

Explanatory Memorandum to the Education (Student Finance) (Miscellaneous Amendments) (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) (Wales) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and the Welsh Language
1 February 2023

Part 1

1. Description

1.1 The Education (Student Finance) (Miscellaneous Amendments) (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:

- increase the amounts of undergraduate and postgraduate support in line with established policy; including a 9.4% increase in undergraduate support;
- increase the maximum amount of doctoral loan instalment payable annually;
- assist in meeting a Programme for Government commitment, enable more part-time students to apply for Grants for Dependants, and increase the income disregards used to calculate financial entitlement;
- make family members of certain persons settled in the UK eligible for certain elements of support;
- to make certain persons from specified British Overseas Territories and EU Overseas Territories eligible for certain elements of support; and
- make technical amendments to the Education (European University Institute) (Wales) Regulations 2014 by omitting redundant provisions.

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), (b) and (c) 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 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 The functions of the Secretary of State in section 1 of the Education (Fees and Awards) Act 1983 were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 2006/1458 with effect from 8 June 2006. The functions of the Secretary of State in section 2 of that Act were transferred to the National Assembly for Wales so far as exercisable in relation to Wales by S.I. 1999/672. 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)(c) 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 (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 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, and certain other students studying in Wales, who are taking designated courses of higher education in the UK.
- 4.2 The 2023 Regulations amend existing student support regulations as outlined in paragraphs 4.3 – 4.24.

Annual support increases

Maintenance support

- 4.3 For students who began their undergraduate courses on or after 1 August 2018, to increase the amount of maintenance support to reflect the projected increase in the National Living Wage for 2023. This policy applies to full and part-time students, who are the majority of current undergraduate students.

- 4.4 The amount of maintenance support will rise by 9.4% between 2022/23 and 2023/24. The loan element of support is increased accordingly; the grant element is fixed.
- 4.5 For full-time students who began their undergraduate courses on or after 1 August 2012 and before 1 August 2018, to increase the amount of maintenance loan by a measure of RPIX.
- 4.6 The amount of maintenance loan will increase by 1.8% between 2022/23 and 2023/24 in line with the estimates of forecast inflation as measured by RPIX in the year to Q1 2024 and published by the OBR in March 2022. Support is a mixture of grants and loans and is dependent on household income.
- 4.7 For part-time students who began their undergraduate courses on or after 1 August 2014 and before 1 August 2018, no increase. A fixed course grant of a maximum of £1,155 is payable, which decreases with income. No loan is available.

Other support grants

- 4.8 For all eligible students, to increase the amounts of Grants for Dependents, including the Childcare Grant, by RPIX. These grants will increase by 1.8% between 2022/23 and 2023/24.
- 4.9 For all eligible students, to increase the amount of Disabled Student's Grant by RPIX. This grant will increase by 1.8% between 2022/23 and 2023/24.

Fee support

- 4.10 For full-time students who began their undergraduate courses on or after 1 August 2012 and before 1 August 2018, to decrease the amount of fee grant and increase the amount of fee loan by RPIX. Overall fee support is unchanged, but the grant amount will decrease and loan increase by 1.8%.

Postgraduates

- 4.11 For postgraduate Masters' students who begin a course on or after 1 August 2023, to increase the amount of support by RPIX. Total support will rise by 1.8%, by increasing the amount of loan. There is no increase to the grant. Support is per course as opposed to per academic year and hence increases apply to new students only.
- 4.12 For doctoral students who begin a course on or after 1 August 2023, to increase the amount of support by RPIX. The maintenance loan will rise by 1.8%.

Postgraduate doctoral loan support

4.13 Current policy enables doctoral students to receive a maximum annual instalment of £10,609 in accordance with Regulation 14 of the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018. This amount has not been increased since the introduction of postgraduate doctoral loans in academic year (AY) 2018/19 despite the loan itself increasing. It is therefore proposed to increase the maximum amount of loan payable in an academic year to reflect 50 per cent of the total amount of loan available.

Grants for Dependants

4.14 Grants for Dependants (GfDs) provide additional support to undergraduate students with dependants and comprise three grants: the Childcare Grant, the Parents' Learning Grant, and the Adult Dependants' Grant. The Childcare Grant pays (for a full-time student) up to 85% of childcare costs of up to £187 per week for one dependent child or up to £321 per week for two or more dependent children. The Parental Learning Allowance is a flat rate allowance of £1,896 (full-time) per academic year for any student with one or more dependent children. The Adult Dependants' Grant is a grant paid to a student with a partner or adult dependant.

4.15 A Programme for Government objective has been established to fund childcare for more families where parents are in education and training or on the edge of work.

Income disregards

4.16 Increasing the level of income disregards has the effect of raising the amount of GfDs which are potentially payable to an eligible student, by reducing the amount of income which is assessed as an offset to grants. The 2023 Regulations provide for an increase in the level of income disregards for all eligible students by 1.8 per cent for 2023/24 (i.e. in line with forecast RPIX inflation).

Part-time students

4.17 Part-time students must be studying at an intensity of 50 per cent of a full-time equivalent course to be eligible for GfDs. The amount to which they are entitled is pro-rated by this intensity, as follows:

- an entitlement of 50 per cent of the full-time equivalent grant where the intensity of study for the academic year is at least 50 per cent but less than 60 per cent of a full-time equivalent course;
- 60 per cent where the intensity of study is at least 60 per cent but less than 75 per cent; and
- 75 per cent where the intensity of study is at least 75 per cent or more.

4.18 Part-time students are eligible to apply for a maintenance grant, maintenance loan and Disabled Students' Grants when studying at an intensity of 25 per cent or more. GfDs are the only grant for which they are not eligible when studying at less than 50 per cent intensity. Amendments are made by the 2023 Regulations

which enable eligible part-time students to qualify for GfDs when studying at an intensity of study of 25 per cent or more. This will make more parents eligible for childcare support and assist in meeting the Programme for Government commitment.

4.19 Additional pro-rating will apply:

- an entitlement of 25 per cent of the full-time equivalent grant where the intensity of study for the academic year is at least 25 per cent but less than 30 per cent of a full-time equivalent course;
- 30 per cent where the intensity of study is at least 30 per cent but less than 40 per cent; and
- 40 per cent where the intensity of study is at least 40 per cent but less than 50 per cent.

Family members of other persons settled in the UK

4.20 As a result of the UK's exit from the EU, the student support regulations were amended in 2021 so that family members of UK nationals could continue to access student support and benefit from home fee status on the same basis as when the UK was a member of the EU. An amendment to the regulations is now made to ensure comparability between family members of UK nationals and of other persons settled in the UK. Students who begin a course in the 2023/24 academic year will be eligible for home fee status, the tuition fee cap, tuition fee loans, and postgraduate support.

Students from British overseas territories (BOTs) and EU overseas territories (EUOTs)

4.21 As a result of the UK's exit from the EU, the student support regulations were amended in 2021 so that UK nationals and their family members domiciled in the BOTs (excluding the Sovereign Base Areas) could benefit from home fee status as they could when the UK was a member of the EU.

4.22 The 2023 Regulations make provision for persons who have settled status in the UK, and those covered by the various Withdrawal Agreements, who come from specified BOTs to study in Wales to be eligible for undergraduate tuition fee support and postgraduate support. This ensures comparability between UK nationals resident in these territories and those resident elsewhere.

4.23 Further, this is extended to include persons with protected rights who come from specified EUOTs to ensure comparability between EU and UK nationals in this respect. This will apply to students who begin a course in the 2023/24 academic year.

4.24 The Education (European University Institute) (Wales) Regulations 2014 provide for eligible students to apply for four different grants. For each grant, there is an exception made so that an eligible student does not qualify for the grant in question should they fall only within certain specified eligibility categories. This means that there are categories of students who are eligible under the regulations but who are unable in any circumstance to actually qualify for support. A technical amendment is proposed to remove the superfluous provisions.

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)

6.1 An RIA has been conducted for the 2023 Regulations. Options for support for students for the 2023/24 academic year were considered against existing policy which bases the value of maintenance support for a student starting a course on or after 1 August 2018 on the National Living Wage ('NLW'). While policy does not explicitly target the real value of support, the Welsh Government was conscious of the high level of inflation experienced in 2022. Inflation is expected to moderate somewhat during 2023 and 2024. The Office for Budget Responsibility noted in its November 2022 *Economic and Fiscal Outlook* (p.15) that 'on a calendar-year basis, CPI inflation falls back from 9.1 per cent in 2022 to 7.4 per cent in 2023.... Conditional on market expectations for Bank Rate and gas prices, inflation falls below zero for eight quarters from mid-2024'.

Options

6.2 As noted, policy for increasing the various rates of student support is well-established. The value of maintenance support for undergraduate students who begin a course on or after the 1 August 2018 is increased each year by the rate of increase in the NLW. This policy was established by the *Review of higher education funding and student finance arrangements* in 2018. As the policy link is to the NLW, the real (inflation adjusted) value of maintenance support may rise or fall accordingly.

6.3 Options were considered for specifically increasing maintenance support for post-2018 students and included:

- a. Increase maintenance rates for post-2018 students to reflect the 9.7% increase to the NLW, the rate announced at the time of the Autumn Statement. Note the increase to support rates will be 9.4%, to accommodate an over-estimate of the NLW in support rates for 2022/23. This will mean that support rates accurately reflect the NLW 2023-24 value.

- b. Introduce an increase based on the National Minimum Wage (as opposed to the National Living Wage) as this is the statutory wage which applies to young people (aged 18-22). The uplift for 2023/24 is the same (9.7%) and so this option has been discounted.
 - c. Increase maintenance rates for post-2018 students by 4.7%, the NLW rate increase forecast at the time of the OBR's March 2022 *Economic and Fiscal Outlook*. The March OBR figure has been used in previous years but any discrepancy with the final NLW rate is usually ironed out, either by a late adjustment, or by an adjustment to the following year's value.
- 6.4 Increasing maintenance rates to reflect the 9.7% increase to the NLW will maintain the established policy link between support rates and the NLW and provide a substantial increase to support during a time of exceptional cost of living pressures. This is the option selected.
- 6.5 All other values are increased by a forecast measure of price inflation as measured by RPIX. Due to the nature of the legislative process, it is necessary to use a forecast of RPIX from the March of the year preceding the year in which the academic year begins. So, for values for the 2023/24 academic year, a rate of 1.8% is used, as that was the forecast in March 2022.
- 6.6 The Regulations encompass a wide range of policy changes over and above the annual uplifts to support values. Options are recorded below.

Option 1: Business as usual

- 6.7 If the 2023 Regulations are not made the implications are that:
- the value of student support will decrease, leaving students to bear the entire cost of this reduction at a time when the cost of living has increased;
 - the Programme for Government objective to fund childcare for more families where parents are in education and training or on the edge of work will not be met;
 - there would be no comparability between family members of UK nationals and of other persons settled in the UK;
 - there would be no comparability between UK nationals resident in the BOTs territories and those resident elsewhere and there would be no comparability between EU nationals with protected rights resident in EOTs territories and UK national resident in BOTs territories;
 - there would continue to be superfluous provisions in the EUI Regulations.

Option 2: Make the Regulations

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

Costs and benefits

Option 1: Business as usual

- 6.9 Leaving the existing regulations in place would mean no additional costs are incurred via the student support system. Students would bear the entire cost of any real reduction in the value of their student support.

Option 2: Make the Regulations

- 6.10 By making the 2023 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 will benefit from an increase in their maintenance support linked to the value of the National Living Wage, which will increase substantially in the 2023-24 financial year. By increasing the level of income disregards and enabling part-time students to apply for Grants for Dependants when studying at an intensity of study of 25 per cent, the Programme for Government objective will be met. The extension of eligibility for support, home fee status, and the tuition fee cap, 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.
- 6.11 The annual support uplifts for the 2023/24 academic year are estimated to cost an additional £80m.

Financial implications of uplifts for 2023/24 (£m)			
	No uplift	With uplift	Difference
Near Cash	30.1	31.7	1.6
Non Cash	471.7	534	62.2
RAB	105.8	121.9	16.2
Total cost			80.0

Notes:

Costs for no uplifts do account for increases in student numbers but presume no uplift on the loan amounts used for the 2022/23 academic year.

Includes student support products that are uplifted with inflation; undergraduate maintenance loans, the loan element of postgraduate Masters and doctoral maintenance support, grants for dependants and disabled students allowance.

- 6.12 The changes to GfDs to increase the income disregards and reduce intensity of study requirements are estimated to cost an additional £652,000 in the academic year 2023/24.

Financial implications of GfDs changes for 2023/24	
GfD cost for 2023/24 without changes	£15,206,000
Estimated extra cost for increasing income disregards	£274,000
Estimated extra cost for reducing intensity of study	£378,000
Total extra cost	£652,000

6.13 The amendment to make provision for family members of other persons with settled status in the UK will have a minor cost implication but as numbers are likely to be very low, any costs are considered to be minimal.

6.14 The amendment to make provision for UK nationals resident in the BOTs territories and EU nationals resident in the EOTs territories to be eligible for undergraduate tuition fee support and postgraduate support is thought to have a minor cost implication as numbers are likely to be low.

7. Competition Assessment

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

8. Post-Implementation Assessment

8.1 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.