

Explanatory Memorandum to The Assembly Learning Grants (European Institutions) (Wales) 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 required to replace the existing Assembly Learning Grants (European Institutions) (Wales) Regulations 2006 (Statutory instrument No. 1794). Under the 2006 Regulations, financial support was provided for a small quota of up to 4 Welsh students taking designated postgraduate courses at one of three European Institutions: the Bologna Center in Bologna, Italy; the College of Europe in either Bruges, Belgium or Natolin, Poland; and the European University Institute in Florence, Italy. Funding arrangements differ between the European Institutions. With the devolution of student support policy to Wales, there is a need to amend and uprate the 2006 Regulations to make financial provision for students ordinarily resident in Wales from the 2007/08 academic year who are taking designated postgraduate courses at one of these European Institutions. 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 Welsh Ministers under paragraphs 30(1) and 30 (2) (d) 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. This statutory instrument is subject to annulment by a resolution of the Assembly (the Negative Resolution procedure).

Purpose and intended effect of the legislation

4. These Regulations amend the existing Assembly Learning Grants (European Institutions) (Wales) Regulations 2006 and also provide for support for eligible students taking designated higher education courses at the

Bologna Center, the College of Europe or the European University Institute in respect of an academic year beginning on or after 1 September 2007.

These Regulations set out the eligibility criteria for the grants, the application procedure and the method for calculating the amount of grant payable. The Regulations also set out the arrangements for payment of the grants and recovery of any overpayments. There is a continuing need for the Welsh Assembly Government to ensure provision for graduate students attending any of the three European Institutions.

6. In view of the ECJ decision on Gürol (Case number C-374/03), the Welsh Assembly Government must take steps to ensure that the children of Turkish workers in Wales can qualify for home fee status and financial support. The 2006 and 2007 Regulations are required to be amended to comply with article 9 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Community and Turkey. The number of students affected by this change in Wales is likely to be extremely small, and if any such nationals are eligible for attendance at any institutions, they would be taking up one of the existing places that have been made available.

7. The Assembly Learning Grants (European Institutions) (Wales) Regulations 2006 (S.I. 2006/1794) were not amended in line with the DfES SI 2006/3156. Therefore, those amendments are to be included in Schedule 1 of the 2007 Regulations. 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.

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 Assembly and the Welsh Assembly Government in May 2007. There is a need to rectify and correct some minor typographical errors to the 2006 Regulations.

9. In practical terms the amendments will have little impact on the delivery of the student support arrangements for 2007/08, as the Student Loans Company (SLC) have been instructed to use the DfES Regulations to govern the rules engine used for the assessment and payment of support to Welsh students, except for the specific differences in the part-time arrangements.

Implementation

10. 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.

11. Broadly similar Regulations came into force in England in December

2006. In drafting these Regulations, it was essential to ensure parity with the DfES Regulations (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 Welsh Ministers to make new Regulations in relation Wales under the post May 2007 procedures.

12. If these Regulations are not made, Welsh Ministers will not be able to meet the obligations arising from the Gurol decision. The Regulations contain eligibility criteria which comply with article 9 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Community and Turkey, thereby minimising the risk of successful legal challenge in relation to a claim for race discrimination being brought by an overseas student. Further consequences of not making the Regulations are that 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

13. There is no legal requirement to consult on these Regulations. The changes proposed for Turkish nationals are to ensure compliance with EU law.

Regulatory Impact Assessment

14. 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

15. **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 give effect to the original policy intent and to mirror arrangements on the ground. If the Regulations are not made prior to the start of the academic year, students ordinarily resident in Wales will not be able to receive support for study undertaken at one of these European Institutions.

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. There is a continuing need to ensure that the existing student cohort and other new applicants are not disadvantaged. The technical corrections and revisions to published figures as laid out in statutory instrument No. 1794 (W.189) will need to be taken into account by delivery agents assessing applications for 2007/08.

Benefits

16. 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

17. During Academic Year 2006/07, only one student attended one of the institutions. These costs are contained within the existing Learner and Student Finance SPA baseline. In view of the demand led nature of this activity, and low take up to date, data will continue to be re-visited and refined as more accurate numbers become known.

18. Currently, there is one student participating at one of the three institutions who will continue to do so in 2007/08. There are two new applications for 2007/08. An eligible Turkish national wishing to take up a place at any of the institutions would be included as part of the agreed allocation of Welsh students, four in total spread between the three institutions, for each academic year. Therefore, there is no additional expenditure for 2007/08 or 2008/09.

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 proposed Regulations.

Post implementation review

21. There is an ongoing process of continual review of the Regulations that govern the support provided to Welsh students studying at any of the three EU institutions. It is expected that these Regulations will require amendment for the 2008/09 academic year to ensure that the amount of support available, either using revised figures from the Institutions or uprating in line with inflation. Any revised Regulations will need to be in place by Spring 2008.

Summary and Recommendation

22. These proposed Regulations are required to amend and clarify the Assembly Learning Grants (European Institutions) (Wales) Regulations 2006 No. 1794 (W.189) which came into force on 7 July 2006. The 2007 Regulations include 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 the proposed Regulations are made by the portfolio Welsh Minister on the due date, that is, the 6 August 2007.

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