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Department for  
**Employment  
and Learning**  
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# A consultation on the proposal to exempt student loans from individual voluntary arrangements

**July 2009**

**Closing date for responses:** Friday 23rd October 2009

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## Ministerial foreword



Dear Consultee

### Student Loans and Individual Voluntary Arrangements

I enclose a copy of a consultative document setting out proposals for the treatment of student loans under Individual Voluntary Arrangements (IVAs). These proposals will exempt loans made to students out of public funds in Northern Ireland from being included in an IVA.

The policy in respect of IVAs is the responsibility of the Department of Enterprise, Trade and Investment and will be outlined in the body of the consultation document.

In terms of student finance, the Department for Employment and Learning makes funding available to the Student Loans Company and the Education and Library Boards to provide financial support to Northern Ireland domiciled students undertaking eligible courses of higher education in the United Kingdom and the Republic of Ireland.

The financial support available consists currently of means-tested non-repayable grants and bursaries, loans to cover fees and maintenance costs and supplementary grants to assist students with, for example, a disability or dependants. I should point out however that the current fee and student finance arrangements in Northern Ireland are currently the subject of an independent review.

This consultation will focus on the publicly funded loan element of student support and its treatment under an IVA.

Loans available for students are subsidised by the public purse and are one of the most generous forms of credit available. Unlike commercial loans the only interest charged is that of the rate of inflation to make sure that the loan repaid is equal in real terms to the amount borrowed. In addition, repayments are linked to income, not the level of debt, ensuring graduates are required to repay their loan only when they can afford to do so.

Since there are already safeguards built into the student loan system to protect low-income or over-indebted student loans borrowers, I do not consider it appropriate to allow borrowers to reduce or limit their ability to repay by entering into an IVA.

It is, therefore, in the interests of taking steps to protect public funds whilst at the same time ensuring a favourable package of student finance remains available to those who need it and can benefit from it, that I submit these proposals for consultation.

I look forward to receiving your views in due course.

Yours sincerely

**Sir Reg Empey MLA**  
**Minister for Employment and Learning**

## Introduction

1. The purpose of this consultation is to seek views on the proposal by the Department for Employment and Learning (the Department) to bring forward legislation to exempt publicly funded student loans from Individual Voluntary Arrangements (IVAs), ensuring consistency in the treatment of student loans with that for bankruptcy.

## Background

2. The Department for Employment and Learning has responsibility for providing financial support for Northern Ireland domiciled students undertaking eligible courses of higher education at institutions in the United Kingdom and the Republic of Ireland. The support is underpinned in the Education (Student Support) Regulations (Northern Ireland) made annually. Applications for financial support are assessed by the local Education and Library Boards with subsequent payments processed by the Student Loans Company (SLC).
3. The financial support available consists currently of means-tested non-repayable grants and bursaries, loans to cover fees and maintenance costs and supplementary grants to assist, for example, students with disabilities or dependants. The maximum levels of support for the incoming academic year 2009/10 are;

**Tuition Fee Loan** £3,225

**Maintenance Loan (not final year)**

Living at Home £3,673

Living away from Home £4,705

Living in London £6,643

**Maintenance Grant** £3,406

4. With the current "free fees" policy in operation in the Republic of Ireland, Northern Ireland domiciles currently studying eligible courses there do not require a fee loan and therefore avail of loans for maintenance only.
5. This consultation will focus on the repayable loan element of publicly funded student support for Northern Ireland students. The repayment process differs depending on the type of student loan taken out. Students entering higher education before September 1998 were entitled to a "mortgage-style" loan. After this date students will have been assessed for "income-contingent repayment" loans. Details of both these types of loan are set out in paragraphs 11 to 17.

6. The Department's resource allocation to fund student loans in the financial year 2008/09 is set out below;

	Amount (£ m)
Tuition fee loan	77.360
Maintenance loan	113.450

In addition the Department bears a charge to reflect;

- (i) the proportion of loans that will be written off due to death or permanent disability of borrowers,
- (ii) incomes not being sufficient to fully repay the loan, and
- (iii) the subsidised nature of student loans which are charged interest equivalent to the rate of inflation rather than at commercial rates.

This cost, the notional loan subsidy, was £57m for 2008/09.

## What is an IVA?

7. Responsibility for the policy and regulations on IVAs in Northern Ireland rests with the Department of Enterprise, Trade and Investment (DETI). IVAs are governed by Part VIII of the Insolvency (Northern Ireland) Order 1989.
8. IVAs are intended to be a more flexible alternative to bankruptcy, less costly and avoiding some of the restrictions which apply to a bankrupt. IVAs enable an individual to enter into an arrangement with a creditor or creditors whereby those creditors agree to accept less than the full value of the debt as satisfaction for the whole amount.
9. An IVA is a legally binding arrangement supervised by a licensed insolvency practitioner, the purpose of which is to enable an individual to reach a compromise with his/her creditors and avoid the consequences of bankruptcy.
10. An IVA precludes all creditors notified, and therefore included in the IVA, from taking any enforcement action against the debtor post-agreement assuming the debtor complies with the obligations in the IVA.

## Publicly funded student loans

11. There are two main types of publicly funded student loan. These include loans for maintenance for students in higher education prior to 1998 more commonly known as "mortgage style loans" and loans for maintenance support and tuition fees for students in higher education since 1998, commonly known as "income contingent repayment loans".
12. Mortgage style loans continue only as a legacy regime, still available to a very small number of students who commenced higher education courses before September 1998. These loans are provided for through the Education (Student Loans) Regulations (Northern Ireland) 1998, SR 1998 No. 58 (as amended) made under the Education (Student Loans) (Northern Ireland) Order 1990, S.I 1990/1506 (N.I. 11).

13. These loans are repayable in a series of equal monthly instalments, generally over a fixed term of 5 years (it is in this respect that the loans are "mortgage style"). The loans generally become repayable the April following the end of the borrower's course. Borrowers can defer repayment of mortgage style loans if their current income is less than £25,936 per annum.

14. Mortgage-style loans are cancelled upon death, permanent disability or on the borrower reaching a prescribed age. The loans are governed by regulated consumer credit agreements between the Student Loans Company ("the SLC") and the individual borrower.

15. Income contingent repayment loans form part of the current student loans regime, and have been issued since the 1998/99 academic year. Unlike commercial loans, student loans are non profit making with the Government subsidising the actual cost of interest. These loans are provided for through the Education (Student Support) Regulations (Northern Ireland) 2009, SR 2009 No. 37 in exercise of powers conferred by the Education (Student Support) (Northern Ireland) Order 1998, S.I 1998/1760 (N.I. 14). These loans are also governed by a contract between the Department and the individual borrower, which is exempt from consumer credit regulation.

16. Income contingent repayment loans are also repayable the year after leaving higher education. However, the obligation to repay only occurs when the borrower's income exceeds a certain threshold, currently £15,000. The amount of each repayment is currently 9% of the borrower's gross income above £15,000. Repayments are collected via Her Majesty's Revenue and Customs (HMRC) through its Pay As You Earn (PAYE) system or through self-assessed tax returns. These loans are also cancelled upon death, permanent disability, the borrower reaching the age of 65 (in the case of loans pre-2006) or 25 years after the April when the individual first becomes responsible for paying back the loan (in the case of loans since 2006).

17. Student loans are made on an annual basis. The application forms make clear that the repayment of the loan will be regulated in terms of repayment levels, repayment rate and income thresholds. By signing the application forms for financial support the student accepts these terms.

## Student loans and IVAs

18. Currently both mortgage style loans and income contingent repayment loans can be included by a borrower in an Individual Voluntary Arrangement (IVA). This may have the effect of permanently restricting the Government's ability to recover the full amount of the loan from the borrower.

19. The Department for Employment and Learning (the Department) is proposing to legislate to exclude publicly funded loans that it has paid to students, from any IVAs which borrowers may enter into during the lifetime of their loans.

20. Student loans are currently excluded by provisions in the Higher Education (Northern Ireland) Order 2005 (“the 2005 Order”) from a borrower’s bankruptcy debts, so that upon discharge from bankruptcy the borrower remains liable to repay his or her student loan. During the passage of the 2005 Order, it was considered whether student loans should also be excluded from IVAs. In 2005, IVAs were relatively uncommon. In line with England, the Department decided not to legislate at that time with respect to IVAs and to keep the situation under review. At that time their financial effect on the Student Loans Company (SLC), which administers loan payments and collection, was negligible: the SLC had dealt with only 11 IVAs in the United Kingdom, covering £41,000 in value of student loans.

21. However IVAs have increased significantly in number in recent years. The Apprenticeship, Skills, Children and Learning Bill, which is currently being brought forward at Westminster contains provisions which seeks to legislate to exempt student loans, paid out of public funds by the respective Government Departments in England and Wales, from IVAs.

## Rationale for change

22. The Department now considers that it is anomalous to exclude student loans from bankruptcy but not from IVAs. Student loans are made on non-commercial terms, including low interest rates and the obligation to repay being linked to a student’s income. In addition, as student loans are paid out of and subsidised by public funds, it is not considered appropriate to allow borrowers to reduce or limit their liability to repay by entering into IVAs.

23. It is important to emphasise that, whilst the development of this policy and passage of subsequent legislation might coincide with the current review of variable fees and student finance arrangements, this policy deals explicitly with;

- (a) aligning the treatment of student loans in relation to IVAs with that which applies to bankruptcy; and
- (b) the protection of public money.

## Equality impact

24. In line with commitments in its equality scheme, the Department has considered the impact of this proposal on the nine equality categories identified in Section 75 of the Northern Ireland Act 1998. Having considered all available evidence, it is the Department’s view that the proposal to exempt student loans from Individual Voluntary Arrangements would not have an adverse impact on any of the nine equality categories.

## Regulatory impact

25. The Department considers that this proposal to exempt publicly funded student loans from inclusion in an IVA would not place an additional burden on business, charities and voluntary bodies.

## Conclusion

26. The Department concludes that it is necessary to take appropriate measures to protect the public funds disbursed through student loans from potential write-off or reduction through IVAs. It proposes therefore to bring forward through primary legislation, safeguards that ensure consistency in the treatment of student loans, exempting them from IVAs in a similar manner to the current arrangements that apply in the case of bankruptcy orders.

The Department would welcome your views on this proposal.

## Responding to this consultation

27. This consultation will be carried out in accordance with the Government’s criteria in its Code of Practice on Consultation – see Annex 1.

28. The Department for Employment and Learning welcomes comments in relation to this policy proposal to exempt publicly funded student loans from Individual Voluntary Arrangements. Comments on this consultation should be made to:

**Patrick Smith**  
**Department for Employment and Learning**  
**Higher Education Division**  
**Adelaide House**  
**39 - 49 Adelaide Street**  
**Belfast**  
**BT2 8FD**

**Email:** patrick.smith@delni.gov.uk  
**Fax:** 028 9025 7747

29. The Department is keen to ensure that all barriers to proper consultation can be removed. The Department will therefore consider invitations to meet with organisations with a particular interest in these proposals.

30. This consultative document is available in print form and alternative formats, free on request from the above address, by telephone on 028 9025 7756 or by e-mailing studentfinance@delni.gov.uk

31. This document can also be accessed on the Department’s website at:  
**[www.delni.gov.uk/consultation-zone](http://www.delni.gov.uk/consultation-zone)**

32. Responses should be received by 3.00pm on **Friday 16 October 2009** .

## Freedom of Information Act 2000 – Confidentiality of consultations

33. The Department will publish a summary of responses following the completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations. This sets out the legal position about any information given by you in response to this consultation.
34. The Freedom of Information Act gives a public right of access to any information held by a public authority, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.
35. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
- The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided.
  - The Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature.
  - Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
36. For further information about the confidentiality of responses please contact the Information Commissioner's Office (or see the website at: [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)).
37. For further information about this particular consultation please contact the consulting branch indicated at paragraph 28.

## Code of practice for consultations

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation processes should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The complete code is available at this link to the BERR web site - [www.berr.gov.uk/files/file47158.pdf](http://www.berr.gov.uk/files/file47158.pdf)

## ANNEX 2

### List of organisations consulted

This policy consultation was issued to the following organisations in accordance with guidance from the Machinery of Government Division of the Office of First Minister and deputy First Minister and the Equality Scheme of the Department for Employment and Learning.

Action Mental Health  
ADVICE NI  
Age Concern  
Alliance Party  
Association of NI Colleges  
Barnardos  
Belfast Metropolitan College  
Belfast Solicitors Association  
Care Challenge  
Carers Northern Ireland  
Catholic Bishops of Northern Ireland  
Cedar Foundation  
Children's Law Centre  
Chinese Welfare Association  
Civil Law Reform Division  
Coalition on Sexual Orientation  
Committee on the Administration of Justice  
Community Foundation for Northern Ireland  
Community Relations Council  
Confederation of British Industry  
Council of the Inn of the Court of Northern Ireland  
Democratic Unionist Party  
Destined  
Disability Action  
Dungannon Development Association Training Services  
Educational Guidance Service for Adults  
Equality Commission  
Federation of Small Business  
Food Standards Agency  
Gairm  
General Consumer Council for Northern Ireland  
Gingerbread Northern Ireland  
Greater Shankill Community Council  
Green Party  
Guide Dogs for the Blind Association  
Help the Aged, Northern Ireland  
Her Majesty's Revenue and Customs  
Human Rights Commission  
Independent Health Coalition

Indian Community Centre  
Irish Congress of Trade Unions (Northern Ireland Committee)  
Labour Party (NI)  
Law Centre (NI)  
Law Society of Northern Ireland  
Local Government Staff Commission for NI (LGSC)  
Magherafelt Women's Group  
Magistrate's Court - District Judge  
Mencap  
Ministers of the Northern Ireland Executive  
Ministry of Defence  
NASUWT  
Newry & Mourne Women  
NIPSA  
North West Community Network  
North West Regional College  
Northern Ireland Anti-Poverty Network  
Northern Ireland Association of Citizens Advice Bureaux  
Northern Ireland Chamber of Commerce and Industry  
Northern Ireland Chamber of Trade  
Northern Ireland Conservative Association  
Northern Ireland Council for Ethnic Minorities  
Northern Ireland Council for Voluntary Action  
Northern Ireland Court Service  
Northern Ireland Judicial Appointments Commission  
Northern Ireland Local Government Association  
Northern Ireland Ombudsman  
Northern Ireland Women's European Platform  
Northern Ireland Youth Forum  
Northern Regional College  
NUS-USI  
Open University  
Participation & the Practice of Rights Project  
PCM Associates  
POBAL  
Presbyterian Church  
Progressive Unionist Party  
Queen's University of Belfast  
Queen's University of Belfast, School of Law  
RNIB  
Royal National Institute for Deaf People (NI)  
Rural Community Network  
Save the Children  
Sinn Fein  
Skill Northern Ireland

## List of organisations consulted (cont.)

Social Democrat & Labour Party  
Society of Local Authority Chief Executives  
St Mary's University College  
South East Regional College  
South West Regional College  
Southern Regional College  
Staff Commission for Education and Library Boards  
Stranmillis University College  
The British Council  
The Ulster People's College  
Traditional Unionist Voice  
Training for Women Network  
Travellers Movement NI  
Ulster Unionist Party  
University & College Union  
University of Ulster  
University of Ulster, School of Law  
Victims Unit, OFMDFM  
Women's Forum Northern Ireland  
Women's Resource & Development Agency  
Women's TEC  
Worker's Party

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