

Information on deferral, cancellation, refunding or offsetting of payment of student fees in the 2020 Summer Semester and the 2020/21 Winter Semester

1. Deferment or cancellation of payment as per the hardship clause in section 7 of the State Higher Education Fees Act (*Landeshochschulgebührengesetz – LHGebG*)

Deferment or, in certain circumstances, cancellation of the payment of fees is possible in line with section 7 of the State Higher Education Fees Act (*Landeshochschulgebührengesetz – LHGebG*), if the student becomes subject to financial hardship after beginning their studies, for reasons which were not the student's fault. This regulation cannot be applied to people who have not yet started their studies. The event triggering the financial hardship can specifically be the Covid-19 pandemic. This applies in particular if the student is made redundant from existing employment used for financing their studies – and/or if the student's parents are made redundant.

The regulation is particularly relevant for the coming 2020/21 Winter Semester, with the legal consequence of deferment or cancellation of payment. It is generally the case that the fee was already payable for the current 2020 Summer Semester (re-registration deadline in January/February 2020). In as far as payment has already been deferred for enrolled students, it can now also be canceled. Section 7 of the State Higher Education Fees Act (*Landeshochschulgebührengesetz – LHGebG*) cannot be applied if the hardship occurred after the fee was paid.

Any hardship in March/April 2020 cannot be the reason for non-payment if the fee was already paid/payable in January/February.

The situation must be re-evaluated for the 2020/21 Winter Semester. Here it may be that the fee cannot be paid due to financial hardship – so that section 7 of the State Higher Education Fees Act (*Landeshochschulgebührengesetz – LHGebG*) is realized.

Appropriate evidence of the financial hardship must be submitted as per the stipulations of section 7 of the State Higher Education Fees Act

(*Landeshochschulgebührengesetz – LHGebG*). Therefore, students submitting an application should provide good reasons for it, providing information on their savings and income as well as definitive proof that paying the fees would endanger their livelihood.

According to section 7 of the State Higher Education Fees Act (*Landeshochschulgebührengesetz – LHGebG*), a refund of fees already paid is not possible. Section 10(3) S. 2 of the State Higher Education Fees Act (*LHGebG*) (applications for deferment or cancellation of payment of fees can also still be made after the start of the lecture period) covers cases where the fee was not paid on time and, after the start of the semester, there is a threat that the student will be removed from the register of students, as per section 62 of the State Higher Education Act (*Landeshochschulgesetz – LHG*) – which may be avoided by deferment or cancellation of payment of fees.

2. Cancellation and reimbursement as per section 22 of the State Fees Act (*Landesgebührengesetz – LGebG*)

Independent of the student's personal circumstances, as per section 1(2) of the State Higher Education Fees Act (*Landeshochschulgebührengesetz – LHGebG*), section 22(2) S. 1 of the State Fees Act (*Landesgebührengesetz – LGebG*) also applies, should the charging of fees be objectively unfair in the specific case. This assumes that the fees go beyond the purposes of the State Fees Act (*Landesgebührengesetz – LGebG*) and, in particular, go beyond the underlying assessments for determining fees, and that the circumstances which led to the student owing money were not the fault of the student¹. An obligation to pay is unfair if the classes and examinations are not provided, or are only provided to a very limited extent.

Objective unfairness is, however, not always the case if classes are canceled.

¹ cf. No. 18.2.2.2 VwV-LGebG, GABI. 2019, 354.

Legal consequences

If the courses offered are canceled, or almost completely canceled, the fee can be canceled or refunded in full.

If only part of the service was not provided, a partial cancellation or a partial refund can be considered. However, a partial cancellation or partial refund cannot be justified by every minor cancellation of individual classes or individual examinations – this also applies to postponement, extension and streamlining of classes, if the following semester is not significantly impacted by additional classes or examinations.

Section 22 of the State Fees Act (*Landesgebührengesetz* – LGebG) also permits refunds due to personal unfairness. However, this regulation is blocked by section 7 of the State Higher Education Fees Act (*Landeshochschulgebührengesetz* – LHGebG), in conjunction with section 1(2) of the LHGebG, in as far as financial hardship is given as a reason for the deferment or cancellation of payment of fees. The State Higher Education Fees Act (LHGebG) has its own regulation in this regard, which only takes financial hardship beginning before the moment of payment into account. If the fee has already been paid, a claim due to continuation of financial hardship can still be issued in line with the provisions of section 7 of the State Higher Education Fees Act (LHGebG).

Personal unfairness as per section 22 of the State Fees Act (LGebG) can apply independently of section 7 of the State Higher Education Fees Act (LHGebG) if the student was made a an offer for teaching and support, but was unable to take up this offer for reasons which were not the student's fault (childcare provided by the Students' Union for a child requiring care prevented participation; official prohibition of entry to the country).

There is no provision for refunding the administration costs (*Verwaltungskostenbeitrag*) as per section 12 of the State Higher Education Fees Act (*Landeshochschulgebührengesetz* – LHGebG). The student retains their student status and has the option of using the facilities and services provided by the university administration — albeit, perhaps, to a reduced extent.

3. Refunds after removal from the register of students, section 4(2) S. 3 of the State Higher Education Fees Act (*Landeshochschulgebührengesetz – LHGebG*)

We do not recommend students use the option of getting removed from the register of students within one month from the start of the lecture period in order to get the fee refunded. This would mean that students also lose their student status, potentially with legal consequences for residency and other consequences. At the same time, other configurations where removal from the register of students may be advantageous are conceivable, e.g. for students whose final examinations for the end of the 2019/20 Winter Semester were scheduled, and which had to be canceled – and these students would now have to re-enroll. The actual "start of the lecture period" should be used instead of the originally-planned "start of the lecture period". This results from the justification for the regulation: up to one month after the start of lectures, students have "(...) typically only made use of the teaching provided to a small extent. Refunding course fees paid for the affected semester is, therefore, justified." (LT-Drs. 16/1617, S. 22).

The same applies to the administration costs (*Verwaltungskostenbeitrag*) as per section 12 of the State Higher Education Fees Act (LHGebG), the refunding of which is also set by the start of the lecture period.

From one month after the start of the lecture period, it is no longer possible to get the administration cost refunded.

4. Course fees for a second degree

The information provided in 2 and 3 also applies correspondingly for the course fees for a second degree as per section 8(1) of the State Higher Education Fees Act (*Landeshochschulgebührengesetz – LHGebG*). There is no special legal test of hardship provided here (in contrast to section 7 of the State Higher Education Fees Act (LHGebG) for international student fees), so the provisions of the State Fees Act (*Landesgebührengesetz – LGebG*) (threat to livelihood) should be used to test for personal unfairness (hardship). (Partial or complete) deferral, cancellation and refunds are in line with the general provisions of section 21 onwards of the State Fees Act (LGebG).