

EXPLANATORY MEMORANDUM TO THE ASSEMBLY LEARNING GRANTS AND LOANS (HIGHER EDUCATION) (WALES) REGULATIONS 2011

The Explanatory Memorandum has been prepared by the Engagement and Student Finance Division of the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales under Standing Order 24.1.

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Leighton Andrews

Minister for Children, Education and Lifelong Learning

25 January 2011

Description

1. These Regulations are required in order to underpin the higher education student support system in Wales (fee grants, fee loans, maintenance grants and maintenance loans) in relation to full-time students, part-time students, distance learning students and certain postgraduate students for academic year 2011/12. These regulations amend and will eventually replace the existing *Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2009 No.2737(W.235)*. The main student support regulations are made on an annual basis.

Matters of special interest to the Constitutional Affairs Committee

2. There are no matters of special interest.

Legislative Background

3. In June 2006, section 44 of the Higher Education Act 2004 transferred to the National Assembly for Wales the majority of the Secretary of State's functions in relation to student support (essentially the Secretary of State's functions under sections 22 and 23 of the Teaching and Higher Education Act 1998 ("the 1998 Act")). Sections 47 and 52 of the 2004 Act gave the National Assembly for

Wales power, by order, to bring section 44 into force. The relevant Order bringing into force the various subsections of section 44 is the Higher Education Act 2004 (Commencement Order No. 2 and Transitional Provision) (Wales) Order 2005 as amended by the Higher Education Act 2004 (Commencement Order No. 2 and Transitional Provision) (Wales) (Amendment) Order 2006. Those National Assembly functions under sections 22 and 23 of the 1998 Act are now vested in the Welsh Ministers by virtue of Schedule 11 of the Government of Wales Act 2006. Each year, the relevant functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are transferred and delegated to Welsh local authorities and the Student Loans Company under section 23 of the 1998 Act.

4. This instrument follows the Negative Resolution procedure.

Purpose and intended effect of the legislation

5. The Welsh Ministers make annual regulations governing the higher education student support system. Generally, each set of regulations relates to a particular academic year. These Regulations will amend and eventually replace the existing legislation governing academic year 2010/11 and the student support arrangements for students ordinarily resident in Wales and EU students attending Welsh higher education institutions who are undertaking designated higher education courses. These regulations will govern the 2011/12 academic year and will enable Welsh Ministers to make awards of grants and loans to eligible students. In amending and replacing the existing legislation, these Regulations will introduce a number of policy changes together with some technical drafting amendments.
6. The specific policy changes incorporated within the regulations are set out below:

a. Inflationary up-rating and cessation of the Welsh National Bursary leading to increased maintenance support for students starting courses in academic year 2011/12 :

In academic year 2011/12, there will broadly be three different packages of support available to full-time students who are ordinarily resident in Wales, depending upon when the students started their course:

- (i) The package of support for full-time students who started or are treated as starting their courses on or after 1 September 2006 but before 1 September 2010 and are continuing their studies in 2011/12 -
 - Welsh students studying in Wales may receive a tuition fee grant which for 2011/12 has been up-rated in line with inflation (2.7%) to a maximum value of £2,030;

- The tuition fee loan has been up-rated in line with inflation to a maximum value of £3,375 (ensures that no full-time undergraduate student has to pay fees 'up-front');
 - No inflationary up-rating for maintenance grant, maintenance loan or targeted grants such as childcare grant (subject to the point below, a maximum means-tested maintenance grant of £2,906 and a maximum means-tested maintenance loan of £6,548 is available);
 - As in previous years, the amount of maintenance loan that a student receives is reduced by £1 for every £1 of maintenance grant received, subject to a maximum reduction of £1,288 in the value of the maintenance loan.
- (ii) The package of support for full-time students who started or are treated as starting their courses in academic year 2010/11 and are continuing their studies in 2011/12 -
- No tuition fee grant available;
 - The tuition fee loan has been up-rated in line with inflation to a maximum value of £3,375 (ensures that no full-time undergraduate has to pay fees 'up-front');
 - No inflationary up-rating for maintenance grant, maintenance loan or targeted grants such as childcare grant (subject to the point below, a maximum means-tested maintenance grant of £5,000 and a maximum means-tested loan of £6,648 is available). This enhanced level of maintenance grant resulted from the re-modelling of the student support system following the Jones Review in 2008. The household income threshold for a partial maintenance grant remains at £50,020;
 - As for academic year 2010/11, the amount of maintenance loan that a student receives is reduced by £0.60 for every £1 of maintenance grant received, subject to a maximum reduction of £2,844 in the value of maintenance loan.
- (iii) The package of support for full-time students who start their courses in academic year 2011/12 –
- No tuition fee grant available;
 - The tuition fee loan has a maximum value of £3,375 (ensures that no full-time undergraduate has to pay fees 'up-front');
 - A maximum means-tested maintenance grant of £5,600 is available (this change to maintenance grant is reflected in regulation 40). As for 2010/11 cohort students, the household income threshold for a partial maintenance grant is £50,020.
 - A maximum means-tested loan of £6,648 is available. As for 2010/11 cohort students, the amount of maintenance loan that a student receives is reduced by

£0.60 for every £1 of maintenance grant received, subject to a maximum reduction of £2,844 in the value of maintenance loan.

As regards part-time students and distance learning students, the fee grant available to such students in academic year 2011/12 has been up-rated by 2.7%. The amounts and income thresholds for part-time targeted grants are frozen in line with the full-time student support package.

b. NHS Bursaries and full-time students

Students who are studying for certain higher education health care qualifications can apply for means-tested NHS / healthcare bursaries. The policy intent is that full-time students who are able to apply for such NHS / healthcare bursaries should only have access to a reduced rate of maintenance loan under the student support regulations. To ensure that this policy intent is implemented, a clarifying amendment has been made to the definition of “bursary year” in regulation 2(1).

c. Prior Year Tax – Current year Assessments

In a case where parental income is assessed to determine a full-time student’s entitlement to grants and loans for living costs, the income used is that based on the financial year before the financial year that precedes the start of the academic year (the prior financial year). In respect of an academic year starting on 1 September 2011, the prior financial year will be April 2009 – March 2010.

However, if the parental income for the financial year in which the start of the academic year falls (the current financial year) is likely to be 85% or less than that in the prior financial year, an assessment of that income is based on the current, rather than prior, financial year.

Schedule 5 to the regulations has been amended to clarify the policy intent where a second or subsequent current year assessment is made in respect of consecutive academic years of a course.

By way of example: a student starts the second year of a course on 1 September 2011. In respect of academic year 2010/11, that student’s parental income was calculated on the basis of a current financial year assessment (namely in respect of financial year April 2010 – March 2011). However, there has been a further drop in parental income. In order to determine whether parental income should again be the subject of a current financial year assessment (namely in respect of financial year April 2011 – March 2012), it is necessary to establish whether that parental income has dropped by 15% or more. The regulations now provide that income for financial year April 2011-March 2012 should be compared with income in financial year April 2010 – March 2011 (and not compared with income in the prior financial year).

d. ERASMUS Work Placements

The regulations have been amended to clarify the position regarding the status of ERASMUS work placement students.

ERASMUS is an EU scheme that enables higher education students in 31 European countries to study for part of their degree in another country. During an academic year that is an “Erasmus year”, the policy intention is that such students may either study at an institution or attend a work placement in their chosen country. By way of amendments to (amongst other provisions) the definition of “Erasmus year” in regulation 2(1), the Regulations ensure that:

- work placements undertaken as part of an ERASMUS year are distinct from work placements undertaken as part of a sandwich course (the latter often attract a reduced entitlement to student support); and
- maintenance support in the form of maintenance grants and loans for living costs available to ERASMUS students undertaking work placements abroad are the same as that available to ERASMUS students undertaking study placements.

e. Definition of a family member in accordance with EU Directive 2004/38

Various categories of student and their family members who may be eligible for elements of the student support package are defined within Schedule 1 to the Regulations.

A person who is an European Economic Area migrant worker (a national of an EU country other than the UK or a national of Norway, Iceland or Lichtenstein who is a worker in the UK) or the family member of such a worker may be entitled to student support if they are ordinarily resident in Wales on the first day of the first academic year of the course. Similar provisions apply in relation to European Economic Area self-employed persons and their family members.

In defining the term “family member” for these purposes the student support regulations have previously referred to “a child” of the working or self-employed person or “a child” of that person’s spouse or civil partner. These regulations replace those previous references to “a child” with a reference to direct descendants of the person or the person’s spouse or civil partner who are under the age of 21 or dependent on the person or the person’s spouse or civil partner.

The above change aligns the definition of family member for European Economic Area migrant workers and self-employed persons with that used for other categories of student within the

Regulations and with the definition of family member within Article 2 of EU Directive 2004/38.

f. Students taking veterinary medicine as a second degree

A provision in the Regulations concerning previous study has been amended to ensure that the regulations correctly implement the policy intent (regulation 7(5)(a) refers). Eligible students whose course leads to a qualification as a social worker, medical doctor, dentist, veterinary surgeon or architect may qualify for a loan for living costs even if they have already attained an honours degree from an institution in the UK.

g. Amendments to the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2009 (SI 2009 No.2737(W.235)) governing academic year 2010/11

Amendments as described in paragraphs b – f above will be made to the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2009 in respect of academic years starting on 1 April 2011 or 1 July 2011. These changes will not have any financial implications for the budget for academic year 2010/11.

Technical amendments

8. In addition to the above a number of minor technical and drafting amendments have been made to the Regulations to ensure that the policy intent for student support arrangements is accurately reflected in the legislation.

Implementation

9. This legislation updates the current student support system for academic year 2010/11 and needs to be in place in before the end of February 2011 to enable applications for academic year 2011/12 to be processed after that date. The delivery partners (the Student Loans Company and the Local Authorities in Wales) have been consulted and informed of the intended changes.

Consultation

10. There is no statutory requirement to consult on these Regulations. However the changes outlined in paragraph 7(a) above were included in the consultation exercise for these Regulations and the outcome is referred to in paragraphs 15-16 and Annex B.

REGULATORY IMPACT ASSESSMENT

11. Options

- **Do nothing** – by not amending and replacing the existing Regulations. This will mean that the legislation currently in place (for academic year 2010/11, namely the *Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2009* (SI 2009/2737)) will continue to operate for academic year 2011/12. As such, none of the policy changes identified in paragraph 7 above will be implemented. In particular, this will mean that the maximum amount of tuition fee loan available to students will be less than the maximum tuition fees that higher education institutions will be able to charge. There will also be no provision applying specifically to students commencing courses in academic year 2011/12.
- **Make the Legislation** – implementing these Regulations will ensure that the proper legislative framework is in place for academic year 2011/12. The Regulations will ensure that no full-time undergraduate will have to pay tuition fees “up front”. They will also make specific provision for students commencing courses in academic year 2011/12 (which includes an enhanced maintenance grant).

Benefits

12. By making the Regulations, Welsh Ministers will benefit from the assurance that the Welsh student support system has a proper legal framework and are covered against the possibility of legal challenge. The delivery partners (county and county borough councils in Wales and the Student Loans Company) will also benefit from the knowledge that they are acting within the requirements of the Welsh legislation. Students commencing courses in academic year 2011/12 will benefit from specific provisions within the regulations relating to their maintenance support.

Costs

13. The delivery partners annually make assessments and payments of the loans and grants to students as specified by the relevant legislation. No additional burdens on the delivery partners are expected to be created by the changes incorporated within the new Regulations. The costs to the Welsh Assembly Government will be met from existing budgets.

Sectors and Duties

14. These Regulations have no impact on the statutory duties (sections 77-79 of the Government of Wales Act 2006) or impose any additional burdens upon the statutory partners (sections 73-75 Government of Wales Act 2006).

Consultation

15. A six week technical consultation covering the Regulations took place between 23 August and 3 October 2010, the main focus being on the changes outlined in paragraph 7(a); that is the changes in relation to the uprating of tuition fee support for full-time, part-time and distance learning students and the improvement of maintenance support for full-time students. 6 responses were received. These were mainly in relation to the cessation of the national bursary and the related increase in statutory student support (increased maintenance grant for full-time students commencing courses in academic year 2011/12). Annex A provides a list of the consultees and a summary of the comments received in relation to the technical consultation is attached as annex B.
16. The delivery partners and student advice bodies will be notified of the legislation via Student Finance Wales Information Notices.

Competition Assessment

17. The making of these Regulations has no impact on business, charities or the voluntary sector.

Post Implementation Review

18. The main regulations governing the student support system are made annually and are continually subject to detailed review, both by policy officials and by the delivery partners in their practical implementation of the Regulations.

Summary

19. The making of these Regulations is necessary to establish the basis for, and update aspects of, the higher education student support system for Welsh domiciled students and EU students studying in Wales for the 2011/12 academic year.

Annex A

List of consultees

Further Education Institutions

Barry College
Bridgend College
Coleg Ceredigion
Coleg Glan Hafren
Coleg Harlech
Coleg Gwent
Coleg Llandrillo Cymru
Coleg Meirion-Dwyfor
Coleg Menai
Coleg Morgannwg
Coleg Powys
Coleg Sir Gâr
Deeside College
Gower College Swansea
Merthyr Tydfil College
Neath Port Talbot College
Pembrokeshire College
St David's College
Yale College, Wrexham
The College Ystrad Mynach

Higher Education Institutions

Aberystwyth University
Bangor University
Cardiff University,
University of Wales Institute Cardiff
University of Glamorgan
University of Wales, Newport
Glyndŵr University Wrexham
Open University
Swansea Metropolitan University
Swansea University
University of Wales Trinity St David
Royal Welsh College of Music and Drama

Local Authorities

Blaenau Gwent County Borough Council
Bridgend County Borough Council
Caerphilly County Borough Council
Cardiff County Council
Carmarthenshire County Council

Ceredigion County Council
Conwy County Borough Council
Denbighshire County Council
Flintshire County Council
Cyngor Gwynedd Council
Merthyr County Borough Council
Monmouthshire County Council
Newport County Borough Council
Neath Port Talbot County Borough Council
Pembrokeshire County Council
Powys County Council
Rhondda Cynon Taf County Borough Council
City and County of Swansea
Torfaen County Borough Council
Vale of Glamorgan County Borough Council
Wrexham County Borough Council
Ynys Mon Isle of Anglesey
Welsh Local Government Association

Organisations

AMMOSHE
Care Council for Wales
Fforwm
NUS Wales
Student Loan Company
NASMA
HEFCW
UKCISA
Citizens Advice Cymru

Annex B

Consultation Exercise

Set out below is a summary of the responses received on the proposals to replace the *Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2009 No.2737 (W.235)*, which came into force on 5th November 2009.

Summary

6 responses were received. The respondents agreed with the majority of the proposals. Respondents' views on the proposal to end the Welsh National Bursary and refocus funding into statutory student support were mixed. Set out below is a brief summary of the responses received, including a number of the technical delivery questions. Where appropriate, these issues have been addressed and wherever possible additional information will be contained within the guidance that is issued in support of the legislation.

Responses to the policy changes to be included in the Regulations for academic year 2011/12:

The principle of targeting financial support to students most in need was supported by all respondents.

Cross Border Issues

Some respondents raised concerns over the removal of the requirement for Welsh Higher Education Institutions to provide the minimum Welsh National Bursary to low income students from England, Northern Ireland and Scotland and consequently not achieving equity of outcomes for those students. Also, some respondents raised the issue of Welsh domiciled students potentially being offered 'double' bursaries, in that they would receive an enhanced maintenance grant and potentially an institutional bursary, if they choose to study in England.

Removal of the bursary is not something that falls within the scope of these student support regulations: the changes described in the explanatory memorandum in respect of the student finance regulations do not bring about the end of the Welsh National Bursary scheme for students commencing their courses in academic year 2011/12. The Welsh National Bursary has never been administered by way of these student support regulations and decisions in respect of the Bursary are a separate policy matter. In response to the concerns about the potential to double fund Welsh students studying in England, officials have contacted the Office for Fair Access, which has removed the obligation for English HEIs to pay the Welsh National Bursary to students in these circumstances.

The potential impact of the Welsh Assembly Government's response to the Independent Review of Higher Education Funding and Student Finance chaired by Lord Browne Review was recognised by all.

Impact on higher education institutions

Some of the respondents argued that the ending of the Welsh National Bursary would potentially lead to a reduction in higher education institutions' flexibility to respond to student needs.

It should be noted that it is not as a direct result of these regulations that the Bursary scheme is coming to an end. The Welsh National Bursary has never been a feature of the student finance regulations. The changes proposed in respect of these Regulations implement an enhanced maintenance support package for students commencing studies in academic year 2011/12.

Some respondents suggested that more focus should be placed on higher education institutions supporting the widening access agenda in terms of activities to encourage applications from under represented groups. Also concerns were raised about the transparency of the Institutional Fee Planning process.

Communication with students and higher education institutions

Respondents stressed the importance of clear and timely information about the changes being communicated to students and institutions to assist decision making for applications and institutional budget planning.