

SL(5)663 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

Background and Purpose

The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (“the 2020 Regulations”) revoke and replace the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019 (together “the 2019 Regulations”).

The purpose of the Regulations is to ensure that existing student finance policy is continued for the academic year 2020/21 and is not adversely affected by the end of the transition period. The Regulations will therefore replicate the provisions in the 2019 Regulations. In addition, the Regulations will ensure EU nationals, and other groups who are settled under the EU Settlement Scheme, or who are to be treated as such under provisions of the Withdrawal Agreement, the EEA separation agreement and the Swiss citizens’ rights agreement are able to access the same support and home fee status as they would have been able to before the end of the transition period.

The Regulations will also amend the provisions which relate to the eligibility for student support of those settled in the UK but who exercise a right of residence elsewhere in the EU after IP completion day and then return to the UK and start a course before 1 August 2021. Due to UK nationals no longer being able to exercise this right of residence after IP completion day, were the provisions not amended, EU nationals would receive a more favourable treatment than UK nationals. An amendment will ensure that they receive equal treatment.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.



1. 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 Senedd

The Committee notes that these Regulations are made using enabling powers in education law, rather than under the European Union (Withdrawal) Act 2018 as is usually the case for statutory instruments relating to the United Kingdom's exit from the European Union. However, the Committee notes that the Minister for Education previously wrote to the Committee on 15 February 2019 in relation to the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, stating that:

"Paragraph 1(1) of Schedule 2 to the Withdrawal Act contains a power for the Welsh Ministers to make regulations to "prevent, remedy or mitigate" any failure of "retained EU law" to operate effectively arising from the UK's withdrawal from the EU. There is an argument to be made that the proposed amendment regulations should be made under this power. However, I believe that the usual education law powers cited above are more appropriate for these purposes."

The letter from the Minister went on to state that:

"An important consideration in this decision was accessibility of the law. The Committee noted the importance of maintaining the accessibility of the law in the EU Exit SI programme in its recent report on scrutiny of legislation to leave the EU. Student support legislation is extremely complex and often amended. Regulations made under the Withdrawal Act will not be directly connected to education legislation, making discovery of the appropriate legislation more difficult than it ought to be for the public. Equally, in terms of accessibility, the title of the regulations will include "EU Exit" therefore making it clear that there is a link to the departure of the UK from the EU."

The Welsh Government is asked to confirm whether the above reasoning also applies to these Regulations and, if not, why these Regulations are made using enabling powers in education law, rather than under the European Union (Withdrawal) Act 2018 as is usually the case for statutory instruments relating to the United Kingdom's exit from the European Union.

Implications arising from exiting the European Union

These Regulations will form part of EU retained law even though they are not being made under the European Union (Withdrawal) Act 2018. The procedure is negative in accordance with the enabling powers.

Welsh Government response

These Regulations revoke and replace (with additions and amendments) the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019. The same reasoning regarding the enabling powers as outlined above therefore applies to these Regulations.



Legal Advisers
Legislation, Justice and Constitution Committee
30 November 2020



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—
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