

## **Explanatory Memorandum to the Education (Student Finance) (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 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 2022. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS  
Minister for Education and the Welsh Language  
28 January 2022

## **Part 1**

### **1. Description**

1.1 The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2022 (“the 2022 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 Provisions) (Wales) Regulations 2015,
- the Education (Student Support) (Wales) Regulations 2017, and
- the Education (Student Support) (Wales) Regulations 2018.

1.2 The 2022 Regulations amend existing student support regulations to:

- increase the amount of undergraduate support, in line with established policy;
- remove references to the ‘grace period’ in relation to the EU Settlement Scheme in the undergraduate student support regulations;
- make individuals granted leave to enter or remain as a relevant Afghan citizen and their family members under the ARAP and ACRS immigration schemes eligible for student support, home fee status and tuition fee cap (this change is not required in the Education (Student Support) (Wales) Regulations 2017);
- extend eligibility to home fee status and the tuition fee cap to students from the Crown Dependencies studying a higher education course in Wales;
- ensure that students on the International Learning and Exchange programme will receive the same support as those on the Erasmus+ scheme; and
- make postgraduate social work students in receipt of a social work bursary eligible to apply for Disabled Students Grant where a course begins on or after 1 August 2022.

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

2.1 There are no matters of special interest to the Legislation, Justice and Constitution Committee.

### **3. Legislative background**

3.1 The 2022 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)(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 (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 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 The amount of undergraduate support is amended, in line with established policy, as follows:

- to increase the amount of Disabled Student's Grant available to new and continuing students by the projected rate of inflation of 2.2 per cent to reflect cost of living increases;
- to increase the amount of Grants for Dependants, including the Childcare Grant, available to new and continuing students by the projected rate of inflation;
- to increase the amount of maintenance loan available to students who began their courses on or after 1 August 2018, to ensure that the overall maintenance package reflects the National Living Wage projection for 2022 (National Living Wage hourly rate £9.52);
- to increase the amount of maintenance loan available to those students who began their courses on or after 1 September 2012 but before 1 August 2018 by the projected rate of inflation; and
- to decrease the amount of tuition fee grant and increase the amount of tuition fee loan for those students who began their courses on or after 1 September 2012 but before 1 August 2018 by the projected rate of inflation so that overall tuition fee support is unchanged.

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

4.4 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'.

4.5 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 regulations to remove references to the grace period (only).

*Afghan nationals*

4.6 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 01 April 2021 and will continue to remain open and operate indefinitely.

- 4.7 In addition, due to recent events in Afghanistan, the UK Government announced details of a new 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.
- 4.8 An amendment is made to the Education (Student Support) (Wales) Regulations 2018 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 tuition fee cap. This is extended to the spouse, civil partner or any dependent children under the age of 18.

#### *Students who move from the Crown Dependencies to study in Wales*

- 4.9 An amendment is made to the Education (Fees and Awards) (Wales) Regulations 2007 and the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provisions) (Wales) Regulations 2015 to make provision for students from the Crown Dependencies (Jersey, Guernsey and the Isle of Man) who come to Wales to study to be eligible for home fee status and the tuition fee cap for courses beginning on or after 1 August 2022 provided they satisfy relevant eligibility criteria.

#### *International Learning and Exchange (ILE) programme*

- 4.10 The Welsh Government is developing the ILE programme, which will ensure that the opportunities Erasmus+ provided for learners and providers in Wales continue to be available. An amendment to regulations is made to include reference to the ILE, to ensure the correct provision of support to those participating in the 2022/23 academic year.

#### *Postgraduate Masters social work students – Disabled Students Grant*

- 4.11 Under the current regulations, students studying for a postgraduate Masters 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) (Wales) Regulations to make these students, who start their course on or after 1 August 2022, eligible for the Disabled Students Grant, where applicable. This follows a change in policy to enable these students to access the Disabled Students Grant and an element of loan funding (further amendments to legislation are planned) in recognition of the importance of the profession to the well-being of the people of Wales.

## **5. Consultation**

- 5.1 A consultation was undertaken for the amendment to make provision for the students from the Crown Dependencies who come to Wales to study to be eligible for home fee status and the tuition fee cap. The consultation was launched on 2 August 2021 and closed on 25 October 2021. The majority of responses agreed with the proposals in the consultation.
- 5.2 For the other amendments, 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 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 home fee status, the tuition fee cap and student support between Afghan nationals and others with similar protection-based forms of leave to be in the UK;
- students from the Crown Dependencies coming to Wales to study will not be eligible for home fee status or the tuition fee cap, leaving Welsh higher education institutions at a competitive disadvantage;
- students participating in the ILE programme will be unable to access support, contrary to policy; and
- postgraduate Masters social work students starting their courses from academic year 2022/23 will not be eligible for the Disabled Students Grant.

### *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. 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, 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.

7.3 The routine uplifts applied to student support rates each year preserve the real value of support. The amendments made to the amount of student support by the 2022 Regulations result in the forecast for student support increasing by £16.0m, most of which was for full-time undergraduate students, which increased by £12.7m. For context, the total student support forecast for 2022-23 is £1.358bn.

7.4 As of 1 September 2021, 8,000 individuals have been granted leave under the ARAP. There is no breakdown as yet of anticipated 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 amendment to make provision for the students from the Crown Dependencies who come to Wales to study to be eligible for home fee status and the tuition fee cap has no financial implications.

7.6 The amendment to make students participating in the ILE programme eligible to access support will have no additional associated costs as this is a replacement for the Erasmus scheme.

7.7 The estimated costs of making postgraduate Masters social work students starting their courses from academic year 2022/23 eligible for the Disabled Students Grant are as follows:

	2022/23 <sup>(1)</sup>	2023/24	2024/25	2025/26
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Maximum potential costs <sup>(2)</sup>	£524,100	£1,019,500	£1,049,000	£1,078,700
Expected costs	£52,100	£101,300	£104,300	£107,200

Source: HE Division internal analysis, Welsh Government

<sup>(1)</sup> Assuming support introduced for new students only

<sup>(2)</sup> Cost if all eligible students are awarded the maximum DSG amount

<sup>(3)</sup> Costs rounded to nearest £100

7.8 All additional costs will be met through existing budgets.

## 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.