

Explanatory Memorandum to the Education (Eligibility for Student Support) (Amendment) (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 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 (Eligibility for Student Support) (Amendment) (Wales) Regulations 2022.

Jeremy Miles MS
Minister for Education and Welsh Language
19 January 2022

Part 1

1 Description

- 1.1 The Education (Eligibility for Student Support) (Amendment) (Wales) Regulations 2022 (“the Regulations”) amend the Education (European University Institute) (Wales) Regulations 2014 (SI 2014/3037) (“the 2014 Regulations”) and the Education (Student Support) (Wales) Regulations 2018 (SI 2018/191) (“the 2018 Regulations”).

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

- 2.1 The Legislation, Justice and Constitution Committee considered the Education (European University Institute) (Wales) (Amendment) (EU Exit) Regulations 2021 (SI 2021/1294), which amend the 2014 Regulations, at their meeting of 6 December 2021 and issued a report containing merit and technical points. The Regulations make amendments to address two points made by the Committee. This Statutory Instrument is being issued free of charge to all known recipients.

3 Legislative background

- 3.1 The Regulations are made under sections 22(1)(a), 22(2)(a) and 42(6) of the Teaching and Higher Education Act 1998 (“the 1998 Act”).
- 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 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. The student finance regulations contain eligibility criteria pursuant to which certain groups may be eligible for student support, home fee status and the tuition fee cap.
- 4.2 The 2014 Regulations provide for financial support for an eligible student to attend the European University Institute. The 2018 Regulations provide for financial support for students taking designated higher education courses which begin on or after 1 August 2018. These are principally full and part-time undergraduate courses. The 2018 Regulations also provide support for courses which begin before 1 August 2018 and are subsequently converted from full-time to part-time or part-time to full-time on or after 1 August 2018.

Amendment to the 2014 Regulations

- 4.3 The Education (European University Institute) (Wales) (Amendment) (EU Exit) Regulations 2021, which came into force on 31 December 2021, make EU exit related amendments to the 2014 Regulations in respect of the provision of financial support to eligible students studying at the European University Institute.
- 4.4 The Regulations amend the 2014 Regulations by providing re-formatted drafting in relation to the definition of a UK national. They also include reference to paragraph 289D of the Immigration Rules, correcting an omission in the definition of a 'protected partner'.

Amendment to the 2018 Regulations

- 4.5 As a result of the UK's withdrawal from the EU, significant changes were made to the student support regulations for academic years starting on or after 1 August 2021. The Education (Student Fees, Awards and Support) (Amendment) (Wales) Regulations 2021, which came into force on 31 December 2021, make amendments to ensure that Irish nationals are eligible for home fee status, the tuition fee cap and tuition fee support as a result of the Common Travel Area arrangement.
- 4.6 An unintended consequence of those amending regulations is that Irish nationals studying in Wales who were resident in the EEA and Switzerland at the end of the transition period have been made eligible for maintenance support under the 2018 Regulations. The Regulations amend the 2018 Regulations to ensure that these Irish nationals are unable to apply for maintenance support but remain eligible for fee support, home fee status and the tuition fee cap.

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)

As these Regulations make factual amendments to update subordinate legislation and the amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation, an RIA is not required. 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.