

EXPLANATORY MEMORANDUM AND REGULATORY IMPACT ASSESSMENT TO THE ASSEMBLY LEARNING GRANTS AND LOANS (HIGHER EDUCATION) (WALES) (No 2) REGULATIONS 2008.

The Explanatory Memorandum has been prepared by the Funding and Student Finance Division of the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales under Standing Order 24.1.

Description

1. These Regulations are required to amend the existing *Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2008 (No. 1273 (W. 130))*, which came into force on 30 May 2008 as well as the subsequent amending legislation (SI 2008/2140 (W.189)) which came into force on 29 August 2008. These main student support regulations are made on an annual basis to underpin the higher education student support system in Wales.

Matters of special interest to the Subordinate Legislation Committee

2. The Committee considered The Assembly Learning Grants and Loans (Higher Education) (Wales) (Amendment) Regulations 2008 on 29 September 2008 (SI 2008/2140 (W.189)). They drew attention to the fact that paragraph 7(1)(b) of Schedule 6 to those amendment regulations contained a cross-reference to paragraph 7 of that Schedule, which should have been to paragraph 6. The context made the intention clear, but the recommendation was that it should be corrected when the principal Regulations are next amended or consolidated. This has been done in these Regulations.

In its twenty-eighth report of session 2007-2008 (published 24 October 2008), the Joint Committee on Statutory Instruments (JCSI) reported the equivalent English regulations (The Education (Student Support) (Amendment) (No2) Regulations 2008 (SI 2008/1582 as amended)) for defective drafting. That report drew special attention to regulation 10(1) of the English regulations which mirrors regulation 10(1) of The Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2008 (SI 2008/1273 as amended). The JCSI reported that the requirement for a student support application to be made within 9 months of the start of the academic year conflicted with the intention to allow early application via the "UCAS alignment" mechanism. The English regulations (SI 2008/1582) have since been amended in line with the JCSI's recommendations: the regulation now provides that applications should be received no later than the end of the ninth month of the relevant academic year.. This revised wording has also been incorporated into regulation 10(1) of these Regulations.

Legislative Background

3. In June 2006, section 44 of the Higher Education Act 2004 transferred to the National Assembly for Wales the majority of the Secretary of State's functions in relation to student support (essentially the Secretary of State's functions under sections 22 and 23 of the Teaching and Higher Education Act 1998). Sections 47 and 52 of the 2004 Act gave the National Assembly for Wales power, by order, to bring section 44 into force. The relevant Order bringing into force the various subsections of section 44 is the Higher Education Act 2004 (Commencement Order No. 2 and Transitional Provision) (Wales) Order 2005 as amended by the Higher Education Act 2004 (Commencement Order No. 2 and Transitional Provision) (Wales) (Amendment) Order 2006. Those National Assembly functions are now vested in the Welsh Ministers by virtue of Schedule 11 of the Government of Wales Act 2006. Each year, the relevant functions of the Welsh Ministers in regulations made under section 22 of the Teaching and Higher Education Act 1998 are transferred and delegated to Welsh local authorities and the Student Loans Company under section 23 of that 1998 Act.

4. This instrument will follow the Negative Resolution procedure.

Purpose and intended effect of the legislation

5. The Welsh Assembly Government makes annual regulations governing the student support system. Generally, each set of regulations relates to a particular academic year. These Regulations will amend and replace the existing legislation governing academic year 08/09 and the student support arrangements for students ordinarily resident in Wales and for EU students attending Welsh HEIs in designated higher education courses. These regulations will govern the 2009/10 academic year and will enable Welsh Ministers to make awards of grants and loans to eligible students. In replacing the existing legislation, these Regulations will introduce a limited number of policy changes together with some technical drafting amendments.

6. The specific policy changes incorporated within the regulations are set out below:

- a) **Minor amendments to the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2008 (SI 2008/1273 (W.130)) governing academic year 08/09** - Whilst reviewing the Regulations, Legal Services noted an anomaly in regulation 18 (6), which has the potential to lead to discrimination against EU students. The proposed amendment to remove this clause will guard against this possibility. There is also a need to make some typographical changes to the regulations governing academic year 08/09. Neither of these issues will have any financial implications for the 08/09 budget.
- b) **Prior Year Tax (PYT)** - Currently most students apply for student support in the period April to September of the year in which they plan to start their course: household income is assessed using data relating to income in the financial year ending immediately before that period. Thus, a student applying for support for a course starting in September

2008 would have had income assessed on data for financial year 2007-2008. Under the new service being introduced for students applying to enter Higher Education in academic year 09/10 (see below), new students will apply for student support based on household income data for the prior year, i.e. financial year 2007-2008. These students will have access to student support information earlier in the year via the UCAS alignment process which Wales is joining in February 2009. In order for the transition to the new system to be fair the household income thresholds used for means testing students will be frozen for one year. Therefore students' income will be assessed using the same thresholds in 09/10 as for 08/09, because the income taken into account for that assessment will be the same.

Under the existing regulations for academic year 08/09, independent students without a partner are assessed on their current year's income, i.e. their income in the academic year for which they apply for support. This will continue in relation to academic year 09/10 and is therefore an exception to the application of prior year tax. Independent students with a partner are currently assessed on their partner's income for the financial year immediately preceding the relevant academic year. From 2009/10 onwards they will be assessed on their partner's prior year tax.

c) Residence in a house of Religious Order - The 'House of Religious Order' provision for students is removed for students starting their courses in 2009/10. Students claiming support under this provision (by ticking a box on the student application form) do not meet the original policy intent as they live in the parental home and study courses other than Religious Studies. Omitting this provision removes a significant anomaly from the Regulations whilst affecting a very small number of students. It will allow a question to be removed from the student application form thereby enabling clearer information to be provided to students on their likely entitlement to support.

d) No automatic re-assessment of remaining student if sibling withdraws and simplification of rules on split contributions - Where a family has two or more students in Higher Education at the same time and one of those students withdraws in-year from that Higher Education, this will no longer result in the automatic re-assessment of the student support given to the remaining family members. This change is essentially about simplifying the process and removing the risk within families that if one student withdraws in-year the other students would face re-assessment and reduced support.

In addition, the family contribution in respect of each student is to be assessed according to the student support system for which they are eligible, and the family contribution is then to be divided by the number of family members in Higher Education. No contribution leftover from the assessment of any student in the household will be applied to the

remaining support of other students in the household as is currently the case. Instead, any leftover contribution will simply be discarded and will not be used to reduce the entitlement of other students in the household.

e) **Higher Education Student Support – Graduate Entrants** - Currently an annual review of the courses which attract a maintenance loan for 'second time' undergraduates is undertaken. Lead Government Departments which have some national strategic responsibility for ensuring an adequate supply of suitably qualified personnel for specific professions inform this process. For academic year 09/10 planning and landscaping courses are removed from the list of such courses because there are now accelerated postgraduate routes available which negate the need to undertake further lengthy, undergraduate level study.

f) **Initial Teacher Training** – Student eligibility. This change means that students on part-time undergraduate courses of Initial Teacher Training will receive a half rate means tested Maintenance Grant (or Special Support Grant) where the periods of full-time attendance (including teaching practice) during the academic year are from 6 weeks up to 10 weeks.

g) **Uprating for Inflation** - As part of the annual review an inflationary uplift has been applied to the Tuition Fee Grant, all loans, grants and means-tested thresholds throughout the Regulations. The rate of increase has been fixed at 2.6%.

To note - this results in the following key changes for academic year 2009/10:

- Tuition Fee Grant of £1,940
- Maximum fee loan of £3,225 (£1,285 for students qualifying for Tuition Fee Grant and students who started courses before 1 September 2006)
- Maximum maintenance grant of £2,906.

h) **Treatment of pension income paid to an ex-partner** - The Regulations ensure that a student's means-test does not include the amount of a pension income that is paid to an ex-spouse under a court attachment order (Pensions Act 1995). Conversely, the amount of the pension income that is received by an ex-spouse needs to be taken into account in the means-test for full-time students, i.e. the household income is based on income available to that household. This policy is for students starting their courses from 2009/10 academic year and onwards, and will not be applied retrospectively.

i) **Calculation of contributing eligible part-time student's residual income** - Currently, a full-time student's income for work done during the

academic year is not used in the assessment process. For academic year 09/10, a part-time student's household income will in future be calculated to include remuneration for work done during an academic year of the course.

j) **Technical amendments** - There are also a number of very small technical amendments required to ensure that the policy for part-time student support arrangements are accurately reflected in the Regulations.

Implementation

7. This legislation updates the 2008/09 student support system and needs to be in place in before February 2009 to enable applications for academic year 09/10 to be processed after that date. The delivery partners (the Student Loans Company and the local authorities) have been consulted and informed of the intended changes.

8. Except for the part-time aspects and some minor technical amendments, similar changes have recently been made by the Department for Innovation Universities and Skills (DIUS) and this legislation is necessary to ensure parity of treatment across the UK for students who fall under various eligibility requirements.

Consultation

9. There is no statutory requirement to consult on these Regulations. However the majority of the changes were included in the main consultation exercise for these Regulations and the details are referred in paragraph 17.

Regulatory Impact Assessment

Options

10. **Do nothing** – by not amending and replacing the existing Regulations. This will mean that no legislation is in place for the payment of HE student support in academic year 09/10.

11. **Make the Legislation** – implementing these Regulations will ensure that the proper legislative framework is in place for academic year 09/10 and that parity with other government administrations is achieved. They will also bring benefits to certain categories of students.

Benefits

12. By making the Regulations Welsh Ministers will benefit from the assurance that the Welsh student support system has a proper legal framework and are covered against the possibility of legal challenge. The delivery partners will also benefit from the knowledge that they are acting within the requirements of the Welsh legislation.

Costs

14. The total cost to the Welsh Assembly Government of the changes contained within the draft legislation equate to £6.5M (split as £3.8M for the FY 2008-09 and £2.7M for the FY 2009-10) and will be met from existing resources.

15. The delivery agents (the Welsh local authorities and the Student Loans Company) annually make assessments and payments of the loans and grants to students as specified by the relevant legislation. No additional burdens on the delivery agents are expected to be created by the changes incorporated within the enclosed Regulations.

Competition Assessment

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

Consultation

17. The majority of the changes were included in the main consultation covering the Regulations which took place between 6 May and 29 July 2008, in relation to which 12 responses were received. Annex A provides a list of the consultees and a summary of the comments received is attached as annex B. The consultees were mostly in support of the changes and the technical questions which were raised have since been addressed and stakeholders notified as part of the implementation phase.

18. The delivery partners and student advice bodies will be notified of the further amendment legislation via Student Finance Wales Information Notices.

Post Implementation Review

19. The main regulations governing the student support system are made annually and are continually subject to detailed review, both by policy officials and by the delivery partners in their practical implementation of the Regulations.

Summary

20. The making of these Regulations is necessary to establish the basis for and update aspects of the higher education student support system in Wales for the 2009/10 academic year.

List of consultees

Further Education Institutions

Barry College
Bridgend College
Ceredigion College
Coleg Glan Hafren
Deeside College
Gorseinon College
Gwent College
Coleg Harlech
Llandrillo College
Llysfasi College
Coleg Menai
Coleg Meirion-Dwyfor
Merthyr Tydfil College
Coleg Morgannwg
Neath Port Talbot College
Pembrokeshire College
Powys College
Coleg Sir Gar
St David's College
Swansea College
Yale College, Wrexham
Ystrad Mynach College
Welsh College of Horticulture

Higher Education Institutions

University of Wales, Aberystwyth
University of Wales, Bangor
Cardiff University,
University of Wales Institute Cardiff
University of Glamorgan
University of Wales, Lampeter
University of Wales, Newport
North East Wales Institute of Higher Education (now Glyndŵr University)
University of Wales, Swansea
Open University
Swansea Metropolitan University
Trinity College
Royal Welsh College of Music and Drama

Local Authorities

Anglesey Council
Blaenau Gwent Council
Bridgend Council
Caerphilly Council
Cardiff Council
Carmarthenshire Council
Ceredigion Council
Conwy Council
Denbighshire Council
Flintshire Council
Gwynedd Council
Merthyr Council
Monmouthshire Council
Newport Council

Neath Port Talbot Council
Pembrokeshire Council
Powys Council
Rhondda Cynon Taff
Swansea Council
Torfaen Council
Vale of Glamorgan Council
Wrexham Council
Welsh Local Government Association

Organisations

AMMOSHE
Care Council for Wales
fforwm
NUS Wales
Student Loan Company
NASMA
HEFCW
UKCISA
Citizens Advice Cymru

Annex B

Consultation Exercise

Set out below is a summary of the responses received on the proposals to replace the *Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2008 (No.1273 (W.130))*, which came into force on 30 May 2008 together with the subsequent amending legislation (SI 2008 No.2140 (W189)) which came into force on 29th August 08.

Summary

12 responses were received. The majority of respondents agreed with the majority of the proposals. Some offered comments about their implementation which have been considered carefully.

Set out below is a brief summary of the responses received, including a number of the technical delivery questions. These issues have been addressed and wherever possible additional information will be contained within the guidance that is issued in support of the legislation.

The only change with which five of the respondents disagreed was the proposal to change the re-assessment threshold from 15% to 5% (paragraph 5 of Schedule 5 to SI 2008/1273 refers). They voiced concerns about the administrative impact this will have on the Local Authorities. This proposed change has since been removed.

Responses to the Policy Changes to be included in the 09/10 Regulations:

Independent students and prior year tax

- The application form will have to make clear the financial information required for the various categories of student and include a reference to the fact that the partner's income is not included for student support, other than for supplementary grants, where the student is aged under 25. Also needs to be made clear enough for vulnerable students.
- This rule should be extended to include all students, including dependent and self employed. Where an independent student begins living with a partner between the prior tax year and the start of term, the prior tax year rule should also apply.
- Problems may arise with certain changes of circumstance.

Change in re-assessment rate from 15% to 5%

- Too low, would strongly recommend retaining the 15%. This will result in more current year assessments being provisional which will impact on Universities bursaries. This change in % will result in an increase in the numbers of 'current' assessments being requested. From an assessment point of view it may be time consuming.

Inflationary Uprating

- Four respondents felt that the figure used was too low, but the rest agreed or didn't comment on the amounts.

Residence in a House of Religious Order

- No concerns were raised regarding this change.

No automatic re-assessment of remaining student if sibling withdraws and simplification of rules on split contributions

- Will the computerised assessment process carry out the initial split contribution calculation and any subsequent re-assessments or will this have to be done by means of a manual workaround?

Graduate entrants

- No specific comments were received on this change.

General Comment

- Although Non-medical amounts have been increased for 2008, the equipment allowance has stayed the same. This is particularly important for severe disabilities such as a blind/deaf/wheelchair-bound students where the equipment costs are extremely high.