Kingdom — and, if the EU rules were not there, to charge people from the Republic of Ireland or Paris £9,000, I suspect that a lot of people would say, “This is discriminatory”. I wonder why, when you argue on a matter of absolute core principle, we are able to say that we will discriminate against people going the other direction. What is sauce for the goose is sauce for the gander.

Tom brought up fairness. I am not challenging the Executive’s right to set whatever fees they want to set. That is the benefit of being devolved. However, when you have set those fees, you should apply them equitably and fairly to everybody. So, by all means let us set our figure at £3,000, £4,500 or whatever figure we want, but we should not discriminate against England, Scotland and Wales. We are treating them differently from the Republic of Ireland, France,

Germany and anywhere else. That just seems to me to be unfair. Chris did not wish to speak on this, but the Alliance Party's manifesto said that there should be no unfair increases in tuition fees. This, to my mind, is unfair.

I will conclude by saying that there is a danger that we could handle this in a way that creates a backlash from the people in Westminster who provide a significant amount of money to this part of the world, in that it looks as if you are having to pay more if you come from the place that gives us the money than if you come from somewhere else. Personally, I am deeply uncomfortable with it.

Mr Ross:

They are not paying more; they are paying exactly the same as they would if they stayed in England. They are not paying more by coming to Northern Ireland.

You said that people pay us. Yes, our block grant comes from Westminster, but devolution means that, in many areas, our citizens are better off than elsewhere in the United Kingdom. That is what devolution is about. If it is a point of principle, you have to also oppose free transport for the over-60s, lower rates and all the other things that Northern Ireland citizens get that their counterparts in GB do not.

The Chairperson:

I am sorry, Alastair, but you missed the point.

Mr Ross:

I have not missed the point.

The Chairperson:

Then maybe I have not made it clearly enough. My issue is not that you cannot have differential pricing. My issue is that, if you have differential pricing, you should give it fairly to everybody who wants to come. We are obviously not going to reach a conclusion on this.

My final statement is that I do not think that we have really got to the bottom of the massive student flows that will come around in the next year. So, regardless of what happens to this SL1 or statutory rule, there will be a problem because we have not dealt with this issue properly. We

have tried to put a sticking plaster over things and have come up with some convoluted system that tries to do it without looking at the options. People tell me that people in the Executive agree with things, but there was a time and a place when it was not clear what fees were to be charged by universities in Great Britain, and it was also not clear what way the universities here were going to take those things. However, it is becoming increasingly clear, and I think that we will have a problem with it.

I will close on that point and put the matter to the vote, unless anybody else wants to say anything. I do not want to stop anybody in their tracks.

Mr D McIlveen:

What you are describing sounds more like communism than devolution. It would be unforgivable for the Committee to end up today with a policy of doing nothing and simply waiting to see what happens. Colleges and universities are hanging by a thread financially, and they need us to address the issue here and now. The fact that the issue has already stalled for two weeks has created difficulties and pressures for the very sector that we are supposed to support. That has sent out a very damaging message.

The Chairperson:

It is disappointing for me to hear you use the word "communism", when we are, in fact, trying to go through a democratic process. I have a mandate, just as you do, to raise the issues — that is democracy — and I have raised my concerns. If I were in a communist state, I would not be able to do so. Here, however, I am able to put forward my arguments in the hope of convincing some people, who, I suspect, might have certain sympathy with the possibility of there being another option. I would have preferred another way of managing student numbers, whether through quotas, bursaries, or something else. I am looking for some way that does not disadvantage citizens of the United Kingdom and Europe. I seek to try to do the best for all. I dare say that there will be other comments later on. Unless anybody else wants to speak, I will put the matter to the vote.

Mr Douglas:

I have many concerns, including the legal aspect. Perhaps Jim could give us legal advice, given his background. We need to get some legal comfort here. I was going to ask the officials more about their legal advice, but we were told not to do so. I do not understand why the officials can

simply outline the independent legal comfort that they have received without having to name names. That general point has come up before.

Andrew talked about the danger to what I would call low-income families. For me, if it were to have a negative impact, I would certainly not go down that route. I do not care what David Cameron or anybody else says. The UK Government introduced the £9,000 fees. I will support the statutory rule, primarily on that basis. Also, to be honest, I think that the Executive have already agreed it. David is right in saying that we should go ahead and vote.

The Chairperson:

I agree that we should try to look after the most vulnerable in our society, but the question is how we do that.

I put it to the Committee for Employment and Learning that it has considered the Student Fees (Qualifying Courses and Persons) (Amendment) (No. 2) Regulations (Northern Ireland) 2011 and is content for the Department to proceed to make the statutory rule.

The Committee divided: Ayes 6; Noes 3.

AYES

Mr Buchanan, Mr Douglas, Ms Gildernew, Mr Lyttle, Mr D McIlveen, Mr Ross

NOES

Mr Allister, Mr B McCrea, Mrs Overend