

**Explanatory Memorandum to the Education (Student Finance)
(Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019**

This Explanatory Memorandum has been prepared by Higher Education Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister'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) (EU Exit) Regulations 2019.

Kirsty Williams AM
Minister for Education
5 March 2019

PART 1

1. Description

The Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the Regulations”) make technical amendments to various student finance regulations to ensure the language of the legislation will continue to implement existing policy effectively when the United Kingdom leaves the European Union.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Regulations will ensure support for certain students, including EU nationals, continues uninterrupted after the UK leaves the EU on 29 March 2019. The policy of the Welsh Ministers to support these students is not directly affected by the UK’s exit from the EU.

The Regulations will be subject to the negative procedure and made using powers under the Education (Fees and Awards) Act 1983, the Teaching and Higher Education Act 1998 and the Higher Education (Wales) Act 2015, rather than the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”). They will come into force on exit day, as defined in section 20 of the Withdrawal Act.

Paragraph 1(1) of Schedule 2 to the Withdrawal Act contains a power for the Welsh Ministers to make regulations to “prevent, remedy or mitigate” any failure of “retained EU law” to operate effectively arising from the UK’s withdrawal from the EU. There is an argument to be made that the Regulations should be made under this power. However, the usual education law powers cited above are more appropriate for these purposes.

No new policy is being introduced and the Regulations will not do anything to recreate or replace EU law in domestic legislation. These amendments are in line with other technical amendments routinely made to student finance legislation using the cited powers.

An important consideration in this decision was accessibility of the law. Student support legislation is extremely complex and often amended. Regulations made under the Withdrawal Act will not be directly connected to education legislation, making discovery of the appropriate legislation more difficult than it ought to be for the public. Equally, in terms of accessibility, the title of the Regulations

includes “EU Exit”, making it clear that there is a link to the departure of the UK from the EU.

3. Legislative background

This instrument is not being made under the Withdrawal Act but relates to the withdrawal of the UK from the EU because certain provisions of student support legislation require updating if policy is to be preserved.

The Regulations will be subject to the negative procedure and will be made using powers under sections 1 and 2 of the Education (Fees and Awards) Act 1983 (“1983 Act”) , sections 22 and 42(6) of the Teaching and Higher Education Act 1998 (“1998 Act) and sections 5(5)(b) and 55(2) of the Higher Education (Wales) Act 2015.

The functions of the Secretary of State in section 1 of the 1983 Act were transferred to the National Assembly for Wales, so far as exercisable in relation to Wales, by National Assembly for Wales (Transfer of Functions) Order 2006 (S.I. 2006/1458) with effect from 8 June 2006. The functions of the Secretary of State in section 2 of the 1983 Act were transferred to the National Assembly for Wales, so far as exercisable in relation to Wales, by National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The Secretary of State’s functions in section 22(2)(2)(a) to (i) and (k) of the 1998 Act were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 (c. 8), with functions under sub-sections (a), (c) and (k) exercisable concurrently with the Secretary of State. The Secretary of State’s functions in section 42 was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. All the above functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

4. Purpose and intended effect of the legislation

To be eligible for student support, a student must meet certain criteria, including residency requirements. EU nationals, UK nationals who have exercised free movement rights to reside elsewhere in the European Economic Area (“EEA”) or Switzerland, and EEA and Swiss migrant workers and their family members, may all be eligible for support. It has been decided that this policy will not be affected by exit from the EU for the 2019/20 academic year.

The student support regulations employ various territorial descriptions and

references to the EU and its member states in relation to the residency criteria and assessment of household income. As the UK will no longer be a member of the EU or the EEA, technical amendments are required to ensure the language of the legislation will continue to implement existing policy effectively. Some minor amendments are also necessary to ensure that policy with regards to students' participation in the Erasmus+ programme is maintained. The regulations which are amended are:

- (a) The Education (Student Support) (Wales) Regulations 2017;
- (b) The Education (Student Support) (Wales) Regulations 2018;
- (c) The Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017;
- (d) The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018; and
- (e) The Education (European University Institute) (Wales) Regulations 2014.

In addition, the following regulations, which use the same territorial descriptions are amended to continue to apply fee caps and other aspects of the student finance system:

- (f) The Education (Fees and Awards) (Wales) Regulations 2007; and
- (g) The Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provisions) (Wales) Regulations 2015;

The Regulations make changes to amend references in all the above instruments to "Member State" and "the territory comprising the EEA" to reflect the withdrawal of the United Kingdom from the European Union, as appropriate.

Regulation 25 amends the definition of "Erasmus year" in paragraph 4(1) of Schedule 1 to the Education (Student Support) (Wales) Regulations 2018 so that this definition applies in relation to academic years beginning before or after exit day. This ensures that students participating in Erasmus+ in the current academic year will continue to be treated as on the programme for student finance purposes for the remainder of the academic year. An equivalent amendment is made to the Education (Student Support) (Wales) Regulations 2017.

Regulation 26(5)(a) and (c) amends paragraph 6 of Schedule 2 ("EU nationals") to the Education (Student Support) (Wales) Regulations 2018 to ensure that a person who would have been eligible for support under this paragraph before exit day will continue to be eligible on and after exit day. Regulation 26(6) makes equivalent provision in relation to any person who would have been

eligible under paragraph 7 of Schedule 2 (“Children of Swiss nationals”) immediately before exit day. Equivalent amendments are made to the Education (European University Institute) (Wales) Regulations 2014, the Education (Student Support) (Wales) Regulations 2017, the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017, and the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 to ensure policy is preserved.

5. Consultation

Consultation was not undertaken as there is no change to policy. The purpose of the Regulations is solely to make amendments necessary to preserve existing policy.

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted. The Regulations make technical amendments that are necessary to preserve existing policy.