

Explanatory Memorandum to the Assembly Learning Grants (European Institutions) (Wales) (Amendment) Regulations 2008

This Explanatory Memorandum has been prepared by the Student Finance Division and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

1. These Regulations are required to amend the existing Assembly Learning Grants (European Institutions) (Wales) Regulations 2008 (Statutory instrument No. 18 (W.7), referred to as the “Primary Regulations”, which came into force on 1 February 2008. Under the Primary 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 Centre 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. There is a need to amend the fee charged by the Bologna Centre to ensure the correct financial provision for students ordinarily resident in Wales from the 2008/09 academic year who are taking designated postgraduate courses at the Bologna Centre.

2. There is a requirement to make changes to Schedule 1 (Part 2) paragraph 8 to reflect a residency change as a result of the decision of the European Court of Justice in the D’Hoop case (C-224/98) and ensure that all those who are settled in the UK and who exercise a right of residence in the EEA or Switzerland for a period in excess of three months are eligible for UK student finance when they return to the UK and again become ordinarily resident there. This amendment to the 2008 Regulations is required to ensure that the UK as a whole is not in breach of European Community Law. There is also an opportunity to make a minor drafting change to the Primary Regulations to ensure that they correctly reflect the position relating to calculation of parent’s residual income.

Matter of special interest to the Subordinate Legislation Committee

3. None.

Legislative Background

4. 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.

Purpose and intended effect of the legislation

5. These Regulations amend the existing Assembly Learning Grants (European Institutions) (Wales) Regulations 2008 SI No 18 (W.7) to provide the correct support for eligible students taking designated higher education courses at the Bologna Centre in respect of an academic year beginning on or after 1 September 2008. The primary 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. As a result of the D'Hoop case, the Regulations have to be amended to ensure that students who leave Wales to take up a right of residence in Europe and reside elsewhere in the UK on their return will not be disadvantaged, as under the current legislation they would not receive support from Wales or from the other Administrations. There is a need to make a minor drafting change to the Primary Regulations to ensure that they correctly reflect the position relating to calculation of parent's residual income.

Implementation

7. It is intended that this Instrument will come into force on 13 June 2008. The Regulations need to be in force before the start of the 2008/09 academic year as they will enable the revisions to be taken into account for students applying to study in the 2008/09 academic year.

8. Broadly similar Regulations are expected to come into force in England at the same time. In drafting these Regulations, it was essential to ensure parity with the Department for Innovation, Universities and Skills (DIUS) Regulations, so that full coverage can be ensured.

Consultation

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

Regulatory Impact Assessment

10. Details of the proposed changes are set out in the *purpose and intended effect of the legislation* section.

Options

11. **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) concerning the levels of support available for attendance at the Bologna Centre. 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 the correct amount of support for study undertaken at the Bologna Centre. If these Regulations are not made to include the required

residency change, there is a possibility that certain students might be ineligible for support on their return to the UK, which would result in a breach of EC Law.

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 required residency changes will secure compliance with European Community law. There is a continuing need to ensure that the existing student cohort and other new applicants are not disadvantaged. The technical correction and revision to published figures as laid out in statutory instrument No. 2008/18 (W.7) will need to be taken into account by delivery agents assessing applications for 2008/09.

Benefits

12. 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 DIUS Regulations for the 2008/09 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 2008/09 academic year.

Costs

12. Currently (academic year 2007/08), there are three Welsh domiciled students attending the three institutions, two of which will continue to do so in 2008/09. The slightly increased costs can be contained within the existing Learner and Student Finance SPA baseline and therefore, there is no additional expenditure for 2008/09 or 2009/10. In view of the demand led nature of this activity, and current take up, data will continue to be re-visited and refined as more accurate numbers become known.

Competition Assessment

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

Post implementation review

14. 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 further amendment for the 2009/10 academic year to ensure that the amount of support available, either using revised figures from the Institutions or up rating in line with inflation. Any revised Regulations will need to be in place later in 2008.

Summary

15. These proposed Regulations are required to amend and clarify the Assembly Learning Grants (European Institutions) (Wales) Regulations 2008 No. 18 (W.7) which came into force on 1 February 2008 and to make provision for support for academic year 2008/09.