

Explanatory Memorandum to the Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2021

This Explanatory Memorandum has been prepared by 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 (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2021.

Jeremy Miles, MS
Minister for Education and the Welsh Language

9 July 2021

PART 1

1. Description

- 1.1 Student support regulations make provision to pay an eligible student undertaking a course of higher education an amount of financial support, comprised of grant and loan, to meet their living costs. The amount is based on their location. The restrictions imposed during recent outbreaks of coronavirus have meant that students may have been at home while still incurring the costs associated with living away from home. An amendment is made by the Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2021 to enable the Welsh Ministers to continue to pay the appropriate rate of support in such circumstances related to coronavirus as may arise in the future, ensuring that policy is implemented correctly and students are not placed into financial hardship.
- 1.2 Typographical errors in several statutory instruments which provide for aspects of student support are corrected.

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

- 2.1 None.

3. Legislative background

- 3.1 The Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983 (“the 1983 Act”) and sections 22(2)(a) and (c) and 42(6) of the Teaching and Higher Education Act 1998 (“the 1998 Act”).
- 3.2 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 authorising rules of eligibility in relation to certain awards in connection with education, training or research.
- 3.3 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.

- 3.4 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).
- 3.5 The functions of the Secretary of State under section 2 of the 1983 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).
- 3.6 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.
- 3.7 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).
- 3.8 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.
- 3.9 This instrument will follow the negative resolution procedure.

4. Purpose and intended effect of the legislation

- 4.1 The Education (Student Support) (Wales) Regulations 2017 (‘the 2017 Regulations’), which provide for those starting a course of higher education before 1 August 2018, and the Education (Student Support) (Wales) Regulations 2018 (‘the 2018 Regulations’), which provide for those starting a course of higher education on or after 1 August 2018, make provision for an eligible student to be paid an amount of maintenance support which varies according to their term-time location. The 2018 Regulations make provision for three rates of support relating to (a) those living at home, (b) those living away from home but not in London, and (c) those living away from home in London. The 2017 Regulations make similar provision across five categories. The purpose is to assist a student to meet the higher costs associated with living away from home. Should a student change their term-time address, a re-assessment of student support is

required by the regulations. This policy applies to eligible students (principally undergraduates, but also some honours graduates) undertaking a full-time course which is designated for the purpose of paying support by either the 2017 Regulations or the 2018 Regulations. Rates of support do not vary by location for part-time students, or for those undertaking a postgraduate Master's or doctoral course.

- 4.2 Lockdowns associated with coronavirus in the 2019/20 and 2020/21 academic years meant some students, acting upon Government advice and in accordance with coronavirus legislation, remained at home despite having secured term-time accommodation. Many of these students were locked into accommodation contracts, or otherwise continued to incur expenses similar to those they would have had if they been living away from home, and so did not benefit from the lower costs that the regulations anticipate when a student lives at home. Requiring a re-assessment of support to a lower rate would not meet the established policy aim of assisting a student to meet their costs.
- 4.3 The 2017 Regulations and the 2018 Regulations are amended by the Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2021 to ensure that an eligible student who is living at a given location for a reason relating only to coronavirus will be treated as living in the location that the eligible student would have been living had it not been for that reason. For example, a student who would, but for coronavirus, be living in a hall of residence but is temporarily living at home will be treated as though living in the hall for the purpose of assessing their entitlement to support. This ensures the correct implementation of the policy of assisting a student to meet costs, negates the additional burden of having to utilise discretionary powers, provides students with certainty, and enables clear communication with students. Students will not be re-assessed to lower rate of support unless they request it.
- 4.4 The opportunity is taken to correct typographical errors in the Education (Fees and Awards) (Wales) Regulations 2007, the Education (Student Support) (Wales) Regulations 2017, the Education (Student Support) (Wales) Regulations 2018, and the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 are also corrected by the Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2021.

5. Consultation

- 5.1 No consultation has been undertaken. The Regulations are amended to provide for the correct implementation of existing policy for the support of students. No new policy is introduced.

6. Regulatory Impact Assessment (RIA)

- 6.1 An RIA has not been prepared for this Order as it makes technical amendments that are required to change the wording of the law rather than its purpose or effect. This is in line with the policy set out in the *Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation*.