POLICY NOTE

THE EDUCATION (STUDENT LOANS) (SCOTLAND) AMENDMENT REGULATIONS 2016

SSI 2016/261

The above instrument was made in exercise of the powers conferred by sections 73(f) and 74(1) of the Education (Scotland) Act 1980. The instrument is subject to negative procedure.

Policy Objectives

The Scottish Government recently completed a review of the upper age limit applied to eligibility for student living-cost loans ("maintenance loans"). This review was undertaken in light of the Equality Act 2010 and future increases in the state pension age.

Informed by the findings of that review, Ministers decided to increase the upper age limit for eligibility for a student maintenance loan, from age 55 to age 60. This will bring Scotland into line with the age cap applied elsewhere in the of the UK.

During conduct of the review, the current upper age limit was challenged by Judicial Review in the Outer House of the Court of Session. On 20 May 2016, Lady Scott issued her opinion in that Judicial Review. She found that the current age limit of 55 for eligibility for student maintenance loans is unjustifiably discriminatory on grounds of age and, as such, Regulation 3(2)(b)(ii) of the Education (Student Loans) (Scotland) Regulations 2007 (which contains the age limit)) is incompatible with the European Convention on Human Rights and is outwith the legislative competence of the Scottish Parliament. She stated that "A cut off on the basis of age is not justifiable unless it can be shown to be rationally connected to the legitimate aim of the decision maker or regulations involved"; she was not satisfied that such a rational connection was shown for the age limit of 55.

In light of the review and Scottish Ministers' intention to raise the age limit to 60, the Scottish Government took the decision not to appeal the court judgement which found the current age limit of 55 to be unlawful. Having carried out a thorough Equality Impact Assessment and careful financial modelling, the Scottish Government is clear that it is able to show a rational connection between the age limit of 60 and the policy of ensuring a fair and proportionate approach to the issue of student support which recognises the needs and desires of students of all ages to study courses of higher education as well as the financial constraints on the Scottish Government and the changing demographics and participation in the labour market.

At a hearing on 7 September 2016 to make orders under section 102 of the Scotland Act 1998, following the findings in her substantive opinion, Lady Scott agreed that the Scottish Government is best placed to assess the financial burden of her findings and, having been informed of the substance of this instrument, agreed to suspend the effect of her judgement until 31 October 2016 to allow the amendments in this instrument to take effect. Lady Scott also agreed to limit the retrospective effect of her judgement.

This instrument gives effect to the new policy to raise the age limit to 60 and corrects the defect identified in the Judicial Review. The instrument does this by amending the Education (Student Loans) (Scotland) Regulations 2007 ("the 2007 Regulations") which currently prevent the award of a student maintenance loan to those persons who are aged 50 or over on the date that they commence a designated course of higher education (except where the person is under the age of 55 and the Scottish Ministers are satisfied that the person intends to enter employment after completion of the course which he or she is undertaking).

The instrument amends the 2007 Regulations so that a person who meets the other eligibility criteria in the 2007 Regulations and commences such a course prior to reaching the age of 60 will now be eligible for a student maintenance loan without any requirement to satisfy the Scottish Ministers of their intention to enter employment after completing their course.

Consultation

A consultation was not considered necessary due to the nature of the amendments.

Impact Assessments

An Equality Impact Assessment has been carried out. It found limited evidence to demonstrate a positive or negative impact of the existing age limit on the protected characteristic of age and concluded that the policy of capping the age at which a student is eligible for a maintenance loan is a proportionate and justifiable position. The full EQIA will be available to view on the publication area of the Scottish Government website - https://beta.gov.scot/publications/ .

Financial Effects

A BRIA is not necessary as the instrument has no impact upon business, charities or voluntary bodies.

Scottish Government
Directorate for Advanced Learning and Science
9 September 2016