

## **Explanatory Memorandum to The Education Maintenance Allowances (Wales) Regulations 2007**

This Explanatory Memorandum has been prepared by the Student Finance Division and is laid before the National Assembly for Wales

### **Description**

1. These Regulations are intended to replace the existing Education Maintenance Allowances (Wales) Scheme 2006. The Regulations do not introduce changes to the existing Scheme other than updating the existing eligibility criteria. A copy of the Instrument is submitted with this Memorandum.

### **Matter of special interest to the Secondary Legislation Committee**

2. These Regulations are of a routine nature and will be made by the relevant portfolio Welsh Minister within the required dates. The Regulations are of no special interest to the Secondary Legislation Committee.

### **Legislative Background**

3. These Regulations are made under the powers provided by section 181 of the Education Act 2002. The functions of the National Assembly for Wales under the 2002 Act were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 of the Government of Wales Act 2006. The Minister for Children, Education Lifelong Learning and Skills is able to put forward legislation for Assembly approval under Standing Order 24.

### **Purpose and intended effect of the legislation**

4. These Regulations provide for financial payments to persons aged 16-18 to encourage them to continue in education after they have reached compulsory school leaving age. An education maintenance allowance of up to £30 per week is available to eligible persons who undertake eligible courses. In addition, bonus payments of £100 are made up to three times a year if an eligible person meets certain objectives linked to his/her learning agreement as set out in these Regulations.

### **Eligibility Criteria Changes**

5. These Regulations will update the existing Scheme which sets out the specific eligibility criteria to be used in assessing a student's entitlement to the receipt of an allowance. The existing eligibility

criteria are updated so that they follow, as far as possible, the policy principles in the main student support legislation – *The Assembly Learning Grants and Loans (Higher Education)(Wales)Regulations 2007 No 1045 (W.104)* and forthcoming amendment regulations.

#### *Children of Turkish Workers*

6. The new Regulations will reflect the European Court of Justice (ECJ) decision in the case of Gürol (Case number C-374/03), which concerned the application of article 9 of Decision No 1/80 of the Association Council (The Association Council was created by the agreement establishing an association between the EC and Turkey). It was held that article 9 has direct effect in the Member States of the EC and as such guarantees the children of Turkish workers a non-discriminatory right of access to vocational training and education grants provided in connection with such training.
7. Article 9 of Decision 1/80 of the Association Council of 19 September 1980 provides that Turkish children who are residing legally in a Member State with their parents who are or have been legally employed in that Member State are to be admitted to courses of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of nationals of that Member State. Article 9 also provides that such children may also be eligible to benefit from advantages provided for under the national legislation in this area.
8. Article 9 guarantees a non-discriminatory right of access to education grants to Turkish children. Wales (and the UK) already allows support (and home fee status) to children of economically active EEA and Swiss nationals (including UK nationals) who have been ordinarily resident in the EEA and Switzerland throughout the three years prior to the first day of the first academic year of the course. Following this ECJ decision, it is unjustified to deny support to children of economically active Turkish nationals in the UK, where the student has been resident in the EEA, Switzerland and Turkey throughout the three years prior to the start of the course. Not including Turkey as a place of qualifying residence would make it harder for Turkish children to comply with the residence criteria and this would arguably be discriminatory contrary to EC law.

#### *Family Members of refugees and those with leave to enter or remain in the UK*

9. The eligibility criteria will be updated to reflect changes to the circumstances in which family members of refugees and persons with leave to enter or remain in the UK and their family members will become potentially eligible under the Regulations.
10. The new legislation will also clarify the definition of family members in refugee cases, which specifies those who can be deemed to be eligible

for support when they are the child, step-child, spouse or civil partner of a refugee.

## Implementation

11. 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 the eligibility criteria to be used in assessing a student's entitlement to be granted an award in 2007/08.
12. The Regulations will ensure that the Welsh Ministers comply with the requirements of the European legislation (European Court of Justice (ECJ) decision in the case of Gürol) in relation to this function. The Regulations contain eligibility criteria which comply with article 9 of Decision No1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Community and Turkey.
13. The changes made to the eligibility criteria within these Regulations will ensure alignment across the suite of legislation supporting the student finance system in Wales.

## Consultation

14. There is no legal requirement to consult prior to making the Education Maintenance Allowances (Wales) Regulations 2007.

## Regulatory Impact Assessment

### Options

15. 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:
16. **Do nothing** – If these Regulations are not made, the Welsh Ministers would not be able to meet their obligations under the terms set by the European Association Council Decision.1/80 article 9. There would also be disparity in the eligibility criteria used by the legislation which governs the student support system.
17. **Make the legislation**– Implementing these Regulations will enable the revised eligibility criteria to be taken into account during the assessment of a person's entitlement for an award in 2007/08.

### Benefits

18. By the making of the Regulations the Welsh Ministers will benefit by

the assurance that it has incorporated the changes resulting from the European Community decision and lessens the potential for successful legal challenge.

19. Students will benefit from the amendments to the eligibility criteria which specifies who can be deemed eligible to receive an award. The new legislation will also ensure greater alignment of the eligibility criteria used across the suite of legislation supporting the student support system in Wales.

### **Costs**

20. It is possible that extending the eligibility criteria could have some additional costs but the likelihood is negligible and in any case can be accommodated within existing budgets.

### **Competition Assessment**

21. The making of these Regulations have no impact on businesses, charities and/or the voluntary sector.

### **Consultation**

22. There is no legal requirement to consult on the Education Maintenance Allowances (Wales) Regulations 2007. However stakeholders were invited to comment on the draft regulations. Stakeholders and the delivery partners have been advised that new Regulations will be made.

### **Post implementation review**

23. There is an ongoing process of continual review of the Regulations to ensure they reflect future policy developments and any new European requirements.

### **Summary and Recommendation**

24. The making of this instrument is assessed as being cost neutral to the Welsh Assembly Government and officials recommend that these Regulations are put in place to support the 2007/08 academic year. They will ensure that eligibility criteria is aligned across the student support system in Wales.