

REGULATORY APPRAISAL

EDUCATION, WALES

THE ASSEMBLY LEARNING GRANTS AND LOANS (HIGHER EDUCATION) (WALES) (AMENDMENT) REGULATIONS 2006

Background

1. The arrangements for providing student support are provided for under section 44 of the Higher Education Act 2004, which transfers to the National Assembly for Wales certain functions relating to the provision of financial support to students by way of loans and grants, 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).
2. Section 44 of the Higher Education Act 2004 was commenced by the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) Order 2005, and transferred these functions for academic year 2006/07 from the Secretary of State to the National Assembly for Wales. Student support was formerly administered on an England and Wales basis by the Department for Education and Skills (DfES).
3. The Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2006 No. 126 (W.19), which came into force on 1 March 2006, sets out the criteria governing the loans and grants available to students ordinarily resident in Wales for the 2006/07 academic year.

Purpose and intended effect of the measure

4. These Regulations amend the existing student support Regulations, which cover students ordinarily resident in Wales taking designated higher education courses in respect of the academic year 2006/07. The existing 2006 Regulations set out the loans and grants available to students and the associated eligibility and payment criteria.
5. These Regulations are required to amend the existing 2006 regulations to ensure compliance with a European Union Directive on the Free Movement for EU Citizens and their Families 2004/38/EC. Under this Directive the eligibility criteria for those EU Citizens who can demonstrate a connection to the UK have been widened, therefore, eligible citizens will be able to be assessed for student support along with other UK Nationals. The amendments also enable new provision to be made for postgraduate college fee loans for Oxbridge students, to encourage wider participation from students who come from poorer backgrounds.
6. In addition, it provides the opportunity to incorporate a number of technical amendments and clarifications. These will include further clarification on the

details of: the previous study rules; the need for a student to enter into a contract to receive a loan; the range of events occurring during an academic year that make a student eligible; the special support grant; split contributions (where a family has more than one student in HE and how the household income can be applied during assessment for student support) and; amending an anomaly to smooth the tapers of the part-time grant thresholds, created by the application of the DfES system on the historically slightly more generous part-time allocations in Wales.

7. The original policy intent for 2006/07 was for the Assembly Regulations to mirror the provisions of the DfES Regulations during this period of devolution. The exceptions to this being the support provided to eligible students where both the maximum amount of the part-time fee grant and part-time course grant differ from the equivalent sums in the DfES regulations because the part-time provision now combines the inherited DfES part-time grants with the additional part-time Assembly Learning Grant. The Department for Education and Skills (DfES) made similar amendment Regulations on 30 April 2006.
8. The details of the amendments to the original Regulations are set out below:
 - Part 2, section 6 of the Regulations has been amended to clarify the period of eligibility for those students who have completed a previous preliminary course and includes a formula, as well as expanding the list of definitions of the codes used in the formula for calculations;
 - Part 2, section 7 covering Previous Study has been revised to widen the circumstances when an eligible student may qualify for a grant for living costs, to correctly reflect the original policy intent. Examples of the circumstances include: undertaking a course which leads to qualification as a social worker, and: where the course is for initial teacher training. The change also allows those students who have completed a single course for a first degree, which may lead to an honours degree being conferred before the final degree is complete, to still be eligible for fee support. This will reflect the corresponding DfES provision;
 - Part 3A - Applying for Grants and Loans for Fees has been included to clarify that the level of grant can not exceed the level of fees paid by a student and that the student must enter into a contract with the Assembly in order to receive a loan. In addition, the list of events that can occur during an academic year that will enable a student to become eligible to receive support has been expanded in line with the DfES provision. Examples of the type of events, which would apply include, the course becoming a designated course or where a student acquires the right of permanent residence;

- Part 6 – section 18 provides further clarification of the eligibility criteria for students to receive a grant for living costs and has been included to replicate the DfES provision and to comply with the EU Directive;
- Part 7A – College Fee Loans has been inserted to provide for fee support for postgraduate students attending Oxford and Cambridge Universities. These proposals have arisen from concern about the impact of these college fees on graduate students from poorer backgrounds and to encourage wider participation for those who wish to enter a defined set of vocational courses leading to professional qualifications e.g. medicine. It is estimated that up to 10 students per academic year would be affected. The detail of the eligibility and payment criteria are contained within the new Schedule 3A. In summary, eligible students must be under aged 60 with an honours degree from the UK who fall under Schedule 1. This covers: persons ordinarily resident in Wales; those settled in the UK; refugees and persons with leave to enter or remain; workers; employed and self employed persons and their families in the European Economic Area and persons who are settled in the UK and have exercised right of residence elsewhere and EC nationals;
- Part 11 – section 50 makes provision for the Assembly to confer eligibility for support to part-time students where it is deemed necessary, in order to adequately cover the complexities and varieties of part time study. It also replicates the revised list of events, as given in Part 3A, that can occur during an academic year that will enable a student to become eligible to receive support and specifies that these events must occur within the first 3 months of the academic year;
- Part 11 – section 53 amends the income taper figures, i.e. where the household income exceeds a certain level, the amount of financial support available to the student is reduced correspondingly until the income reaches a set maximum level where no support is provided. Taper figures are used to calculate the amount of support available when the income falls between the minimum and maximum income levels. The amendments contained in the Regulations smooth the effect of the tapers on the level of support to be received. This anomaly has arisen from the application of the DfES system on the historically slightly more generous part-time allocations in Wales.
- Schedule 1 – sets out the detail of eligibility criteria for students to receive support and has been revised to incorporate the requirements of the European Union Directive on Free Movement for Citizens and their Families 2004/38/EC. Various entries throughout the Regulations, which refer to eligibility and Schedule 1 have been amended to reflect the changes; and

- Schedule 4 – Paragraph 3 amends a typographical error. In addition, further wording has been added to paragraph 10 to provide additional clarity on the relevant parental income thresholds for split contributions for old system and new system students. Split contributions are where a family has more than one student in higher education and rules governing how the household income is applied. A new paragraph 11 has been added covering split contributions from independent eligible students who have partners setting out how the residual household income is applied to the calculation for contribution. This replicates a late addition to the original DfES Regulations, which was not incorporated in the original Wales Regulations.
9. In practical terms the amendments will have little impact on the delivery of the student support arrangements for 2006/07, as the Student Loans Company (SLC) have been instructed to use the DfES Regulations to govern the rules engine used for the assessment and payment of support to Welsh students, except for the specific differences in the part-time arrangements.

Risk Assessment

10. These amendment Regulations need to be introduced to ensure compliance with the EU Directive requirements and to ensure that the Regulations for the 2006/07 academic year correctly reflect the original policy intent. The making of the regulations will provide legal protection for the Assembly against a claim for race discrimination being brought by an overseas student.
11. The terms of the EU Directive required Member States to make the necessary changes by 30 April 2006 and to take these into account when drafting future legislation. In drafting the Wales Regulations it was essential to ensure parity with the DfES amendment Regulations, to ensure full coverage. Consequently, this is the earliest opportunity for the Assembly to make these Regulations incorporating the requirements of the Directive.
12. The DfES has made similar amending Regulations for 2006 to enact the requirements of the EU Directive and to make new provision for postgraduate college fee loans.

Options

Option 1 – Do Nothing

13. If these Regulations are not made, the Assembly will not be able to meet its obligations under the terms of the EU Directive. It could open the Assembly to possible legal challenge and raises the potential for a claim for race discrimination being brought by an overseas student. There would also be a lack of clarity for the Local Education Authorities and the Student Loans Company (SLC) on the areas where the technical amendments are required, as the changes are required to effect the original policy intent and to mirror arrangements on the ground.

Option 2 – Make the Legislation

14. Implementing these Regulations will ensure that the requirement on the Assembly to incorporate the terms of the EU Directive would be met. The revised eligibility criteria and technical changes could be taken into account for the assessment of applications for the 2006/07 academic year.

Benefits

15. The Regulations will provide the Assembly with the legislative coverage to meet the requirements of the EU Directive and remove (in so far as it is possible) the potential risk for challenge by an EU Citizen who wishes to apply for student support. It also will provide certainty to the delivery partners i.e. the Student Loan Company; Higher Education Institutions, and Local Education Authorities as the Regulations will provide consistency with the DfES Regulations for the 2006/07 academic year.

Costs

16. There are no financial implications for Local Government and the Student Loan Company (SLC) created by these new Regulations. There are additional costs for the Assembly which can be accommodated within the Assembly's existing Learner and Student Finance Spending Programme Area budgets. Based on existing evidence the costs of implementing the proposed eligibility changes are negligible and therefore, hard to quantify as they will be created by any potential European Union student who meets the widened criteria and wishes to study in Wales. Similarly, the impact of the technical changes are negligible as the rules engine being used by the SLC to assess the amounts of support available to a student, already take these changes into account.

Consultation

With Stakeholders

17. A formal consultation exercise has not been undertaken, as the views of the key stakeholders and delivery partners have been obtained through the Devolution of Student Support Project Board meetings. These include representatives from the Local Education Authorities, the Higher Education Institutions, the National Union of Students Wales, the Student Loans Company (SLC) and DfES colleagues who have been made aware of the intention to introduce the Regulations. No issues were raised.

18. A formal consultation exercise was undertaken for the original Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2006 between 29 July and 23 September 2005. Five responses were received from the 236 stakeholders who were consulted. A list of consultees is attached at Annex A. No substantive changes were suggested and the proposals were supported.

With Subject Committee

19. These Regulations were notified to the Education, Lifelong Learning and Skills Committee, via the list of forthcoming legislation on 16 March 2006, (ELLS(2)-05-06, paper 2 item no: ELL-07-06) and have remained on the list ever since. They were identified for detailed scrutiny. The Committee considered the Regulations on 18 May 2006 and recommended approval of the Regulations without amendment. A copy of the Committee transcript is attached at Annex B.

Review

20. The Regulations governing the student support regime are made annually to support each academic year and new proposals for Regulations governing the arrangements for the 2007/08 academic year will be consulted upon during late summer/autumn 2006.

Summary

21. The making of these Regulations will provide the Assembly and the relevant stakeholders with assurance that the student support Regulations correctly reflects the policy intent for 2006/07 academic year. There are additional costs for the Assembly, which can be accommodated within the Assembly's existing Learner and Student Finance Spending Programme Area budgets.

Annex A – The list of consultees for the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2006

Colleges

Barnet College

Barry College

Bridgend College

Ceredigion College

Chester College

Deeside College

Edgehill College

Coleg Elidyr

Coleg Glan Hafren

Gorseinon College

Gwent College

Llandrillo College

Llysfasi College

Coleg Menai

Coleg Meirion-Dwyfor

Merthyr Tydfil College

Coleg Morgannwg

Neath Port Talbot College

North East Wales Institute of Higher Education

Pembrokeshire College

Pengwern College

Pontypridd College
Powys College
Coleg Sir Gar
St David's College
Swansea Institute of Higher Education
Trinity College
Yale College, Wrexham
YMCA Community College
Ystrad Mynach College
Welsh College of Horticulture
Welsh College of Music and Drama

Universities

University of Wales, Aberystwyth
University of Wales, Bangor
Queen's University Belfast
University of Wales, Cardiff
University of Wales Institute Cardiff
University of Wales, College of Medicine
University of Glamorgan
Kingston University, London
University of Wales, Lampeter
University of Liverpool
University of Wales, Newport

Open University

University of Sheffield

University of Wales, Swansea

Councils

Anglesey Council

Blaenau Gwent Council

Bridgend Council

Caerphilly Council

Cardiff Council

Carmarthenshire Council

Ceredigion Council

Conwy Council

Denbighshire Council

Flintshire Council

Gloucestershire 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

Organisations

Bangor Students Union

Careers Wales Association

Careers - Gyrfa

Careers Wales Gwent

Careers Wales North East

Careers Wales West

Careers Wales Morgannwg

Citizens Advice Bureau Cardiff

Citizens Advice Bureau Central

DfES

Department of Education and Learning Northern Ireland

Educationet

Education and Learning Wales

Funky Dragon

Health Professions Wales

Higher Education Funding Council for Wales

Higher Education Wales

ISCO Careerscope

Mencap

NUS Wales

Outreach – Lady Margaret Hall

Research Ethics Committee for Scotland
Student Loan Company

Swansea Union Magazine

Wales Council for Voluntary Action

Welsh Local Government Association

Workers Educational Association

Annex B – Committee Transcript

Peter Black: The purpose of this session is to scrutinise the Assembly Learning Grant and Loans (Higher Education) (Wales) (Amendment) Regulations 2006, which were identified for scrutiny at the meeting of the committee on 16 March. Minister, would you like to make a brief introduction?

The Minister for Education, Lifelong Learning and Skills (Jane Davidson): The purpose of these regulations is to update the existing student support regulations for the 2006-07 academic year. The need has arisen to amend the Assembly Learning Grant and Loans (Higher Education) (Wales) (Amendment) Regulations 2006 to ensure that they comply with the European directive and make new provision for college-fee loans for Oxbridge students. This will apply to the following courses: medical doctor, dentist, veterinary doctor, architect, landscape architect, landscape designer, landscape manager, town planner, and town and country planner. This provision has been made because some Oxford colleges charge additional fees. This has also provided the opportunity to make some in-year technical amendments to the original legislation. These changes are administrative in nature and reflect similar updates made by the Department for Education and Skills to its regulations for this academic year. This autumn is a milestone for the Assembly with the devolution of this policy taking effect, and Welsh students coming under the Student Finance Wales system. The making of these regulations will support these arrangements and provide greater clarity for delivery partners. Work is underway to look at the support arrangements for students in 2007-08, which will be the responsibility of the Assembly. These proposals will be consulted upon over the summer months, and new regulations need to be in place by 1 March to underpin the 2007-08 academic year.

I would like to bring Vaughan Johnson and Huw Davies to the table.

Peter Black: Thank you. It is easier for them to contribute from the table than from the side of the room.

Janet, do you have any questions or points that you would like to raise?

Janet Ryder: Yes. Can my questions be answered one by one?

Peter Black: Yes.

Janet Ryder: The regulations apply to higher education. Do the regulations relating to further education have to be changed in a similar way?

Mr Davies: The eligibility criteria for further education will need to be amended. There is a different mechanism for the establishment of the further education scheme. It is a scheme under another set of regulations, and I think that that is being dealt with separately.

Janet Ryder: I am thinking of a particular case, where a European Union subject is seeking a place on a nursing course but has been told that they are not eligible. Will that scenario change if the further education regulations are altered in any way?

Mr Johnson: No, because we are looking at two different schemes. One is covered by the amending regulations. The initial regulations to which they relate, which are before you today, deal with a package of support—fee support, maintenance support, living-costs support and so on. The Assembly Learning Grant for further education students relates to costs that are incurred in following a course, not tuition fee costs. I believe that EU students are only able to access support towards tuition fee costs, and none of the other related costs.

Jane Davidson: There was specific case law, on which I have reported to committee previously, in terms of what constituted eligibility for an EU citizen to demonstrate a connection with the UK. It is that case law that is being appropriately reflected in these regulations. So, there were very limiting circumstances under which specific nationals could access the provision as a result of that case.

Janet Ryder: This is quite a complex field with the split between these regulations relating to HE and also the regulations relating to FE. It has changed considerably with the devolution of these powers. Would it be possible to have a paper that shows the different types of support mechanisms for students at each level, and the way with which they are dealt in regulations—for our own guidance, more than anything?

Peter Black: That would be useful.

Jane Davidson: No problem.

Janet Ryder: On these regulations, there is an issue about Oxbridge students, and the Minister detailed the courses that they relate to. Is it the Minister's specific policy to encourage students along this line, or is it in here just because it is in the DfES regulations? Under what circumstances can we expand this, now that we have control over these mechanisms, to include those courses that are not offered at higher education level in Wales, such as veterinary courses?

Mr Johnson: These changes reflect the changes that have been made or accommodated within the DfES regulations, because one of the drivers this year was to ensure that no Welsh domiciled student would be disadvantaged by the fact that responsibility was being transferred to Wales. Therefore, we needed to ensure that we were matching anything that the DfES was making available that could potentially affect Welsh students studying in England. It reflects the situation that is unique to the Oxbridge universities, where, for some courses, a college fee is charged in addition to the university fee.

On the general issue of supporting the tuition fee costs of students who are studying courses that are not delivered or readily available in Wales, such as the veterinary sciences and so on, there are certain legal obstacles that prevent us from readily going down that path, linked to the European Union issue. Anything that we make available to Welsh students if they study outside Wales would immediately become available to all non-UK EU students, wherever they choose to study in the UK and regardless of whether they have a direct link with Wales, which would clearly create some problems for us. Nevertheless, the whole issue is currently being explored. We have commissioned some work from the Higher Education Funding Council for Wales on the availability of

courses to define a course that cannot be done in Wales, or where there is no similar provision in Wales, and are exploring ways of addressing this issue.

Janet Ryder: Will that be a paper that will come to committee? Veterinary courses stand out in particular. Students cannot study in Wales, and they are distinctly disadvantaged compared to other students who may be able to study their chosen course in Wales. It is a different issue if students opt to study in England, but where students cannot study the course in Wales—and Wales needs veterinarians, given the nature of the country—we need to be able to train those vets. It is grossly unfair that we cannot find a mechanism for supporting those students who want to study veterinary sciences and who have to study abroad. I ask the Minister whether that paper will come to committee and, if so, when, so that we can start to see some movement on this. I would also be interested to know how many non-UK-resident EU nationals study veterinary courses, because that must also play into this.

Jane Davidson: All the comments that have been made by Vaughan and Huw were made in the full discussion that led to the all-party agreement on how it was delivered on 22 June. It is crucial that, as an Assembly, we properly recognise where there are legal obstacles and that we continue to ensure that no Welsh student is disadvantaged; that is why we have put in place the specific provision relating to the Oxbridge colleges. We do not anticipate that that will be taken up by more than some 10 students a year, but 10 students from Wales would be disadvantaged if we did not make this additional provision. I am sure that all Members would want to support that.

As Vaughan says, we have already started commissioning work on issues around courses that are not available in Wales and, when that work is available, it will be brought to committee. We must remember that what we are looking at today—and none of your questions so far have focused on the scrutiny of the legislation—is a simple uprating of the current requirements plus the new legal provisions in terms of Europe, and the new provision in terms of Oxbridge. As I said in my opening remarks, from this autumn, we will be looking at the new arrangements for our delivery from 2007-08 and we will, undoubtedly, have discussions in this committee at that time, following consultations, which will take place this summer. So, there will be an opportunity for this committee to consider these issues fully in the autumn because regulations will need to be made by 1 March next year, in terms of the 2007-08 cohort of students.

Peter Black: I will ask for one point of clarification. I understand that all this is in line with the agreement, and I am sure that it has all-party support. Clearly, the role of the committee is to scrutinise that and to find clarification on various issues that we would like to be clear about. I understand the issue in relation European Community nationals because, in the European Community, we have a free-trade area and we have to have that movement of labour and the same opportunities for every nation state within the EC. I am not entirely clear why it is extended to the European economic area or to Swiss self-employed persons. Could we have some clarification on that?

Mr Davies: There are separate agreements extending the same rights to the full European economic area and Switzerland.

Peter Black: So it is a separate agreement, is it?

Mr Davies: Yes, there are separate agreements with Switzerland and with the countries of the EEA.

Peter Black: I understand that it is not just in education, but I just wanted to be clear on that. Does anyone else have any questions on these regulations? I see that they do not. We will draw up a committee report for Business Committee in due course on our discussions today. Thank you.