

Explanatory Memorandum to the Education (Postgraduate Student Support) (Miscellaneous Amendments) (Wales) Regulations 2022

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's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Postgraduate Student Support) (Miscellaneous Amendments) (Wales) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language
30 March 2022

Part 1

1. Description

1.1 The Education (Postgraduate Student Support) (Miscellaneous Amendments) (Wales) Regulations 2022 (“the 2022 regulations”) amend:

- the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017;
- the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018; and
- the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019.

1.2 The 2022 regulations amend these regulations to:

- increase the amount of postgraduate support;
- remove references to the ‘grace period’ in relation to the EU Settlement Scheme;
- make individuals granted leave to enter or remain as a relevant Afghan citizen and their family members under the Afghan Relocation and Assistance Policy and Afghan Citizen Relocation Scheme immigration schemes eligible for student support;
- make students in receipt of the social work bursary eligible for postgraduate Master’s support, in the form of a loan; and
- make certain students ineligible for a doctoral loan when in receipt of a Welsh Government bursary.

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

2.1 None.

3. Legislative background

3.1 The 2022 regulations are made under sections 22(1)(a), 22(2)(a) and (b) and 42(6) of the Teaching and Higher Education Act 1998.

3.2 Section 22 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(1)(a) and 22(2)(b) of the 1998 Act. Section 44 of the

2004 Act also provided for the functions of the Secretary of State in section 22(2)(a), 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 (SI 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 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, and other students studying in Wales, who are taking designated courses of higher education in the UK.

4.2 The 2022 Regulations amend existing student support regulations as outlined in paragraphs 4.3 – 4.11.

Annual support increases

4.3 In line with established policy, the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017 and the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 are amended to increase the amount of support payable to postgraduate Master's students starting courses on or after 1 August 2022 by the projected rate of inflation, by increasing the amount of loan. Grant support will not be increased. Total support will increase from £18,025 to £18,430 per course.

4.4 The Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 are amended to increase the amount of support for doctoral students starting courses on or after 1 August 2022 by the projected rate of inflation. Doctoral support is loan only, which is increased from £27,265 to £27,880 per course.

Removal of provisions relating to the EU Settlement Scheme "grace period"

- 4.5 The 'application deadline' and 'grace period' associated with the EU Settlement Scheme ended on 30 June 2021. These are provided for in the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020. A person may apply for leave under the EU Settlement Scheme until the application deadline of 30 June 2021. Certain rights conferred by the Immigration (European Economic Area) Regulations 2016 are also maintained, despite the revocation of those regulations, until that date – the 'grace period'. Further, where the grace period has ended and a person has made a valid application which has not been decided, the period is extended until a decision is made – the 'relevant period'.
- 4.6 Provision was made in the Education (Student Finance) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 to ensure that those applying for student support who had applied for leave to remain under the EU Settlement Scheme during the grace period were not inadvertently made ineligible for student support. A necessary amendment is made to the regulations to remove references to the grace period (only).

Afghan nationals

- 4.7 On 29 December 2020, the Defence Secretary and Home Secretary announced the 'Afghan Relocations and Assistance Policy' (ARAP). This scheme offers relocation or other assistance to current and former Locally Employed Staff in Afghanistan to reflect the changing situation in Afghanistan. The ARAP scheme launched on 1 April 2021 and will continue to remain open and operate indefinitely.
- 4.8 In addition, the UK Government announced details of a scheme in August 2021 known as the 'Afghan Citizens' Resettlement Scheme' (ACRS). The ACRS has been established to provide protection for Afghan citizens who have contributed to civil society or who face a particular risk, for example, because of their role in standing up for democracy and human rights, or because of their gender, sexuality or religion.
- 4.9 An amendment is made to the postgraduate regulations to make provision for Afghans relocated to the UK under ARAP and ACRS to be able to access student support in line with other protection-based categories and eligible for home fee status and the tuition fee cap. This is extended to the spouse, civil partner or any dependent children under the age of 18.

Postgraduate Social Work students

4.10 Under the regulations, students studying for a postgraduate Master's in social work who are in receipt of a Social Care Wales bursary are not eligible for student support. An amendment is made to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 to make these students eligible to apply for top-up loan support via the Master's student support package. This will apply to new students starting their course on or after 1 August 2022.

Doctorate in Educational Psychology at Cardiff University

4.11 The Welsh Government provides grant funding to Cardiff University to fund a doctoral course in Educational Psychology. A bursary is also made available by Welsh Government to students. An amendment is required to the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 to render new students ineligible for a doctoral loan when in receipt of a bursary, to avoid double funding.

5. Consultation

5.1 There is no statutory requirement to consult on these regulations and no consultation has been undertaken.

Part 2 – Regulatory Impact Assessment (RIA)

An RIA has been conducted for the 2022 regulations.

6. Options

Option 1: Business as usual

6.1 If the 2022 regulations are not made the implications are that:

- the value of postgraduate student support will decrease in real terms, leaving students to bear the cost of this reduction;
- there will be a lack of parity of eligibility for student support between Afghan nationals and others with similar protection-based forms of leave to be in the UK and with the undergraduate student support regulations;
- postgraduate Master's social work students starting their courses from academic year 2022/23 will remain ineligible for statutory student support; and
- there is a risk of double-funding students studying for a doctoral course in Educational Psychology at Cardiff University, who are in receipt of the bursary.

Option 2: Make the Regulations

6.2 Making these regulations ensures that the consequences outlined above are avoided.

7. Costs and benefits

Option 1: Business as usual

7.1 Leaving the existing regulations in place would mean no additional costs are incurred via the student support system, although the risk of double funding of students studying for a doctoral course in Educational Psychology at Cardiff University remains. Students would bear the cost of a real reduction in the value of their student support.

Option 2: Make the Regulations

7.2 By making the 2022 regulations the Welsh Ministers ensure that the Welsh student support system is underpinned by an appropriate legal framework and that policy is implemented effectively. Students who are ordinarily resident in Wales will benefit from the maintenance of the real value of their support. The extension of eligibility for support, as recorded above, 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 The routine uplifts applied to student support rates each year preserve the real value of support. The amendments to the postgraduate student support regulations increase the cost of student support by £1.63m.

7.4 As of 1 September 2021, 8,000 individuals have been granted leave under the ARAP. There is no breakdown of numbers relocated to Wales and therefore the number of Afghan nationals expected to apply for student support in 2022/23 is unknown. The cost cannot be accurately estimated but is likely to be relatively small.

7.5 The number of first year Welsh students studying a postgraduate Master's in Social Work at a Welsh higher education provider is set out in the table below.

	2016/17	2017/18	2018/19	2019/20	2020/21
Number of first year students	65	55	60	70	70

Source: HESA via Welsh Government

Notes

Student numbers calculated using full person equivalents (FPE). If an individual was studying a joint master's of which 50% was social work, they would be counted in this table as 0.5.

Figures rounded to the nearest 5.

All numbers based on students who are:

1. Welsh domicile students
2. Counted within the standard HE registration population
3. Studying in Welsh Higher Education provider or Open University
4. First year students only
5. Postgraduate students only

Master's degrees have been defined as courses with one of the following course aims:

- Master's degree that meets the criteria for a research-based higher degree
- Master's degree obtained typically by a combination of coursework and thesis/dissertation, that does not meet the criteria for a research-based higher degree
- Taught Master's degree designed specifically as a training in research methods and intended as a preparation for a research-based higher degree
- Master's in Teaching and Learning
- Post-experience taught Master's degree
- Master of Business Administration (MBA)

Student numbers from 2019/2020 are not directly comparable with student numbers for 2018/2019 and prior. This is because of the change from JACS subject coding to HECoS subject coding in the HESA data.

- 7.6 The associated cost with providing postgraduate Social Work students with a loan equal to the difference between the conventional postgraduate package and their Social Care Wales bursary is recorded in the table below.

Estimated cost of SF support as top-up to the Social Care Wales bursary, financial years

	2022-23	2023-24	2024-25	2025-26
Student Finance loan	£99,942	£261,762	£350,113	£397,436
Loan @RAB (loan write-off)	£0	£0	£0	£0

Source: HE Division internal analysis, Welsh Government

1. Costs for Postgraduate Welsh domiciled students, at Welsh HEIs or OU starting in 2022/23
2. Student numbers forecast to increase from 70 in 2020/21, up to the maximum number of bursaries available (83)

- 7.7 The risk of double-funding those students studying for a doctoral course in Educational Psychology at Cardiff University will be removed. The number of Welsh domicile students studying for a doctoral course in Educational Psychology at Cardiff University is set out in the table below.

	2016/17	2017/18	2018/19	2019/20	2020/21
Number of students	25	20	25	25	25

Source: HESA via Welsh Government

Notes

Student numbers calculated using full person equivalents (FPE)

Numbers rounded to the nearest 5

All numbers based on students who are:

1. Welsh domicile students

2. Counted within the standard HE registration population

3. Studying in Cardiff University

Doctoral courses have been defined as courses with one of the following course aims:

- Doctorate degree that meets the criteria for a research-based higher degree
- Provider credit at level D that can count towards a research-based higher degree
- Doctorate degree that does not meet the criteria for a research-based higher degree
- New Route PhD that meets the criteria for a research-based higher degree

Student numbers from 2019/2020 are not directly comparable with student numbers for 2018/2019 and prior. This is because of the change from JACS subject coding to HECoS subject coding in the HESA data.

8. Competition Assessment

8.1 The making of the 2022 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.