

## REGULATORY APPRAISAL

### HIGHER EDUCATION, WALES

#### THE HIGHER EDUCATION ACT 2004 (COMMENCEMENT NO.2 AND TRANSITIONAL PROVISION) (WALES) ORDER 2005

##### Background

1. The Higher Education Act 2004 confers certain functions over student support and tuition fee to the National Assembly for Wales: these are currently exercised on an England and Wales basis by the Department for Education and Skills. The effect of the Act is that, subject to commencement of the Act's provisions, the majority of tuition fee and student support functions will devolve to the National Assembly for Wales.

##### Intended effect of the measure

2. This Order commences sections 10(2), 44, 49 and 50 (partially) of, together with schedules 6 and 7 (partially) to, the Higher Education Act 2004 (HE Act 2004). These sections and schedules are:
  - Section 10 (2): *Research in arts and humanities*. This section provides the Assembly with the power to fund arts and humanities research related activities in relation to Wales;
  - Section 44: *Transfer of certain functions to the National Assembly for Wales*. This section transfers to the Assembly in relation to Wales certain functions relating to the provision of financial support to students by way loans or grant, under section 22 of the Teaching and higher Education Act 1998 (except functions related to repayment of loans through the tax system and functions under section 23 of that Act);
  - Section 49 and schedule 6 are consequential amendments, and section 50 and schedule 7 are repeals; and
  - Article 6: *Transitional and saving provision*. This Article ensures that the Secretary of State's functions under the current England and Wales Regulations continue to be exercised by the Secretary of State until responsibility for student support transfers to the National Assembly on 1 September 2006.

## **Risk Assessment**

3. Failure to commence the relevant provisions of the HE Act 2004 would result in the National Assembly for Wales being unable to regulate for student support arrangements for students ordinarily resident in Wales.

## **Options**

### Option 1 – Do Nothing

4. The objective of providing funding for research in arts and humanities and of devolving student support functions to Wales, agreed in plenary on 27 January 2004 and for which the Act provides, and to which end the National Assembly has been working since the Act received Royal Assent in July 2004, will not be met.

### Option 2 – Make the Legislation

5. Sections 47(5), 52(3), (4) and (6) of the Higher Education Act 2004 provide for the National Assembly to commence the Act's provisions by Order. The Commencement Order will bring into force the relevant provisions of the HE Act 2004 cited in the Order.
6. Article 6 of the Order is a transitional and saving provision. This Article ensures that the Secretary of State's functions under the current England and Wales Regulations continue to be exercised by the Secretary of State until responsibility for student support transfers to the National Assembly on 1 September 2006.

## **Benefits**

7. The Regulatory Impact Assessment, prepared for the Higher Education Bill's introduction to Parliament, identified the following potential benefits:
  - The transfer of functions will bring the devolution settlement in line with that in Scotland and Northern Ireland. The transfer would provide the Assembly with full discretion over the financial levers for higher education on a whole system basis, and deliver a student support system that works in tandem with its wider strategy for the sector in Wales. Benefits will fall to Local Education Authorities (LEAs), and to the National Assembly for Wales; and
  - The National Assembly currently offers the discretionary Assembly Learning Grant (ALG) on a means tested basis to Welsh domiciled students. The ALG is operated outside the DfES administered student support system. LEAs in Wales administer the ALG. From an LEA perspective the burden of running two parallel student support arrangements will be reduced after the DfES administered student support system is transferred to the National Assembly.

8. These benefits remain relevant.

## **Costs**

9. The published Regulatory Appraisal accompanying the Higher Education Act 2004 suggested that the total resource cost of implementing the Act in the UK ranged between £430m and £635 depending on a number of assumptions. The Minister for Education and Lifelong Learning has agreed with the Secretary of State for Education and Skills the financial package which will underpin the transfer of student finance functions:

<http://www.information.wales.gov.uk/content/decisionreports/economics/public/devolution%20of%20student%20support%20to%20the%20assembly.%20financial%20transfer.rtf>

10. The total cost of the student support package in Wales in academic year 2006/07 will be subject to a range of policy decisions yet to be taken.
11. The Assembly previously funded the Arts and Humanities Research Board via the Higher Education Funding Council for Wales. The Arts and Humanities Research Council was established on 1 April 2005 and is fully funded by the Office for Science and Technology. Assembly funding has been transferred from baselines accordingly with effect from this financial year.
12. There are no financial implications for business or voluntary sector interests.

## **Consultation**

### With Stakeholders

13. Stakeholders have not been consulted on the content of the Statutory Instrument. However, stakeholders including Local Education Authorities, Higher Education Institutions, the Student Loans Company and the National Union of Student are represented on the Project Board, which oversees the devolution of student finance. Throughout the passage of the Higher Education Act, and since then, these and other stakeholder groups have been involved in devolution proposals and implementation plans in a variety of ways: e.g. stakeholder workshops and discussions, presentations, dialogue via Project Newsletters and website, and a range of formal and informal meetings and working groups. The Higher Education Act was subject to rigorous scrutiny by Parliament and in the Assembly, where it was considered both by the Education and Lifelong Learning Committee and in plenary.

### With Subject Committee

14. The proposed Order has not been scrutinised by the Education and Life-Long Learning Committee. However, the Order was notified to the Committee via the list of forthcoming legislation on 22 September 2004 (paper 6, item no:

ELL-15-05) and ever since. The Order was not identified for detailed scrutiny.

**Review**

15. The Order is required on a one-off basis to commence the provisions of the Higher Education Act 2004 and does not require a review.

**Summary**

16. The financial implications of the transfer of student support functions are referred to above. The Order is consistent with Sections 47(5), 52(3), (4) and (6) of the Act that gives the Assembly order making powers to commence its provisions.