

EXPLANATORY MEMORANDUM TO THE EDUCATION (FEES AND AWARDS) (WALES) (AMENDMENT) REGULATIONS 2008.

The Explanatory memorandum has been prepared by the Student Finance Division and is laid before the National Assembly for Wales under Standing Order 24.1.

Description

1. These Regulations are required to update the existing *Education (Fees and Awards)(Wales) Regulations 2007 No. 2310 (W.181)*, which came into force on 31 August 2007. The changes are technical in nature and will update the existing eligibility criteria so they reflect the latest position and maintain parity with the rest of the UK.

Matters of special interest to the Subordinate Legislation Committee

2. None

Legislative Background

3. These regulations are made under the powers provided by Sections 1 and 2 of the *Education (Fees and Awards) Act 1983*. The functions covered by Section 1 of the 1983 Act were transferred to the National Assembly for Wales by the *Transfer of Functions Order 2006 No 1458*. The functions covered by Section 2 of the 1983 Act were transferred to the National Assembly for Wales by the *Transfer of Functions Order 1999 No 672*. These functions are vested in the Welsh Ministers by virtue of the Schedule 11 of the Government of Wales Act 2006.

4. This instrument will follow the Negative Resolution procedure.

Purpose and intended effect of the legislation

5. This legislation makes provisions in respect of the powers of higher and further education institutions to charge fees to students and they also enable discretionary awards to be made by the bodies mentioned in the Regulations. In particular they set out the rules of eligibility for home fee status and for the issue of awards. The purpose of the legislation is to provide the institutions or bodies with a statutory defence against claims made under the Race Relations Act 1976, should they elect to charge different fee levels to different categories of students based on whether they can demonstrate a relevant connection with the UK.

6. The amending legislation is required to update aspects of the eligibility criteria, specifically:

- i) to further clarify that students who are ordinarily resident in the UK as a result of moving from the Channel Islands or the Isle of Man to

undertake a course, will be considered as ordinarily resident in the Islands for the purpose of fee status. This is an administrative change and will ensure that the legislation fully reflects current practice. Due to the complex legal position of the Channel Islands these nationals are not eligible for the home fee status available to other UK and EC nationals.

ii) to extend eligibility to the family members of nationals from British and other Overseas Territories so that they are charged the same fees for higher education as other UK and EC nationals. This change will ensure equal treatment for this category of students in relation to the existing entitlement given to the family members of UK or EC nationals and is necessary to ensure that the National Assembly complies with European Law.

ii) to make a minor drafting change which will ensure that the legislation correctly reflects the position for European students whose country accedes to the European Community or who naturalise once they have already started their course in the UK. As long as they meet the other eligibility criteria, this will enable students in this situation to become eligible for home fees from the start of the next academic year of their course.

Implementation

7. For the changes to the eligibility criteria to be taken into account for in the 2008/09 academic year, the Regulations need to be made in Spring 2008. It will allow the institutions to take these changes into account when deciding on the relevant fee levels for these categories of students.

8. Similar changes have recently been made by the Department of Innovations University and Skills (DIUS) and this legislation is necessary to ensure parity of treatment across the UK for students who fall under these provisions.

Consultation

9. There is no legal requirement to consult on these Regulations.

Regulatory Impact Assessment

Options

10. **Do nothing** – this would mean that the eligibility criteria would not be up to date and raise the possibility of legal challenge under European law.

11. **Make the Legislation** – implementing these Regulations will ensure that the most up to date eligibility criteria is being used for assessment of home fee status and that they are in place for the next academic year. It will also provide protection to the Welsh Ministers by ensuring that they have met their

obligations under European and UK law. In relation to the change relating to a country's accession to the EC, it will mean that the provisions in the new legislation will directly reflect those that are in place within the corresponding student support legislation.

Benefits

12. By making the regulations Welsh Ministers will benefit from the assurance that the potential for successful legal challenge will have been minimised. Overseas students will benefit from greater clarity of the rules of eligibility for entitlement to home fee status for the 2008/09 academic year.

Costs

13. There are no additional financial implications for the DCELLS MEG or for the Assembly as a result of these regulations as they do not directly impact on the Welsh Assembly Government's budgets. The purpose of the regulations is to provide race relations cover by setting out specific eligibility criteria.

Competition Assessment

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

Consultation

15. There are no legal requirements to consult prior to making this legislation. However colleagues in UK Council for International Student Affairs (UKCISA), Higher Education Funding Council for Wales (HEFCW), the Higher Education and Planning and Funding Divisions have been consulted during the drafting of the legislation. The delivery partners and student advice bodies will also be notified of the proposed changes via student finance information notices.

Post Implementation Review

16. At this time there are no plans to make further changes to the legislation, but they will remain under review to ensure that they continue to reflect policy developments and any European requirements.

Summary

17. The making of these Regulations is cost neutral to the Welsh Assembly Government and officials recommend that this legislation is put in place to support the 2008/09 academic year. They will provide legal coverage for Welsh Ministers against race relations claims and the amendments will provide overseas students with greater clarity on the eligibility criteria used in the assessment of home fee status.