

SL(6)087 - The Education (European University Institute) (Wales) (Amendment) (EU Exit) Regulations 2021

Background and Purpose

These [Regulations](#) amend the Education (European University Institute) (Wales) Regulations 2014 (“the 2014 Regulations”) to ensure compliance with the EU Withdrawal Agreement, the EEA EFTA separation agreement, the Swiss citizens’ rights agreement (“the Agreements”) and the Common Travel Area arrangement.

The European University Institute (“the Institute”), located in Florence, Italy, is an international postgraduate and post-doctoral teaching and research institute established by European Union member.

Support for an eligible student who attends the Institute is provided for by the 2014 Regulations. The Welsh Ministers may only award support to one eligible student in each academic year.

These Regulations remove eligibility for support from EU nationals and accommodate those with citizens’ rights under the Agreements.

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 2 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

The first paragraph of the Explanatory Note states that one of the principal amendments made by these Regulations is to change the application deadline under the 2014 Regulations to 28 February. These Regulations do not appear to include any provision to change the application deadline. Therefore, there is an inconsistency between what the Regulations include and what the Explanatory Note states.



2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 11(12) of these Regulations inserts a new paragraph 9B (United Kingdom nationals) into Schedule 1 to the 2014 Regulations. Paragraph 9B(1)(b)(ii) includes the text:

“and has remained ordinarily resident in the territory comprising the United Kingdom, Gibraltar, the European Economic Area and Switzerland throughout the period beginning on IP completion day and ending immediately before the relevant date”

It is unclear whether this text forms part of sub-paragraph (ii) or paragraph (b) and would apply equally to sub-paragraphs (i) and (ii). In new paragraph 9BA, the latter approach is taken.

Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

3. 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.

Paragraph 289D of the immigration rules provides for the grant of further limited leave to remain for a period not exceeding 30 months in respect of an applicant that does not meet the requirements for indefinite leave to remain as a victim of domestic violence. This provision is not referenced within the first sub-paragraph of the definition of *“person granted leave to remain as a protected partner”* inserted into the 2014 Regulations by these Regulations.

This is different to the position under sub-paragraph (b) of that definition, which includes reference to paragraph D-DVILR.1.2 of Appendix FM of the immigration rules. Under paragraph D-DVILR.1.2, provision is made for further limited leave to remain for a period not exceeding 30 months. The approach also differs from that taken under sub-paragraph (c) of the definition of *“person granted leave to remain as a protected partner”* in relation to partners of members of the Armed Forces who are the victim of domestic violence. In that case a similar provision permits the grant of limited leave (under paragraph 41 of Appendix Armed Forces of the immigration rules).

It is not clear why a person granted limited leave under paragraph 289D of the immigration rules is outside the scope of the definition of *“person granted leave to remain as a protected partner”* when a person granted limited leave under paragraphs D-DVILR.1.2 of Appendix FM or paragraph 41 of Appendix Armed Forces is within the scope of that definition.

4. 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.

Regulations 11(2)(c) and (d) of these Regulations insert the text *“, the territory comprising the United Kingdom, the Islands and the Republic of Ireland”* into sub-paragraphs (7) and (8) of



paragraph 1 of Schedule 1 to the 2014 Regulations. Sub-paragraphs (7) and (8) of paragraph 1 of Schedule 1 to the 2014 Regulations already include the wording "*in the territory comprising the United Kingdom, Gibraltar,*". It is therefore not clear why "*the territory comprising the United Kingdom*" has been repeated in those provisions.

Welsh Government response

Technical scrutiny

1. The reference in the Explanatory Note to a change in the application deadline was included in error.
2. The text referred to in the report applies to both sub-paragraphs (i) and (ii). A formatting error resulted in that text following on immediately after sub-paragraph (ii). The Government does not consider that the formatting error prevents the correct interpretation of that provision.

Merit scrutiny

1. The first sub-paragraph of the definition of "person granted leave to remain as a protected partner" should have included reference to paragraph 289D of the immigration rules. The Government will look to schedule an amendment in an appropriate future instrument.
2. The inclusion of "the territory comprising the United Kingdom, the Islands and the Republic of Ireland" is necessary. That is a term used in the Regulations and is distinct from the term "the territory comprising the United Kingdom, Gibraltar...".

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 6 December 2021 and reports to the Senedd in line with the reporting points above.

