

Explanatory Memorandum to the Education (Student Finance) (Miscellaneous Amendments) (No. 3) (Wales) Regulations 2023

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

Minister for Education and Welsh Language'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) (No. 3) (Wales) Regulations 2023. I am satisfied the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language

12 December 2023

Part 1

1 Description

1.1 The Education (Student Finance) (Miscellaneous Amendments) (No. 3) (Wales) Regulations 2023 (“the 2023 Regulations”) amend:

- the Education (Fees and Awards) (Wales) Regulations 2007;
- the Education (European University Institute) (Wales) Regulations 2014;
- the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015;
- the Education (Student Support) (Wales) Regulations 2017;
- the Education (Student Support) (Wales) Regulations 2018;
- the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018; and
- the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019.

1.2 The 2023 Regulations amend existing student support regulations to:

- make NHS students eligible for the full maintenance loan value;
- make minor corrections to the definition of a Person granted leave as a relevant Afghan citizen arising out of changes to the immigration rules Education (European University Institute) (Wales) Regulations 2014;
- make a minor correction to ensure that a person is treated as being ordinarily resident in Wales in cases where their parent is temporarily employed outside Wales and the UK;
- extend eligibility for support, home fee status and the tuition fee cap to certain family members of Ukrainian nationals and to additional family members of relevant Afghan citizens;
- require distance learning students claiming Grants for Dependents to be in Wales on the first day of the first academic year of a course;
- terminate the eligibility of postgraduate students in certain circumstances;
- remove redundant Scottish regulatory references; and
- make minor technical corrections to paragraph references in the Welsh language text of the Education (Fees and Awards) (Wales) Regulations 2007).

2 Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None.

3 Legislative background

3.1 The 2023 Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983; sections 22(1)(a), 22(2)(a) and (b) and 42(6) of the Teaching and Higher Education Act 1998 (“the 1998 Act”); and sections 5(5)(b) and 55(2) of the Higher Education (Wales) Act 2015.

3.2 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. This power enables the Welsh Ministers to prescribe, amongst other things, the amount of financial support (grant or loan) and who is eligible to receive such support.

3.3 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.

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

3.5 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.

3.6 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.

3.7 This instrument will follow the negative resolution procedure.

4 Purpose and intended effect of the legislation

- 4.1 The Welsh Ministers make regulations to provide the basis for the system of financial support for students ordinarily resident in Wales who are taking designated courses of higher education in the UK, and other students studying in Wales.
- 4.2 The 2023 Regulations amend existing student support regulations as outlined in paragraphs 4.3 – 4.7.

Family members of Ukrainian nationals

- 4.3 The 2023 Regulations will amend student support and associated regulations to enable family members of those granted leave under the Ukraine Schemes to be considered as eligible students for the purpose of student support in Wales, and for home fee status and capped tuition fees to apply. Family members include:
- the spouse or civil partner of a person granted leave under one of the Ukraine Schemes who was the spouse or civil partner on the leave application date; and
 - the child of a person granted leave under one of the Ukraine Schemes or the child of the spouse or civil partner of a person granted leave under one of the Ukraine Schemes who was the child/step-child under the age of 18 on the leave application date.

Family members of relevant Afghan citizens

- 4.4 The 2023 Regulations will make additional provision for family members (spouse, civil partner, dependent child or dependent child of spouse or civil partner) of persons granted indefinite leave to enter the United Kingdom under paragraph ARAP 6.1 of Appendix Afghan Relocation and Assistance Policy to the immigration rules or indefinite leave to remain in the United Kingdom under paragraph ARAP 6.2 of that Appendix.

Termination of eligibility of certain postgraduate students

- 4.5 The 2023 Regulations will amend the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 and the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 to provide that students in protection-based categories and those with limited leave under the EU settlement schemes whose leave has expired may no longer qualify for support. Policy will match that for undergraduate students.

Increased maintenance loan for students eligible to apply for an NHS bursary

- 4.6 The 2023 Regulations will amend the Education (Student Support) (Wales) Regulations 2017 and the Education (Student Support) (Wales) Regulations 2018 to provide that students who are eligible to apply for an NHS bursary will become eligible for the maximum rate of maintenance loan.

Grants for Dependants for students undertaking distance learning courses

- 4.7 An amendment will be made to the Education (Student Support) (Wales) Regulations 2018 which will impose a requirement for a student undertaking a distance learning course to be in Wales on the first day of the first academic year to be eligible for Grants for Dependants. An exemption to this requirement will be made to ensure consistency with similar provisions elsewhere in student support regulations, including where the student or a close relative are members of the armed forces, as has been policy for some time.

Removal of redundant Scottish regulatory references

- 4.8 Regulations will be amended to remove references to 'Scottish Healthcare Allowance' given that such references are redundant as the allowance was discontinued several years ago.
- 4.9 Regulations will also be amended to remove reference to the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 as these regulations were revoked in 2022 by the Student Support (Scotland) Regulations 2022.

Corrections to Welsh language provisions

- 4.10 Amendments will be made to the Welsh language text of the Education (Fees and Awards) (Wales) Regulations 2007). These will correct certain paragraph references.

5 Consultation

- 5.1 A consultation has not been carried out as some of the amendments are required to correct and update law arising from changes to Immigration Rules and to remove redundant regulatory provision. Other amendments which extend eligibility to student support support the Welsh Government's policy on being a 'Nation of Sanctuary'.

PART 2 – REGULATORY IMPACT ASSESSMENT (RIA)

An RIA has been conducted for the 2023 Regulations.

6. Options

Option 1: Business as usual

6.1 If the 2023 Regulations are not made then the implications would be as follows:

- family members of those granted leave under the Ukraine Schemes will not be eligible for student support, the tuition fee cap or home fee status, potentially precluding them starting or continuing a higher education, worsening the dislocation effects of conflict;
- certain family members of relevant Afghan citizens would not be eligible for student support, the tuition fee cap and home fee status, potentially precluding them starting or continuing a higher education and limiting their ability to settle successfully in the UK;
- students who are eligible to apply for an NHS bursary would continue to access a reduced rate of maintenance loan during a time of significant cost of living pressures, hindering recruitment to the Welsh NHS;
- eligible students undertaking postgraduate courses who lose their immigration status and do not have another form of immigration leave and so have a substantially weakened connection to the UK would retain eligibility for student support, incurring cost; and
- students who are not in Wales on the first day of the first academic year of the course would be eligible to apply for Grants for Dependents perpetuating an inconsistency in student support policy.

Option 2: Make the Regulations

6.2 Making the 2023 Regulations ensures that the implications outlined above are avoided. This is the preferred option.

7. Costs and benefits

Option 1: Business as usual

7.1 Leaving the existing student support regulations in place would mean no additional costs are incurred via the student support system.

Option 2: Make the 2023 Regulations

- 7.2 The extension of eligibility for support, home fee status, and the tuition fee cap, to family members of those with leave under the Ukraine schemes and to family members of certain Afghans ensure that the benefits of a higher education are extended appropriately, and that there is equal treatment between groups. The benefits of a higher education to the individual, to the economy and to society are well established.
- 7.3 Data on the number of visas issued under the Ukraine Schemes¹ is published by the Home Office. As of 28 September 2023, the number of visas where the sponsor was in Wales was:
- 4,644 (sponsored by Individual) visas; and
 - 4,615 (sponsored by the Welsh Government).
- 7.4 Data on the number of safe and legal routes offered under both the Afghan Relocations and Assistance Policy and Afghan Citizens Resettlement Schemes is published by the Home Office². For the period 2015 to end of June 2023, the number of people offered safe and legal routes into the UK was:
- 11,474 (Afgan Relocations and Assistance Policy)
 - 9,783 (Afghan Citizens Resettlement Schemes)
- 7.5 It is thought unlikely that there will be a significant impact on the numbers of students supported by the Welsh Government and costs will be met within existing budgets.
- 7.6 The amendments which introduce a first-day requirement for distance learners and which terminate eligibility for postgraduate students restrict eligibility in line with established policy for other groups or support products, ensuring consistency of policy. There are no additional costs in making the amendments; there may be some small savings.

¹ <https://www.gov.uk/guidance/ukraine-sponsorship-scheme-visa-data-by-country-upper-and-lower-tier-local-authority>

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1182527/asylum-summary-jun-2023-tables.ods

7.7 Increasing the value of the maintenance loan available to those who are eligible to apply for an NHS bursary will support recruitment and retention into the Welsh NHS. Estimated costs are illustrated below.

The below tables illustrate the costs to top up from RRML to full-rate maintenance loan for NHS Bursary Students from 2024/25

Academic year costs

	2024/25	2025/26	2026/27	2027/28
AME	£29,339,000	£30,436,000	£31,814,000	£33,419,000
Non-cash	£2,109,000	£2,560,000	£2,651,000	£2,251,000

Financial year costs

	2024-25	2025-26	2026-27	2027-28
AME	£19,559,000	£30,070,000	£31,355,000	£32,884,000
Non-cash	£1,406,000	£2,410,000	£2,621,000	£2,385,000

Assumptions

Based on latest student numbers receiving an NHS bursary with a growth of 2% each year

93% take out rate for the increased loan

8. Competition Assessment

8.1 The making of the 2023 Regulations has no impact on the competitiveness of businesses, charities, or the voluntary sector.

9. Post-Implementation Assessment

9.1 The regulations governing the student support system are revised annually and are continually subject to detailed review, both by policy officials and delivery partners in their practical implementation of the regulations.