

Explanatory Memorandum to the Education (Student Fees, Awards and Support) (Ordinary Residence) (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 Fees, Awards and Support) (Ordinary Residence) (Wales) Regulations 2021. I am satisfied the benefits justify the likely costs.

Kirsty Williams MS
Minister for Education
7 January 2021

PART 1

1. Description

The Education (Student Fees, Awards and Support) (Ordinary Residence) (Wales) Regulations 2021 (“the Regulations”) make amendments to the regulations listed below. These amendments concern ordinary residence requirements in those regulations and ensure that persons who have been granted humanitarian protection, leave to remain as a stateless person or granted leave under section 67 of the Immigration Act 2016 are treated in the same manner as those who have been granted refugee status:

- 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 (Postgraduate Master’s Degrees Loans) (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.

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

There are no matters of special interest arising.

3. Legislative background

The Regulations will be subject to the negative procedure and made using powers under sections 1 and 2 of the Education (Fees and Awards) Act 1983, sections 22, and 42(6) of the Teaching and Higher Education Act 1998 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 the 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 the 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) 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 and are exercisable concurrently with the Secretary of State. The Secretary of State's function 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.

4. Purpose and intended effect of the legislation

The purpose of the Regulations is to remove the three year ordinary residence requirement ('ORR') present in the above Welsh regulations for certain categories of student. In relation to eligibility for student support, this is the requirement that a person be ordinarily resident in the United Kingdom for three years preceding the first day of the first academic year of their course. The three year ORR is to be removed for those with a protection-based form of leave to enter or remain in the UK, specifically, persons granted humanitarian protection, persons granted leave as a stateless person, and persons granted leave under section 67 of the Immigration Act 2016.

By removing this requirement, those without three years' ordinary residence prior to the start of their course become eligible for support – a more generous position than is currently provided for in regulations. As a result, persons who have been granted humanitarian protection, leave as a stateless person or leave under section 67 of the Immigration Act 2016 will be treated in the same way that refugees are treated for the purposes of student support (currently, refugees do not need to satisfy a three year ORR prior to the start their course).

5. Consultation

Consultation was not undertaken.

6. Regulatory Impact Assessment (RIA)

An RIA has been conducted for the Regulations.

Options

Option 1: Business as usual

If the Regulations are not made those with the various forms of protection-based leave would have to wait considerably longer to become eligible for student support, so affecting their ability to build a new life in the UK. An inconsistency with the treatment afforded to refugees would continue.

Option 2: Make the Regulations

Making the Regulations ensures that the inconsistency noted above is avoided resulting in a legislative framework that correctly reflects the Welsh Ministers' policy for student support, ensuring that refugees and those who have been granted humanitarian protection, stateless leave or leave under section 67 of the Immigration Act 2016 are treated in the same manner and are able to receive appropriate support.

Costs and benefits

Option 1: Business as usual

Leaving the existing regulations in place would mean no additional costs are incurred via the student support system but that persons with a protection-based form of leave in the UK would not all be treated in the same manner for the purposes of access to student support.

Option 2: Make the Regulations

By making the Regulations, the Welsh Government will enable a number of persons to become eligible for student support sooner as they will no longer have to satisfy a three years' ORR. It is expected that the changes will apply to a small number of applicants (fewer than 20 per annum) and, as such, there will be negligible financial implications overall for the Welsh Government.

The final budget for the 2020-21 financial year (for information purposes) was as follows:

Budget	£m
Student Support Grants (BEL 4704)	390.742
Student Loans AME (BEL 4713)	863.631
Student Loans RAB Charge (BEL 4707)	106.849
Total	1,361.222

Competition Assessment

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

Post-Implementation Assessment

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.

Summary

The making of the Regulations is necessary to ensure that persons in the protection-based categories become eligible for student support without needing to satisfy the three year ORR and will therefore provide parity with persons awarded refugee status.