

Explanatory Memorandum to The Assembly Learning Grants and Loans (Higher Education) (Wales) (Amendment) Regulations 2007

This Explanatory Memorandum has been prepared by the Student Finance division, Welsh Assembly Government and is laid before the National Assembly for Wales.

Description

1. These Regulations are intended to amend the existing Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2007 No. 1045 (W.104), which set out the student support arrangements for students ordinarily resident in Wales for the academic year 2007/08 and which enables the Welsh Ministers to make awards of grants and loans to eligible students. The changes are required to incorporate a number of technical amendments, refinements and improvements to existing provisions.

Matter of special interest to the Secondary Legislation Committee

2. These Regulations follow the Negative Resolution procedures and are of a routine nature. They are of no special interest to the Secondary Legislation Committee.

Legislative Background

3. The powers enabling this Instrument to be made are contained in sections 22, 42(6) and 43(1) of the Teaching and Higher Education Act 1998. These powers have been transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 of the Government of Wales Act 2006. Responsibility for issues relating to the contents of the Regulations has been delegated to my portfolio as Deputy Minister for Education, Lifelong Learning and Skills. The legislation follows the Negative Resolution procedure.

Purpose and intended effect of the legislation

4. These Regulations amend the existing student support Regulations, which cover students ordinarily resident in Wales taking designated higher education courses in respect of the academic year 2007/08. The existing 2007 Regulations set out the loans and grants available to students and the associated eligibility and payment criteria along with changes made to the 2006 Regulations.

5. The Regulations are required to amend the existing students support Regulations for 2007 as well as the 2006 Regulations to ensure the European Court of Justice (ECJ) decision in the case of Gürol (Case number C-374/03), which concerned the application of article 9 of Decision No 1/80 of the Association Council (The Association Council was created by the agreement establishing an association between the EC and Turkey). It was held that article 9 has direct effect in the Member States of the EC and as such

guarantees the children of Turkish workers a non-discriminatory right of access to vocational training and education grants provided in connection with such training.

Article 9 of Decision 1/80 of the Association Council of 19 September 1980 provides that Turkish children who are residing legally in a Member State with their parents who are or have been legally employed in that Member State are to be admitted to courses of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of nationals of that Member State. Article 9 also provides that such children may also be eligible to benefit from advantages provided for under the national legislation in this area.

Ms Gürol was a Turkish national who lived with her parents in Germany. Both her parents were legally employed in Germany. She was a studying at a University in Germany and her course involved a period of study outside Germany. She applied for but was refused a grant for this period of study outside Germany. The conditions applied in determining whether she qualified for a grant for that period of study were less favourable than those applied to German nationals.

The ECJ held that article 9 of Decision had direct effect in the Member States of the EC. They also held that article 9 guarantees a non-discriminatory right of access to education grants to Turkish children. Wales (and the UK) already allows support (and home fee status) to children of economically active EEA and Swiss nationals (including UK nationals) who have been ordinarily resident in the EEA and Switzerland throughout the three years prior to the first day of the first academic year of the course. Following this ECJ decision, it is unjustified to deny home fee status or student support to children of economically active Turkish nationals in the UK, where the student has been resident in the EEA, Switzerland and Turkey throughout the three years prior to the start of the course. Not including Turkey as a place of qualifying residence would make it harder for Turkish children to comply with the residence criteria and this would arguably be discriminatory contrary to EC law.

Consequently, we need to ensure that children of Turkish workers studying in the UK are treated no less favourably than UK nationals in relation to access to courses of higher education and also to the support provided to students undertaking such courses.

6. The Regulations are required to amend the existing students support Regulations for 2007 to allow students who are ordinarily resident in Wales ("Welsh students") to access compressed courses in several pilot areas. Funded by the Higher Education Funding Council in England as Flexible Learning Pathfinders, eight Fast Track honours degrees (also known as 'compressed degrees') enrolled students at three pilot English higher education institutions, that started in the Autumn of 2006 (AY 2006/07). This provision is to ensure that any Welsh students enrolled on the pilot Fast Track degrees qualify for student support during full duration of their course of study, notwithstanding the limited period of non attendance relating to distance

learning for part of the course. The aim is to reduce the risk of students dropping out of this pilot provision. Currently, there are no Welsh students on these courses. The number of courses and pilot English institutions is expected to increase in AY 2007/08, thus increasing the possibility of Welsh students starting on these courses.

Students on this pilot provision study over two long academic years (24 months) by creating a third term in place of the traditional summer vacation period during which they undertake varying combinations of summer schools, workshops, e-learning, independent learning and work-based learning. The number of Welsh students expected to start these pilot courses will be extremely small, if any.

The pilot courses generally have three terms (sometimes called semesters) of 15/15/12 weeks. The final term normally runs from June-August, and consists of attendance at the institution, work based placements and distance learning. The amount of distance learning in the third terms of the pilots is between 4 and 10 weeks, with the first two terms requiring full attendance. The intention of the proposed regulatory change is to provide full-time tuition fee and maintenance support to students on Fast Track degree courses for the duration of their course notwithstanding the limited period of non-attendance relating to distance learning for part of the course.

Provision is already made for students on courses with a longer than normal academic year and/or which is classed as an “accelerated degree” (students on accelerated degree courses are eligible for the full year maintenance loan to be paid in the final years of the course). However, these provisions do not apply to students on Fast Track degree courses. At present, distance learning courses, including e-learning, attract only the part-time student support package, with exceptions made only for students who have a disability that prevents them from attending.

Students who satisfy the relevant eligibility criteria including the means test (where appropriate) should be able to apply for the standard student support package, including the extra weeks’ provision and targeted grants, if applicable. It is understood that no Welsh students have so far participated on these courses. The Welsh Assembly Government would have funded a Welsh domiciled student for academic year 2006/07, had an application been received. By making express provision, in the 2006 Regulations, it ensures that Welsh students are not disadvantaged in comparison with English students, because the facility for them to be funded is included in the Regulations. Similar provision will be made to amend the 2007 Regulations thus ensuring equal treatment for eligible Welsh students.

7. In addition, it provides the opportunity to incorporate a number of technical amendments and clarifications. The details of the amendments to the original Regulations are set out below:

- correct published figures and thresholds;

- further strengthen the regulations in regard to those students previously refused student support prior to AY 2006; and
- tidy up regulations 6 and 7 which relate to previous study rules and will more closely mirror relevant DfES provisions.

8. The opportunity is also being taken to make further refinements the 2007 Regulations with regard to references to the National Assembly for Wales, Welsh Assembly Government and Welsh Ministers in light of the separation of the National Assembly for Wales and the Welsh Assembly Government in May 2007. In addition the opportunity is also being taken to further strengthen and clarify minor technical errors and typographical errors within the Regulations.

Implementation

9. These Regulations were made on 4 August 2007 and it is intended will come into force on 31 August 2007. The Regulations need to be in force before the start of the 2007/08 academic year as they will enable the revisions to be taken into account for students applying to study in the 2007/08 academic year. The Regulations will ensure that the Welsh Ministers comply with the requirements of the European legislation (European Court of Justice (ECJ) decision in the case of Gürol) in relation to this function. The Regulations contain eligibility criteria which comply with article 9 of Decision No1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Community and Turkey.

10. Broadly similar Regulations came into force in England on 1 March 2007. In drafting these Regulations, it was essential to ensure parity with the DfES Regulations (note that DfES has now become the Department for Innovation, Universities and Skills, DIUS), so that full coverage can be ensured. Consequently, this is the first opportunity for the Welsh Ministers to make new Regulations in relation Wales under the post May 2007 procedures.

11. If these Regulations are not made, the Welsh Ministers will not be able to meet its obligations under the terms of the ECJ decision. It could open the Assembly to possible legal challenge. There would also be a lack of clarity for the Local Authorities and the Student Loans Company (SLC) on the areas where the technical amendments are required, as the changes are required to give effect to the original policy intent and to mirror arrangements on the ground.

Consultation

12. The *Assembly Learning Grant and Loans (Higher Education) (Wales) Regulations 2007 No. 1045 (W.104)* which came into force on 1 April 2007 were consulted upon between 25 September and 18 December 2006. There is no legal requirement to consult on the amendments to the 2007 Regulations. A number of the proposed non-contentious technical

amendments / corrections were indicated in stakeholder responses and were scrutinised by the Business Committee of the Second Assembly. The remaining changes reflect provision in the DfES Regulations for 2007/08 that could not be incorporated into statutory instrument No. 1045 (W.104) due to constraints within the legislative timetable. The changes proposed for Turkish nationals are to ensure compliance with EU law.

Regulatory Impact Assessment

13. Details of the proposed changes are set out in the *purpose and intended effect of the legislation* section. The options of making or not making the Regulations are:

Options

14. **Do nothing** - If these Regulations are not made, there would be a lack of clarity for delivery partners - Local Authorities, Institutions and the Student Loans Company (SLC) on the areas where the technical amendments / clarifications are required, as the changes are required to effect the original policy intent and to mirror arrangements on the ground.

Make the Legislation as a minimum – Implementing these Regulations will ensure that the requirement on the Welsh Ministers to incorporate the proposed changes would be met. The technical corrections and revisions to published figures as laid out in statutory instrument No. 1045 (W.104) will need to be taken into account by delivery agents assessing applications for 2007/08.

Benefits

15. The Regulations will provide certainty to the Welsh Assembly Government's delivery partners i.e. the Student Loan Company; Higher and Further Education Institutions, and Local Authorities as the Regulations will provide consistency with the DfES Regulations for the 2007/08 academic year. Delivery agents and customers (students) of the Welsh Assembly Government will directly benefit from having a complete set of Regulations governing student support from the start of the 2007/08 academic year.

Costs

16. The forecast revenue expenditure of delivering student finance under these Regulations for the Financial Year 2007-08 and 2008-09 (the period covering the 2007/08 academic year) is £141.1m and £176.7m, respectively. In view of the demand led nature of this activity, data will continue to be re-visited and refined as more accurate numbers become known. These financial implications are based on a series of demand-led forecasts for Student Finance programmes. These forecasts represent our best estimates of expenditure at that time, based on a number of assumptions relating to student numbers and take-up in addition to data from previous

years. Forecasts are produced by the Statistical Directorate through a formal development process involving Student Finance Division

17. The proposed changes have some limited financial implications for 2007-08, the costs of which can be accommodated within the existing Learner and Student Finance Spending Priority Area baseline.

18. There are no additional financial implications for Local Authorities or for Students.

Competition Assessment

19. The making of these Regulations has no impact on business, charities and/or the voluntary sector.

Consultation

20. There is no legal requirement to consult on the amendments to the 2007 Regulations.

Post implementation review

21. There is an ongoing process of continual review of the Regulations that govern the student support system in Wales.

Summary and Recommendation

22. These proposed Regulations are required to amend and clarify the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2007 No. 1045 (W.104) which came into force on 1 April 2007. The amendment Regulations provide for access to pilot Fast track courses in England for Welsh students, if any so wish, along with a number of technical changes / clarifications. In addition, there is a need to update eligibility criteria to comply with the judgment of the European Court of Justice in the case of *Gaye Gürol v Bezirksregierung Köln* (C-374/03), to ensure compliance with article 9 of Decision 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Community and Turkey. The judgment will enable students who are children of Turkish workers and undertaking designated higher education courses to potentially qualify for financial support.

23. It is recommended that these proposed amending Regulations are made by the portfolio Welsh Minister on the due date, that is, the 8 August 2007.

The information in this Memorandum has been cleared with the Legal Services Department