

**Explanatory Memorandum to the Education (Student Support)
(Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit)
Regulations 2019**

This Explanatory Memorandum has been prepared by Higher Education Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019.

Kirsty Williams AM
Minister for Education
24 June 2019

PART 1

1. Description

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) (Amendment) (EU Exit) Regulations 2019 ("the Regulations") make technical amendments to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019, to ensure the language of the legislation will continue to implement existing policy effectively when the United Kingdom leaves the European Union.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Regulations will ensure support for certain students, including EU nationals, continues uninterrupted after the UK leaves the EU. The policy of the Welsh Ministers to support these students is not directly affected by the UK's exit from the EU.

The Regulations will be subject to the negative procedure and made using powers under the Teaching and Higher Education Act 1998 rather than the European Union (Withdrawal) Act 2018 ("the Withdrawal Act").

Paragraph 1(1) of Schedule 2 to the Withdrawal Act contains a power for the Welsh Ministers to make regulations to "prevent, remedy or mitigate" any failure of "retained EU law" to operate effectively arising from the UK's withdrawal from the EU. There is an argument to be made that the Regulations should be made under this power. However, the usual education law powers cited above are more appropriate for these purposes.

No new policy is being introduced and the Regulations will not do anything to recreate or replace EU law in domestic legislation. These amendments are in line with other technical amendments routinely made to student finance legislation using the cited powers.

An important consideration in this decision was accessibility of the law. Student support legislation is extremely complex and often amended. Regulations made under the Withdrawal Act will not be directly connected to education legislation, making discovery of the appropriate legislation more difficult than it ought to be for the public. Equally, in terms of accessibility, the title of the Regulations includes "EU Exit", making it clear that there is a link to the departure of the UK from the EU.

3. Legislative background

This instrument is not being made under the Withdrawal Act but relates to the withdrawal of the UK from the EU because certain provisions of student support legislation require updating if policy is to be preserved.

The Regulations will be subject to the negative resolution procedure and will be made using powers under sections 22 and 42(6) of the Teaching and Higher Education Act 1998 (“1998 Act”).

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)(a), (c), (j) or (k), (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) to be exercisable concurrently with the National Assembly for Wales.

The functions of the Secretary of State under section 42(6) of the 1998 Act were transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

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 (c.32).

4. Purpose and intended effect of the legislation

To be eligible for postgraduate Master’s support, a student must meet certain criteria, including residency requirements. EU nationals, UK nationals who have exercised free movement rights to reside elsewhere in the European Economic Area (“EEA”) or Switzerland, and EEA and Swiss migrant workers and their family members, may all be eligible for support. It has been decided that this policy will not be affected by exit from the EU for the 2019/20 academic year.

The Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019 employ various territorial and institutional descriptions in relation to the residency criteria. These include references to the EU and EEA. As the UK will no longer be a member of either, technical amendments are required to ensure the language of the legislation will continue to implement

existing policy effectively. This is consistent with the changes already made across the full suite of student support legislation. The changes will take effect when the new legislation comes into force on exit day.

The Regulations amend Schedule 2 to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 to ensure that a person who would have been eligible for support under this paragraph before exit day will continue to be eligible on and after exit day.

5. Consultation

Consultation was not undertaken as there is no change to policy. The purpose of the Regulations is solely to make amendments necessary to preserve existing policy.

6. Regulatory Impact Assessment (RIA)

An RIA has not been conducted. The Regulations make technical amendments that are necessary to preserve existing policy.