

**Explanatory Memorandum to the Education (Student Finance)
(Miscellaneous Amendments) (Wales) Regulations 2024**

This Explanatory Memorandum has been prepared by the Tertiary Strategy & Funding Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary 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 2024.

Lynne Neagle MS
Cabinet Secretary for Education

19 July 2024

1. Description

1.1 The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2024 (“the 2024 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 2024 Regulations amend student support and fee protection legislation to ensure continued eligibility for victims of domestic abuse or domestic violence, and bereaved partners, following changes to various provisions within the Immigration Rules.

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

2.1 None.

3. Legislative background

3.1 The 2024 Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983; sections 22(1)(a), (2)(a) 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 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 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 is subject to the negative resolution procedure.

4. Purpose & 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 certain other students studying in Wales.
- 4.2 The Welsh Government makes a victim of domestic abuse or of domestic violence, and bereaved partners, who have been granted leave to be in the UK by the UK Government under various provisions within the Immigration Rules eligible for student support and fee protection. A child of such a person is also eligible. These persons receive special treatment under the Immigration Rules to recognise the fact that they may experience difficulty in demonstrating their eligibility for permission to be in the UK.
- 4.3 The Home Office has made changes to its Immigration Rules to include victims of domestic abuse and bereaved partners in two new separate appendices. Welsh student support and fee protection legislation makes explicit reference to the Immigration Rules so that a person falling into specific provisions are made eligible for student support.

Eligibility of victims of domestic abuse and of domestic violence

- 4.4 The 2024 Regulations make amendments to include those granted leave under the new Appendix Victim of Domestic Abuse. The existing Immigration Rules references within student support and fee protection legislation for those granted leave prior to the new Appendix coming in-force have been retained.
- 4.5 The amendments will:
- ensure the eligibility of those who would have been captured by the previous Immigration Rules provisions; and
 - extend eligibility to those with leave to enter (the previous Immigration Rules provisions only provided for those falling into this category with leave to remain). The Immigration Rules have been expanded to provide those experiencing transnational marriage abandonment (a form of domestic abuse whereby the abusive party abandons their partner overseas and their permission to stay in the UK expires and/or they are left without access to their passport or immigration documents, preventing their return to the UK) with a route to entry clearance for settlement within the UK.

Eligibility of bereaved partners

- 4.6 The 2024 Regulations make amendments to include those granted leave under the new Appendix Bereaved Partner. The existing Immigration Rules references within student support and fee protection legislation for those granted leave prior to the new Appendix coming in-force will be retained.
- 4.7 The amendments will:
- ensure the eligibility of those who would have been captured by the previous provisions;
 - extend eligibility to those with leave to enter (the previous Immigration Rules provisions only provided for those falling into this category with leave to remain). The Immigration Rules have been expanded to provide for a bereaved partner (who is overseas) of armed forces personnel with a route to entry clearance for settlement within the UK.
- 4.8 The amendments detailed in paragraphs 4.4 to 4.7 above will apply to new and continuing students and will take effect from the date the 2024 Regulations come into force. The amendments do not change policy but

reflect the technical changes in the Immigration Rules so that existing policy is given effect.

5. Consultation

- 5.1 A consultation has not been carried out for these technical changes in the Immigration Rules.

6. Regulatory Impact Assessment (RIA)

- 6.1 The Welsh Ministers Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, an RIA has not been produced.
- 6.2 This statutory instrument falls within the exceptions set out in the code as only factual amendments are being made to update subordinate legislation and which do not alter the policy (or its impact) in any significant way or how it is applied in a given situation.