

SL(6)102 - The Education (Student Fees, Awards and Support) (Amendment) (Wales) Regulations 2021

Background and Purpose

These [Regulations](#) amend seven sets of regulations concerning student finance. The student finance regulations amended by these Regulations contain criteria pursuant to which certain groups may be eligible for student support, home fee status and the tuition fee cap.

These Regulations amend student finance regulations as follows:

- Irish nationals resident in the EU before studying in Wales: the amendments make provision for Irish nationals studying in Wales who were resident in the EEA and Switzerland at the end of the transition period to be eligible for home fee status and fee support so that their position is comparable to that of a UK national;
- EU Withdrawal Agreement, EEA EFTA separation agreement and Swiss citizens' rights agreement: amendments relate to:
 - the rights of those making late applications to the EU Settlement Scheme and to future joining family members who have yet to apply and are still within the deadline for doing so; and
 - updates to the definition of a person with protected rights to ensure that the student finance regulations confer protections:
 - on a person, including a person who has submitted a late application, while their application is pending and during any appeal against a refusal of their application; and
 - on a person within the deadline for making an application, including a person joining a family member during the initial three months following their arrival in the UK; and
- Student support for those from Crown Dependencies: amendments to ensure that persons (other than certain Irish citizens) who come to Wales from the Isle of Man and the Channel Islands for the purpose of study are not eligible for support (the Explanatory Memorandum explains that this corrects an unintended consequence of previous amendments).

These Regulations came into force on 31 December 2021.

Procedure

Negative.



The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 56 of these Regulations inserts new paragraph 8BA in Schedule 2 to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019. Paragraph 8BA(2) refers to paragraph 1(5), but that reference appears to be erroneous – paragraph 1(5) defines the scope of citizens' rights provisions and does not relate to whether a person is treated as being ordinarily resident.

Merits Scrutiny

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

2. 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 preamble to these Regulations explains that they are made in exercise of the powers under sections 22(2)(a) and 42(6) of the Teaching and Higher Education Act 1998, amongst other powers.

The Explanatory Memorandum states that these Regulations are also made under section 22(2)(d) of the Teaching and Higher Education Act 1998. This appears to be an error. The power under section 22(2)(d) does not appear to be relevant to the scope of these Regulations.

Welsh Government is asked to confirm that the Explanatory Memorandum is incorrect and that it did not intend to rely on the enabling power under section 22(2)(d) of the Teaching and Higher Education Act 1998.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

5 January 2022

