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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Home fee status for those from the Crown Dependencies

Home fee status and tuition fee caps for those moving from the Crown Dependencies to undertake a course in Wales

Date of issue: 2 August 2021

Action required: Responses by 25 October 2021

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview This consultation seeks views on amending certain regulations so that students moving from the Crown Dependencies to undertake certain courses in Wales will be eligible for home fee status and, in relation to courses of higher education, subject to tuition fee caps.

How to respond Please use the questionnaire at the back of this document and email responses to:

HEDConsultationsMailbox@gov.wales

Further information and related documents **Large print, Braille and alternative language versions of this document are available on request.**

Contact details For further information:

Rhian Haggett
Higher Education Division

HEDConsultationsMailbox@gov.wales

Also available in Welsh at: <https://llyw.cymru/statws-ffioedd-cartref-i-fyfyrrwyr-o-diriogaethau-dibynnol-ar-y-goron>

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:

Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

Background

Those who come to Wales from the Crown Dependencies of the Bailiwick of Guernsey or the Bailiwick of Jersey, which make up Channel Islands, or the Isle of Man (together 'the Islands') to study may be charged fees, including tuition fees, by certain institutions. They are treated as 'international students' and may be charged higher fees than those who are treated as having 'home fee status'. This applies to the fees charged by higher education providers, further education providers, and certain other providers.

Further, the Welsh Ministers have legislated to ensure that certain persons – 'qualifying persons' – who study on certain courses of higher education – 'qualifying courses' – may only be charged a tuition fee by an institution that does not exceed the amount that the institution has specified for that course. The maximum tuition fee that an institution may specify cannot in any event exceed the amount established by the Welsh Ministers. This amount is known as the 'tuition fee cap' and is currently set at £9,000 for full-time undergraduate courses. Those who come to Wales from the Islands to study are not subject to these maximum fees.

This consultation seeks views on amending regulations so that these students will be eligible for home fee status, and will be subject to tuition fee caps.

Home fee status

Section 1 of the Education (Fees & Awards Act) 1983 ('the 1983 Act') applies to (amongst others) universities, other institutions in the higher education sector and institutions in the further education sector. Under section 1 of the 1983 Act, the Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) can make regulations which require or authorise the charging of fees by institutions which are higher in the case of students not having such connection to the UK as may be specified in the regulations than in the case of students that do have such a connection. Without this provision, an institution which charges fees to some students which are higher than those charged to other students may be in breach of the Equality Act 2010. Fees may include tuition fees charged to higher education students (undergraduate and postgraduate), further education students, and students at certain other providers.

Using the powers available to them in the 1983 Act, the Welsh Ministers made the Education (Fees and Awards) (Wales) Regulations 2007 (SI 2007/2310) ('the 2007 Regulations') on 4 August 2007 and they came into force on 31 August 2007. The 2007 Regulations have been amended a number of times. Regulation 4 of the 2007 Regulations provides that it will be lawful for certain institutions to charge higher fees in the case of a person who does not fall within the Schedule to the 2007 Regulations than in the case of a person who does fall within that Schedule. Institutions are those:

- within the higher education sector, including a constituent college, school or hall of such an institution;
- within the further education sector;
- which are training providers and are receiving financial support under section 86 of the Education Act 2005; and
- which provide further education and are maintained by a local authority.

Regulations 5 (Awards by local authorities), 6 (Payments by HEFCW to training providers), 7 (Payments by HEFCW) and 8 (Payments by the Welsh Ministers) of the 2007 Regulations make similar provision in respect of making lawful the restricting of the payment of certain awards to those who fall within the Schedule to those Regulations. It should be noted that there may be additional eligibility criteria for those awards and it does not follow that by appearing in the Schedule that a person will be eligible for an award.

The basic eligibility category in the Schedule to the 2007 Regulations is that of those persons who are settled in the UK and, therefore, have a strong connection to the UK. Other groups who are eligible also must have a tangible connection to the UK. In addition, a period of ordinary residence in the UK and Islands is required for eligibility in a number of cases. Persons with a strong connection to the UK are in a better position to go on to make a contribution to society and the economy, providing the policy rationale for their more favourable treatment.

This ordinary residence requirement is waived in a small number of cases where particular policy considerations arise (for example, in the case of refugees, to enable the UK to meet its obligations under the 1951 Refugee Convention).

Those in the Schedule are said to have 'home fee status' as they are usually resident in the UK. This distinguishes them from those not resident, usually known as 'international students'.

The Schedule contains a number of categories of eligible person. Many of these include a requirement that the person be ordinarily resident in the UK on the first day of the first academic year of the course. Regulation 2(8) of the 2007 Regulations currently provides that a person who is ordinarily resident in the UK as a result of having moved from the Islands for the purpose of undertaking a course is to be considered to be ordinarily resident in the Islands. So, a person who moves to the UK from the Islands to study may not fall within any of the categories in the Schedule and may not be eligible for home fee status.

The tuition fee cap

The Higher Education (Wales) Act 2015 ('the 2015 Act') provides for certain institutions in Wales to apply for the approval of a fee and access plan. If successful, the higher

education courses of the institution are designated for the purpose of the Welsh Ministers providing financial support to a student undertaking one of those courses. Section 5 of the 2015 Act requires that a fee and access plan must specify (or provide for the determination of) fee limits in relation to certain 'qualifying courses' each academic year. Fee limits are the maximum amount which a 'qualifying person' will have to pay to an institution to undertake a qualifying course, and are established by the institution.

Section 5(2)(b) of the 2015 Act enables the Welsh Ministers to prescribe a description of qualifying courses, and section 5(5)(b) enables them to prescribe classes of persons as qualifying persons. These are prescribed by the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015 (SI 2015/1484) ('the QCP Regulations'). The QCP Regulations have been amended a number of times.

The fee charged for a course must not in any event exceed the amount specified in the Higher Education (Amounts) (Wales) Regulations 2015 (SI 2015/1496) for that category of course. For example, the limit for full-time undergraduate courses provided by institutions in Wales is £9,000. Different limits apply to different categories of course. These fee limits are known as the 'tuition fee cap'.

The Schedule to the QCP Regulations contains a number of categories of eligible person. Many of these include a requirement that the person be ordinarily resident in the UK on the first day of the first academic year of the course. Paragraph 1(6) of that Schedule provides that a person who is ordinarily resident in Wales, England, Scotland, Northern Ireland or the Islands having moved from one of those areas for the purpose of undertaking the present course or a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the present course, is to be considered to be ordinarily resident in the place from which the person moved. So, a person who moves to the UK from the Islands to study may not fall within any of the categories in the Schedule and may not be subject to the maximum fee specified by institutions in their fee and access plans.

Policy position

The Welsh Government is of the view that there is a strong case to be made for amending the 2007 Regulations and the QCP Regulations so that persons who move from the Islands to undertake a course are treated as ordinarily resident in the UK rather than in the Islands. The Islands have a close and durable connection to the UK. While the Islands are self-governing and not part of the UK, the UK has responsibility for defence and foreign relations, and there are a number of historical and constitutional ties. Many residents are UK nationals.

Students from the Islands can claim an association with the UK which is similar in strength to that which confers eligibility to home fee status and the tuition fee cap on other groups. For example, a UK national who is undertaking a course in the UK and who has been ordinarily resident in the British overseas territories for at least part of the three-year period preceding the first day of the first academic year of the course is eligible for both. A UK national from the Islands who is ordinarily resident in the UK as a result of having moved from the Islands to undertake a course is not.

The UK Government has made those from the Islands eligible for home fee status and tuition fee caps when undertaking a course in England from 1 August 2021.

Proposal

The Welsh Government proposes, subject to the views of stakeholders, an amendment to the 2007 Regulations and to the QCP Regulations which will remove the provisions which currently prevent a person who is ordinarily resident in the UK as a result of having moved from the Islands to undertake a course from being treated as ordinarily resident in the UK. The removal of these provisions will enable those persons to benefit from home fee status and, in the case of higher education courses, tuition fee caps, provided they also satisfy all other relevant eligibility criteria.

Home fee status extends to any fees charged by an institution.

Application

It is proposed that amendments to regulations would come into force for the start of the 2022/23 academic year on 1 August 2022. Students coming from the Islands to begin a course on or after that date and who are ordinarily resident in the UK would not be treated as being ordinarily resident in the Islands. In relation to the eligibility categories which require a person to be ordinarily resident in the UK on the first day of the first academic year of the course, such a student would (subject to satisfying all other eligibility criteria) be eligible for home fee status and the tuition fee cap. Such students on courses which started before 1 August 2022 would (subject to satisfying all other eligibility criteria) be eligible for home fee status and tuition fee caps for an academic year beginning on or after 1 August 2022.

Costs and benefits

In maintaining the status quo, students who have moved from the Islands for the purpose of undertaking a course may be charged higher fees while studying in Wales than would be the case if regulations are amended. There were 160 students from the Islands studying at Welsh higher education institutions in the 2019/20 academic year¹.

¹ Source: HESA via Welsh Government.

Students from the Islands would benefit from this proposal by way of lower tuition fees. The Welsh Government expects this will increase the number of students from the Islands who choose Wales as a study destination. Students who are ordinarily resident in the UK as a result of moving from the Islands for the purpose of undertaking a course are eligible (from the 2021/22 academic year) for home fee status and tuition fee caps while studying in England. Amending the regulations will ensure that the competitive position of Welsh institutions matches that of their English counterparts.

Conversely, institutions may lose some fee revenue as a result of this proposal, as fees are lowered, representing a cost to them. This may be offset by an increase in the number of students from the Islands. There will also be time-limited adjustment costs for institutions to make system changes, ensure fee assessors are aware of the changes, and to develop or amend marketing and student-facing fee related information. There are limited direct costs to Welsh Government (those related to the amending of regulations).

Overall, the Welsh Government believes the benefits of this change will outweigh the costs.