

## **Explanatory Memorandum to the Education (Student Fees, Awards and Support) (Amendment) (Wales) Regulations 2021**

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 Education (Student Fees, Awards and Support) (Amendment) (Wales) Regulations 2021. I am satisfied that the benefits justify the likely costs.

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

## **Part 1**

### **1. Description**

1.1 The Education (Student Fees, Awards and Support) (Amendments) (Wales) 2021 (“the Regulations”) amend:

- the Education (Fees and Awards) (Wales) Regulations 2007 (SI 2007/2310) (“the Fees and Awards Regulations”);
- the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provisions) (Wales) Regulations 2015 (SI 2015/1484) (“the QCP Regulations”);
- the Education (Student Support) (Wales) Regulations 2017 (SI 2017/47) (“the 2017 Regulations”);
- the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017 (SI 2017/523) (“the 2017 Master’s Regulations”);
- the Education (Student Support) (Wales) Regulations 2018 (SI 2018/191) (“the 2018 Regulations”);
- the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 (SI 2018/656) (“the Doctoral Regulations”); and
- the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019 (SI 2019/895) (“the 2019 Master’s Regulations”).

1.2 The Regulations amend the above (collectively “the student finance regulations”) to make changes necessary as a result of the UK leaving the EU.

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

2.1 There are no matters of special interest arising.

### **3. Legislative background**

3.1 The Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983 (“the 1983 Act”), sections 5(5)(b) and 55(2) of the Higher Education (Wales) Act 2015 (“the 2015 Act”) and sections 22(2)(a) and 42(6) of the Teaching and Higher Education Act 1998 (“the 1998 Act”).

3.2 Sections 1 and 2 of the 1983 Act provide the Welsh Ministers with powers to make regulations requiring or authorising the charging of higher fees to certain students and authorising rules of eligibility in relation to certain awards in connection with education, training or research.

- 3.3 Section 5 of the 2015 Act allows the Welsh Ministers to make regulations prescribing (amongst others) the qualifying persons that will benefit from the fee limits set out in an institution's fee and access plan. This applies to those institutions in Wales regulated by the Higher Education Funding Council for Wales under the 2015 Act.
- 3.4 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.
- 3.5 The functions of the Secretary of State under section 1 of the 1983 Act were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 2006 (S.I. 2006/1458).
- 3.6 The functions of the Secretary of State under section 2 of the 1983 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).
- 3.7 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.
- 3.8 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).
- 3.9 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.
- 3.10 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 2017 Regulations and the 2018 Regulations provide for financial support for students taking designated higher education courses which begin before, and on or after, 1 August 2018 respectively. 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.
- 4.3 The 2019 Master's Regulations provide for financial support for students taking designated postgraduate Master's courses which begin on or after 1 August 2019, and the 2017 Master's Regulations for postgraduate Master's courses beginning before that date. The Doctoral Regulations make provision for those studying designated doctoral courses which begin on or after 1 August 2018.
- 4.4 The QCP Regulations make provision for (amongst other things) those persons who will qualify for the tuition fee cap (currently £9,000 in Wales). The Fees and Awards Regulations make it lawful to differentiate between students when charging fees, establishing "home fee status". Students who do not fall into certain eligibility categories can be charged a higher fee than those who do. Students who qualify for home fee status will also benefit from the tuition fee cap.
- 4.5 The Regulations amend the student finance regulations as outlined below.

##### *Irish nationals resident in the EU before studying in Wales*

- 4.6 As a consequence of the Common Travel Area arrangement the Welsh Government is making provision for Irish nationals studying in Wales who were resident in the EEA and Switzerland at the end of the transition period associated with the UK's departure from the EU to be eligible for home fee status and fee support so that their position is comparable to that of a UK national.

- 4.7 Eligibility is limited to those beginning courses on or before 31 December 2027. This time limit applies to a small number of eligibility categories to provide for a reasonable period of return after the UK's exit from the EU.
- 4.8 Minor amendments are also made to the provisions enabling support and home fee status for those settled in the UK who have been ordinarily resident in the Republic of Ireland to ensure compatibility with the Common Travel Area arrangement.

*Article 18 of the EU Withdrawal Agreement*

4.9 An amendment is made to regulations to ensure consistency with the Withdrawal Agreements. The amendment relates to the rights of those making late applications to the EU Settlement Scheme (EUSS) and to future joining family members who have yet to apply and are still within the deadline for doing so. Updates to the definition of a person with protected rights are made to ensure that regulations correctly reflect the requirements of:

(a) article 18(3) of the EU Withdrawal Agreement (and corresponding articles in the other withdrawal agreements), which confer protections on a person, including a person who has submitted a late application, while their application is pending and during any appeal against a refusal of their application (equivalent updates are also made to the eligibility category covering those with settled status under the EUSS), and

(b) article 18(2) of the EU Withdrawal Agreement (and corresponding articles in the other withdrawal agreements), which confer protections on a person within the deadline for making an application, including a person joining a family member during the initial three months following their arrival in the UK.

*Student support for those from Crown Dependencies*

4.10 An unintended consequence of the amendments made to regulations in 2021 to accommodate EU exit is that persons who are ordinarily resident in the Crown Dependencies have been brought into scope for student support, contrary to established policy. An amendment is required to ensure that persons (other than certain Irish citizens) who come to Wales from the Isle of Man, and the Channel Islands for the purpose of study are not eligible for support.

## **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**

### **6. Options**

#### *Option 1: Business as usual*

If these amendments are not made, the Regulations will not be consistent with the Withdrawal Agreements (the EU Withdrawal Agreement, the EEA EFTA separation agreement and the Swiss citizens' rights agreement) and the Common Travel Area arrangement.

#### *Option 2: Make the Regulations*

By making the Regulations the Welsh Ministers ensure that the legislative framework is consistent with the Withdrawal Agreements and the Common Travel Area arrangement.

### **7. Costs and benefits**

#### *Option 1: Business as usual*

7.1 There would be no additional costs or particular benefits in continuing with business as usual.

#### *Option 2: Make the Regulations*

7.2 The Welsh Government has a revenue and capital budget for 2021-22, the period for which it has a funding settlement from the UK Government. The final budget for the 2021-22 financial year is reproduced below. Any additional costs will be managed within this budget and the impact of making the legislation is likely to be relatively small. There were 360 students from Ireland studying at Welsh higher education institutions in academic year 2019/20, and 160 students from the Crown Dependencies out of a total of 125,635 students. It is anticipated that numbers of students from Ireland will be broadly similar up to and including the academic year starting on or before 31 December 2027. It is not possible to ascertain the numbers of students likely to be affected by the Article 18 amendment but it is anticipated to be minimal. It is unlikely that students from the Crown Dependencies will have applied for student support in academic year 2021/22 as they are supported by their respective Governments and therefore the impact is anticipated to be minimal.

<b>Budget</b>	<b>£m</b>
Student Support Grants (BEL 4704)	358.717
Student Loans AME [Resource and Capital] (BEL 4713)	820.575
Student Loans RAB Charge (BEL 4707)	110.712
<b>Total</b>	<b>1,290.004</b>

7.3 The benefits of making the regulations are that the Welsh Government ensures its legislative framework is consistent with the Withdrawal Agreements and the Common Travel Area arrangement.

## **8. Competition Assessment**

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

## **9. Post-Implementation Assessment**

9.1 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.