

SL(5)225 – The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018

Background and Purpose

These Regulations provide for loan support to eligible students undertaking designated postgraduate doctoral degree courses which being on or after 1 August 2018. The Regulations set out:

- the eligibility requirements for loan support;
- what constitutes a “designated” course;
- the formalities relating to applying for a loan;
- details of the amounts and payment of loans;
- details regarding loans to eligible prisoners; and
- information requirements.

Procedure

Negative.

Technical Scrutiny

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

1. **Standing Order 21.2(x): that there appears to have been unjustifiable delay in publishing it or laying it before the Assembly.**

The Regulations were made on 23 May 2018 but were not laid until 1 June 2018 which is a delay of 9 days. The Government is asked to provide any justification for the 9 day delay in laying these Regulations after they were made.

Merits Scrutiny

One 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 Assembly.**

Regulation 3(3)(a) provides that a person is not eligible for a postgraduate doctoral degree loan if they have reached the age of 60 on the first day of the academic year in which the course starts.

The Committee raises the following human rights concern in respect of this age limit.

Article 2 of Protocol 1 to the European Convention on Human Rights (ECHR) contains a free-standing right to education.



Article 14 of the ECHR provides that the enjoyment of the rights and freedoms set out in the ECHR shall be secured without discrimination on various protected grounds, including age.¹

The Committee believes that the issues raised by regulation 3(3)(a) relate to the right to education. Setting an upper age limit of 60 is discriminatory. It is therefore necessary to look at whether the upper age limit is justified. If it can be justified, there is no breach of the ECHR. The Supreme Court sets a fourfold test²:

- a) Does the measure have a legitimate aim sufficient to justify the limitation of a fundamental right?
- b) Is the measure rationally connected to that aim?
- c) Could a less intrusive measure have been used?
- d) Has a fair balance been struck?

The Explanatory Memorandum provides justification as to the setting of the upper age limit on the basis that:

- a) The aim of the scheme is to increase, in the context of finite resources, high level skills for the economy. The Government states that to ensure value for money, sustainable funding is required and the age limit of 60 mitigates against the risk that loans are disproportionately taken out by older students who will be unlikely to repay the loan amount in full or make significant repayments and who would have a limited number of working years in which their skills would be available to the economy. The Explanatory Memorandum sets out findings of analyses that the Government has carried out to bring it to this conclusion.
- b) It is necessary to ensure value for money for the taxpayer and the Government takes the view that the imposition of the age limit is rationally connected to the aim.
- c) The possibility of a less intrusive measure to achieve the aim was considered. The conclusion was that a system which required individual investigation and assessment would create a heavy administrative burden which could consume scarce resources. Such a system might also introduce scope for inconsistent decision-making.
- d) Taking into account its evidence concerning not only repayment rates of loans but also employment rates (it is not the purpose of the loan to facilitate the uptake of doctoral degree courses by students who have no particular intention to return to the workplace), the Government considers that the age restriction strikes a fair balance and is justified.

We welcome the justification set out in the Explanatory Memorandum and that it appears the Government has given careful consideration to the justification of setting an upper age limit of 60 in these Regulations.

¹ The European Court of Human Rights ECtHR has found that 'age' is included among 'other status' in Article 14 (Schwizgebel v Switzerland (No. 25762/07)).

² R (on the application of Tigere) (Appellant) v Secretary of State for Business, Innovation and Skills (Respondent) [2015] UKSC 57



Implications arising from exiting the European Union

The eligibility requirements for student finance are drafted to take account of UK membership of the European Union. Therefore certain EU students will be eligible for support under the Regulations. It is not confirmed at this stage what effect Brexit will have on the mobility of students.

Government Response

A Government response is required to the technical scrutiny point raised in this report.

Legal Advisers

Constitutional and Legislative Affairs Committee

13 June 2018

