

SL(5)507 – The Education (Student Support) (Miscellaneous Amendments) (Wales) Regulations 2020

Background and Purpose

These Regulations amend the following regulations:

- the Education (Student Support) (Wales) Regulations 2017 (“the 2017 Regulations”),
- the Education (Student Support) (Wales) Regulations 2018 (“the 2018 Regulations”), and
- the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019 (“the Master’s Regulations”).

Definition of “end-on course”

The 2017 Regulations provide for financial support for students taking designated higher education courses which begin on or after 1 September 2017. Regulation 3 amends the definition of “end-on course” in the 2017 Regulations so that the definition refers to the 2017 Regulations as well as to previous Regulations, with the effect that a student who completes a course attracting support under the 2017 Regulations and then, disregarding any intervening vacation, immediately starts one of a number of other courses listed in the definition of “end-on course” will continue to be eligible for support for the later course under the 2017 Regulations.

Calculation of household income

The 2017 Regulations, the 2018 Regulations and the Master’s Regulations provide for the calculation of household income to be used in means testing certain elements of support. Under the 2017 Regulations and 2018 Regulations, students applying for full-time and part-time maintenance grants and grants for students with adult and child dependants qualify for support depending on their household income. Similarly, students applying for a contribution to costs grant under the Master’s Regulations have their income assessed, and support is provided accordingly.

For most students this is based on the taxable income of the student’s parents or, where the student’s parents have separated, the taxable income of the more appropriate parent (usually the parent with whom the student normally lives) and, where applicable, that parent’s partner.

The amendments made by regulations 4 to 8 of these Regulations make it explicit that the income of both parents, or the more appropriate parent and their partner, is taken into account when determining which financial year to use when calculating the incomes.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Four points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument.



Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

1. The 21 day rule under the Statutory Instruments Act 1946 (incorporated in Schedule 10 of the Government of Wales Act 2006) provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can be caused if legislation is annulled after it has been implemented. However, in this case, Welsh Government consider that the circumstances justify a breach of that rule. The Minister for Finance and Trefnydd, as required under section 11A of the Statutory Instruments Act 1946, has notified the Llywydd of the breach in a letter dated 13 February 2020 so that the matter can be brought to the attention of Members.

It is noted that the breach is due to an administrative error, which meant an earlier coming into force date was used. The letter states this does not have a material effect other than bringing the Regulations into force earlier than originally anticipated. Revoking the Regulations and making and laying a new statutory instrument with the intended coming into force date was considered, but it was concluded there was no merit in doing this. It is further stated that this will also ensure that there is no delay to the launch of the student finance application process for academic year 2020/21.

2. Section 22 of the Teaching and Higher Education Act 1998 is cited as one of the enabling powers for making these Regulations. Section 22 contains a wide range of powers and it would assist the reader if the Regulations were more specific in stating the enabling powers. This point has been reported previously in relation to section 22, a point with which the Government agreed.

3. The Explanatory Memorandum states the following:

“Where the income for the current financial year falls by at least 15% compared to the income provided for the prior financial year (the financial year ending in the calendar year before the academic year for which the student is applying for support), income can be reassessed. The Regulations make it explicit that the income of both parents, or the more appropriate parent and their partner, is taken into account to determine whether such a reassessment should take place.”

Sub-paragraph 5 of paragraph 16 of Schedule 3 to the 2018 Regulations is amended by regulation 6(b) of these Regulations. This sub-paragraph refers to a situation where the aggregate of the residual incomes for the current financial year is likely to be at least 15% lower than the financial year immediately preceding the current financial year (“PY”). The text in brackets above appears to only refer to the financial year immediately preceding PY, i.e. PY-1.

4. The quoted text, at point 3 above, states that these Regulations make it explicit that the income of both parents, or the more appropriate parent and their partner, is taken into account to determine whether a reassessment should take place. Can the Government therefore confirm that these Regulations do not change current practice.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.



Government Response

Merit Scrutiny point 2:

The Welsh Government accepts that the enabling power for student support regulations is strictly to be found in subsection (1) of section 22. However, the subsections (2) and (5) of section 22 make reference to “regulations under this section”. Therefore, in order to ensure the legal power to make the Regulations is accurately cited, the Welsh Government is of the view that citing section 22 in general is an accurate reflection of the legal basis on which the power to make regulations is conferred.

The Welsh Government appreciates that the provision made by regulation 3 could be considered to be provision of the kind referred to in section 22(2)(a) (although the definition of “end-on course” in the 2017 Regulations has some implications for provisions that go beyond merely determining whether a person is an eligible student) and that the remaining provisions could be said to be of a kind as is referred to in section 22(2)(c). However subsection (2) of section 22 is no more than an illustrative list of things that regulations under section 22 may make provision about. That subsection does not, in of itself, confer power to make the Regulations therefore it would be inaccurate to cite subsection (2) or any particular paragraphs of it.

Merit Scrutiny point 3:

The Welsh Government notes that the purpose of the amendments provided for by regulations 4, 6(a), 6(b) and 8 of the Regulations is that the income of both parents or parent and parent’s partner, as appropriate, is taken into account to determine whether income has changed sufficiently to trigger a reassessment of household income in the circumstances provided for in the regulations which are being amended. The Explanatory Memorandum does not fully reflect the circumstances provided for by sub-paragraph 5 of paragraph 16 of Schedule 3 to the 2018 Regulations. Sub-paragraph 5 provides for a reassessment of income in the case where income in the financial year beginning immediately before the current academic year (‘the current financial year’) is likely to be at least 15% lower than in the financial year which immediately precedes the current financial year, where the circumstances in sub-paragraph 4 of paragraph 16 are met. This is unchanged from previous years. Student Finance Wales’ published guidance ‘Assessing Financial Entitlement Guidance’ refers to the Regulations in order to ensure that there is clarity for applicants.

Merit Scrutiny point 4:

The Welsh Government confirms that there has been no change in current practice.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 9 March 2020 and reports to the Assembly in line with the reporting points above.

