

EXPLANATORY MEMORANDUM TO THE EDUCATION (STUDENT FINANCE) (MISCELLANEOUS AMENDMENTS) (WALES) REGULATIONS 2018

The Explanatory Memorandum has been prepared by the Higher Education Division and is laid before the National Assembly for Wales under Standing Order 27.1.

Cabinet Secretary's declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Cabinet Secretary for Education

6 July 2018

Description

The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2018 (“the Regulations”) make amendments to the following regulations:

- the Education (Student Support) (Wales) Regulations 2018 (‘the 2018 Regulations’);
- the Education (Student Support) (Wales) Regulations 2017 (‘the 2017 Regulations’);
- the Education (Fees and Awards) (Wales) Regulations 2007;
- the Education (European University Institute) (Wales) Regulations 2015;
- the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015;
- the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017; and
- the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018.

Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

Legislative background

These Regulations are made by the Welsh Ministers in exercise of the powers in sections 1 and 2 of the Education (Fees and Awards) Act 1983 (‘the 1983 Act’), sections 22 and 42(6) of the Teaching and Higher Education Act 1998 (‘the 1998 Act’) and sections 5(2)(b), 5(5)(b), 55(2) and 58(3) of the Higher Education (Wales) Act 2015 (‘the 2015 Act’).

Sections 1 and 2 of the 1983 Act provide the Welsh Ministers with powers to make regulations requiring or authorising the charging of higher fees to certain students and to prescribe the persons who may be eligible for certain awards in connection with education, training or research. Section 22 of the 1998 Act provides the Welsh Ministers with the power to make regulations authorising or requiring the payment of financial support to students studying courses of higher or further education designated by or under those regulations. In particular, this power enables the Welsh Ministers to prescribe the amount of financial support (grant or loan) and who is eligible to receive

such support. Section 5 of the 2015 Act allows the Welsh Ministers to make regulations prescribing the qualifying courses and qualifying persons that will benefit from the fee limits set out in an institution's fee and access plan.

Section 44 of the Higher Education Act 2004 ('the 2004 Act') provided for the transfer to the National Assembly for Wales of the functions of the Secretary of State under section 22 of the 1998 Act (except insofar as they relate to the making of any provision authorised by subsections (2)(j), (3)(e) or (f) or (5) of section 22). Section 44 of the 2004 Act also provided for the functions of the Secretary of State in section 22(2)(a), (c) and (k) of the 1998 Act to be exercisable concurrently with the National Assembly for Wales.

The functions of the Secretary of State under section 2 of the 1983 Act and section 42(6) of the 1998 Act were transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the Secretary of State under section 1 of the 1983 Act were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2006 (S.I. 2006/1458).

The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are delegated to the Student Loans Company under section 23 of the 1998 Act.

This instrument will follow the Negative Resolution procedure.

Purpose and intended effect of the legislation

The Welsh Ministers make regulations annually to provide the basis for the system of financial support for students who are ordinarily resident in Wales and taking designated courses of higher education.

The 2017 Regulations and 2018 Regulations provide for financial support for students taking designated higher education courses which begin on or after 1 September 2017 and on or after 1 August 2018 respectively. The 2018 Regulations also provide support for courses which begin before 1 August 2018 and are subsequently converted from full-time to part-time or part-time to full-time on or after 1 August 2018.

The 2018 Regulations introduced a number of changes to student support for students commencing their studies in the 2018/19 academic year. These changes were made as a result of the *Independent review of higher education funding and student finance arrangements* ('the Diamond review'). In addition, the 2018 Regulations represent a comprehensive redraft and simplification of the previous student support regulations.

The 2017 Regulations remain in force for students continuing their studies from earlier years. These regulations were amended by Schedule 6 of the 2018 Regulations to clarify that the 2017 Regulations will only apply to students continuing on courses commenced prior to 1 August 2018, and to adjust loan and grant values.

Amendments to the 2018 Regulations and 2017 Regulations are required to address some unintended consequences of the existing legislation. In addition, amendments are required to address two identified issues related to the immigration status of certain groups. These amendments are summarised below.

Amendments made to the Education (Student Support) (Wales) Regulations 2018

The following amendments are made.

- Additional provision to allow a person who has been incorrectly assessed by the Welsh Ministers as an eligible student to continue to be treated as such. This allows the Welsh Ministers to continue to treat the student as eligible provided that the information or documentation the student included in their application for support was not materially inaccurate.
- A minor amendment to ensure that the means-tested element of the maintenance grant is not available to students undertaking part-time courses when household income is £59,200 or more.
- A minor amendment to ensure that a £303 deduction is applied to the grant for travel where household income is less than £59,200, and that a £1,000 deduction is applied where household income is £59,200 or more.
- Amendments to clarify the amount of fee loan to be paid to categories of eligible students. Amendments provide for a separate category of student, those undertaking an Erasmus year of a full-time course provided by an

institution in England, Scotland or Wales. Amendments also provide for the amounts to be paid to those students, and to amend the amount of fee loan payable to students studying in Scotland (students undertaking an academic year of a course provided by a UK institution in conjunction with an institution outside the UK).

- A small number of amendments to rectify discrepancies between the English and Welsh text.

Amendments made to the Education (Student Support) (Wales) Regulations 2017

The following amendment is made:

- For academic year 2018/19, the requirement for a distance learning student to be in Wales on the first day of the first academic year of their course in order to qualify for certain types of support will not apply where the student, or their close relative, is a member of the armed forces and the student is not in Wales on that date because they, or their close relative, are serving as a member of the armed forces outside Wales, including outside the UK. An amendment to the 2017 Regulations will extend this exemption to continuing students. This amendment is consistent with the principles of the Armed Forces Covenant.

Amendments made to the Education (Student Support) (Wales) Regulations 2018 and the Education (Student Support) (Wales) Regulations 2017

The following amendments are made:

- The definition of 'close relative' in the armed forces residency exemption is amended so that it will include a person's child, where the person is dependent on that child. This will serve to extend the exemption to include a parent of a serving member of the armed forces, where that parent is dependent on the child. This amendment is consistent with the principles of the Armed Forces Covenant.
- To remove the provisions which impose a maximum period of eligibility for Disabled Students' Allowances and Grants for Dependents for certain students (i.e. new students undertaking full-time or sandwich courses and certain continuing students). This will have the effect of continuing to provide Disabled Students' Allowances and Grants for Dependents

support to students who have exhausted other means of support (such as tuition fee loans and maintenance support).

- An amendment to ensure that eligible students who have previously completed a Certificate of Higher Education and wish to study a full-time first degree after a break in study are able to apply for support.
- An amendment to ensure that students who have completed a full-time ordinary degree and wish to top-up to an Honours degree where there has been a gap in study are able to apply for support.
- An amendment to ensure that a maintenance loan is available to students who have not attained an honours degree to undertake undergraduate courses leading to qualification as a landscape architect, landscape designer, landscape manager, town planner or town and country planner.

Immigration related amendments

To be eligible for student support under the 2017 Regulations and the 2018 Regulations, students must fall within certain prescribed categories which relate to their immigration status. The amendments will add two categories:

- persons granted leave to remain on the grounds of private life; and
- stateless persons.

Changes have been made to the Immigration Rules to introduce a category of 'leave to remain on the grounds of private life'. A number of people who may previously have been granted Discretionary Leave to enter or remain may now instead be granted 'leave to remain on the grounds of private life'. Those granted Discretionary Leave (and their family members) may be eligible for student support from the Welsh Ministers. Amendments are being made to the 2017 Regulations and the 2018 Regulations to ensure that the same groups continue to benefit from student support following the change to the Immigration Rules.

The Immigration Rules also now enable stateless persons to be formally determined as stateless, and to be granted leave to remain, where they have no other right to remain under the Immigration Rules but cannot be removed to the country of former habitual residence. The amendments will mean that from the academic year 2018/19 students who have been granted leave to remain as a stateless person by the Home Office and their family members who meet eligibility criteria will be able to apply for student support.

These amendments are made to the 2018 Regulations, the 2017 Regulations, the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017 (as amended), and the Education (European University Institute) (Wales) Regulations 2015. The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 are amended to include the first category only (the second was included at the time of the making of those regulations).

Corresponding amendments are also made to the Education (Fees and Awards) (Wales) Regulations 2007 (as amended) and the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015 (as amended). The Education (Fees and Awards) (Wales) Regulations 2007 ensure that students in the categories which may be eligible for student support are not charged the higher fees that may be charged to those not in those categories. The amendment ensures this is appropriately extended. The Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015 ensure that students in the categories which may be eligible for student support may not be charged more than a statutory fee limit. The amendment ensures this is appropriately extended.

IMPLEMENTATION

The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2018 enable the Welsh Government's delivery partner (the Student Loans Company) to implement system changes and operate the system of student support for academic year 2018/19.

CONSULTATION

There is no statutory requirement to consult on the Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2018. The 2018 Regulations were developed as a response to the Diamond review. This included a wide-ranging and sustained programme of engagement with stakeholders over more than two years which substantially shaped both the policy for student support and its implementation, both of which underpin the 2018 Regulations.

A consultation was undertaken during 2016 and into 2017 (*Student support funding for students ordinarily resident in Wales*, WG30133)¹.

¹ <https://consultations.gov.wales/consultations/support-funding-for-students-resident-in-wales>

Further engagement was undertaken late in 2017, in the form of a Student Finance Wales Information Notice².

REGULATORY IMPACT ASSESSMENT

The policy underpinning the 2018 Regulations was developed as a direct response to the Diamond review, which addressed the areas of widening access, supporting the skill needs of Wales, strengthening part-time and postgraduate provision, and ensuring the long-term financial sustainability of support. The Diamond review considered a range of options for student support, settling on a set of changes recommended to the Cabinet Secretary for Education, recommendations that were largely accepted.

The 2018 Regulations made provision for those changes. There are some unintended consequences of that legislation which these amendments address. The Regulatory Impact Assessment³ which accompanied the laying of the 2018 Regulations with the National Assembly for Wales is a comprehensive overview of the impact of those regulations and provides the appropriate impact analysis for these Regulations. That Regulatory Impact Assessment is supplemented here with relevant additional information.

The amendments made to the immigration categories in the Regulations, which correct an issue which arose as a result of the Home Office changing the immigration rules with respect to people granted leave to remain for family or private life reasons, and ensure adequate provision is made for stateless persons, will have only minor cost implications. There were 3,065 persons in the UK granted an extension to stay on the basis of family life in 2016⁴. A subset of these will have been granted 'leave to remain on the grounds of private life'. There are estimated to be 317 stateless persons in the UK in 2016⁵, one of whom is known to have applied for student support (in England).

² <https://www.studentfinancewales.co.uk/media/196984/sfwin-04-2017-changes-to-student-support-in-ay201819.pdf>

³ <http://senedd.assembly.wales/documents/s72450/SL5189%20-%20EM%20The%20Education%20Student%20Support%20Wales%20Regulations%202018.pdf>

⁴ Extensions of stay data tables immigration statistics October to December 2017, National Statistics. <https://www.gov.uk/government/statistics/immigration-statistics-october-to-december-2017-data-tables>

⁵ The data for 2016 show that 488 stateless persons applied for asylum; 317 were granted asylum; and 2 were granted 'humanitarian protection'. UK Government Home Office, Immigration Statistics, October to December 2016, 7. Asylum, 7.1 Asylum Data Tables Vol. 1, Table as_01: Asylum applications and initial decisions for main applicants, by country of

Options

Two options were considered.

Option 1 – do nothing

In the event of the Regulations not being made the principal implication is that the policy changes recommended as part of the Diamond review would not be fully implemented. Further, those with particular immigration statuses would remain ineligible for support.

Option 2 – make the regulations

Making these Regulations ensures that the Diamond review recommendations are fully implemented. In turn, this contributes to ensuring that the changes to widening access, supporting the skill needs of Wales, strengthening part-time and postgraduate provision, and financial sustainability have proper effect.

The Regulations also ensure that stateless persons become eligible for support and correct an issue with support policy in relation to those with leave to remain on the grounds of private life.

Costs and benefits

Option 1 – do nothing

There would be neither additional cost nor benefit, however certain aspects of the existing legislation would not operate as intended.

Option 2 – make the regulations

By making the Regulations the Welsh Ministers ensure that the Welsh student support system has an appropriate underpinning legal framework and that policy operates as intended. The Regulations reflect policy developed as a result of the Diamond review. The Regulatory Impact Assessment which accompanied the 2018 Regulations describes the costs and benefits which accrue. Additional cost analysis is detailed table 1 and summarised in the following paragraphs.

nationality: <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2016/list-of-tables#asylum>.

The amendments made to the immigration categories in the Regulations will have only minor cost implications. As noted, there were 3,065 persons in the UK granted an extension to stay on the basis of family life in 2016. A subset of these will have been granted 'leave to remain on the grounds of private life'. There are estimated to be 317 stateless persons in the UK in 2016; only one is known to have applied for student support (in England).

The financial costs of the other amendments made by the Regulations are not material and are expected to fall within the margin of inherent uncertainty associated with forecasting the costs of providing student support. Each of these amendments will affect only small numbers of students in very particular circumstances. Estimating the impact of each individual change is difficult and the resulting cost estimates would convey a spurious sense of accuracy.

Table 1 – Cost analysis

Amendment	Impact
Amendments made to the Education (Student Support) (Wales) Regulations 2018	
Additional provision to allow a person who has been incorrectly assessed as an eligible student to continue to be treated as such. This allows the Welsh Ministers to continue to treat the student as eligible provided that the information or documentation the student included in their application for support was not materially inaccurate.	It is not possible to predict how many persons will be incorrectly assessed as eligible. The figure should be zero when other eligibility criteria are correctly applied.
A minor amendment to ensure that the means-tested element of the maintenance grant is not available to students undertaking part-time courses when household income is £59,200 or more.	This amendment aligns the regulations to the intended policy and forecasting assumptions by reducing the upper threshold for means-testing by £1. This could, in theory, result in a negligible reduction in cost, but would only affect a student with a household income of exactly £59,200. There were no such students in 2017/18.
A minor amendment to ensure that a £303 deduction is applied to the grant for travel where household income is less than £59,200, and that a £1,000 deduction is applied where household income is £59,200 or more.	This amendment aligns the regulations to the intended policy and forecasting assumptions by reducing the upper threshold for means-testing by £1. This could, in theory, result in a negligible reduction in cost, but would only affect a student with a household income of exactly £59,200. There were no such students in 2017/18.

Amendment	Impact
Amendments to clarify the amount of fee loan to be paid to categories of eligible students. Amendments provide for a separate category of student, those undertaking an Erasmus year of a full-time course provided by an institution in England, Scotland or Wales. Amendments also provide for the amounts to be paid to those students, and to amend the amount of fee loan payable to students studying in Scotland (students undertaking an academic year of a course provided by a UK institution in conjunction with an institution outside the UK).	This change aligns the regulations to the intended policy and forecasting assumptions, and ensures that the existing policy is continued. If this amendment was not made then the students concerned would have access to a lower fee loan than intended (£1,385 rather than £4,625). In this context, making the amendment will result in a negligible additional cost. Around 400 full-time undergraduates from Wales enrol at institutions in Scotland each year. Previous data shows that 1-2% of students from Wales that study at institutions elsewhere in the UK undertake a study or work placement abroad (which may or may not be through the Erasmus scheme). It is, therefore, likely that fewer than 10 students will receive a larger fee loan as a result of this amendment, at a cost unlikely to exceed £30,000 in student loan outlay (Annually Managed Expenditure).
A small number of amendments to rectify discrepancies between the English and Welsh text.	No cost implications.

Amendments made to the Education (Student Support) (Wales) Regulations 2017	
For academic year 2018/19, the requirement for a distance learning student to be in Wales on the first day of the first academic year of their course in order to qualify for certain types of support will not apply where the student, or their close relative, is a member of the armed forces and the student is not in Wales on that date because they, or their close relative, are serving as a member of the armed forces outside Wales, including outside the UK. An amendment to the Education (Student Support) (Wales) Regulations 2017 will extend this exemption to continuing students. This amendment is consistent with the principles of the Armed Forces Covenant.	It is not possible to determine how many additional distance learning students may become eligible for support, but numbers will be very small.
Amendments made to the Education (Student Support) (Wales) Regulations 2018 and the Education (Student Support) (Wales) Regulations 2017	
The definition of 'close relative' in the armed forces residency exemption is amended so that it will include a person's child, where the person is dependent on that child. This will serve to extend the exemption to include a parent of a serving member of the armed forces, where that parent is dependent on the child.	It is not possible to determine how many additional students may become eligible, but numbers will be very small and any additional cost negligible.

To remove the provisions which impose a maximum period of eligibility for Disabled Students' Allowances and Grants for Dependents for certain students (i.e. new students undertaking full-time or sandwich courses and certain continuing students). This will have the effect of continuing to provide Disabled Students' Allowances and Grants for Dependents support to students who have exhausted other means of support (such as tuition fee loans and maintenance support).	It may not be possible to determine how many additional students may become eligible, but numbers will be very small. Eligibility and entitlement to Disabled Students' Allowances and targeted grants is unpredictable as it depends on the specific circumstances of individual students.
An amendment to ensure that eligible students who have previously completed a Certificate of Higher Education and wish to study a full-time first degree after a break in study are able to apply for support.	It may not be possible to determine how many additional students may become eligible, but numbers will be very small.
An amendment to ensure that students who have completed a full-time ordinary degree and wish to top-up to an Honours degree where there has been a gap in study are able to apply for support.	It may not be possible to determine how many additional students may become eligible, but numbers will be very small.
An amendment to ensure that a maintenance loan is available to students who have not attained an honours degree to undertake undergraduate courses leading to qualification as a landscape architect, landscape designer, landscape manager, town planner or town and country planner.	It may not be possible to determine how many additional students may become eligible, but numbers will be very small.

To be eligible for student support under the 2017 Regulations and the 2018 Regulations, students must fall within certain prescribed categories which relate to their immigration status. The amendments will add two categories: persons granted leave to remain on the grounds of private life; and stateless persons.	There were 3,065 persons in the UK granted an extension to stay on the basis of family life in 2016. A subset of these will have been granted 'leave to remain on the grounds of private life'. There are estimated to be 317 stateless persons in the UK in 2016, one of whom is known to have applied for student support (in England). Numbers of additional eligible students will, therefore, be very small (if any).
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COMPETITION ASSESSMENT

The making of these Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

POST-IMPLEMENTATION ASSESSMENT

The legislation governing the student support system is usually revised annually and is continually subject to detailed review, both by policy officials and delivery partners in their practical implementation of the legislation. An evaluation plan for the Welsh Government response to the Diamond review has been developed. This will monitor, among other things, numbers, participation and retention of higher education students.

SUMMARY

The making of these Regulations is necessary to prevent unintended consequences arising from certain provisions of the 2017 Regulations and 2018 Regulations and accordingly to confirm the basis for the higher education student support system for students ordinarily resident in Wales and EU students studying in Wales in the 2018/19 academic year.