

**Explanatory Memorandum to the Education (Student Finance)
(Amendments to Student Eligibility) (Wales) Regulations 2019**

This Explanatory Memorandum has been prepared by the 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 Finance) (Amendments to Student Eligibility) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Minister for Education
16 August 2019

1. Description

The Education (Student Finance) (Amendments to Student Eligibility) (Wales) Regulations 2019 ('the Regulations') amend:

- a) the Education (Fees and Awards) (Wales) Regulations 2007; ("2007 Regulations");
- b) the Education (European University Institute) (Wales) Regulations 2014 ("2014 Regulations");
- c) the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provisions) (Wales) Regulations 2015 ("2015 Regulations");
- d) the Education (Student Support) (Wales) Regulations 2017 ("2017 Regulations");
- e) the Education (Student Support) (Wales) Regulations 2018 ("2018 Regulations");
- f) the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018 ("Doctoral Regulations");
- g) the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017 ("2017 Master's Regulations"); and
- h) the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ("2019 Master's Regulations").

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

None.

3. Legislative background

The Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983 (in relation to the amendments made to the 2007 Regulations); Section 5(5)(b) of the Higher Education (Wales) Act 2015 (in relation to the amendments made to the 2015 Regulations) and sections 22 and 42(6) of the Teaching and Higher Education Act 1998 (in relation to the amendments to the 2014 Regulations, the 2017 Regulations, the 2018 Regulations, the Doctoral Regulations and the 2017 Master's Regulations and the 2019 Master's Regulations).

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 to prescribe the persons who may be eligible for certain awards in connection with education, training or research. 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. In particular, this power enables the Welsh Ministers to prescribe the amount of financial support (grant or loan) and who is eligible to receive such support.

Section 5 of the 2015 Act allows the Welsh Ministers to make regulations prescribing the qualifying courses and qualifying persons that will benefit from the fee limits set out in an institution's fee and access plan. This applies to certain higher education providers in Wales regulated by HEFCW under the 2015 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)(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.

The functions of the Secretary of State under section 2 of the 1983 Act and 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 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).

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).

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.

This instrument will follow the Negative Resolution procedure.

4. Purpose and intended effect of the legislation

The Welsh Ministers make regulations to provide the basis for the system of financial support for eligible students taking designated courses of higher education who are eligible students undertaking designated courses.

The amendments will amend the definition of “person with leave to enter or remain” in each of the Regulations being amended by adding a “person granted leave to remain on the grounds of family life”. The Regulations provide for a person with leave to enter or remain to be one of the categories of eligible persons and is one of the criteria that a person must meet if they are to be eligible for the relevant student support.

The Regulations being amended already make provision for a person granted leave to enter or remain on the grounds of private life. The amendment will place persons with leave to remain on the grounds of family life in the same position.

Additionally in order to be eligible for the relevant student support, all other residency criteria in the Regulations must be met. The student must be:

- ordinarily resident in Wales on the first day of the first academic year of the course; and
- lawfully ordinarily resident in the UK and Islands throughout the three year period immediately preceding the first day of the first academic year of the course.

5. Regulatory Impact Assessment

Options

Option 1: Business as usual

In the event of the Regulations not being made the principal implication is that students who would meet the criteria would not be eligible for student support.

Option 2: Make the Regulations

Making the Regulations ensures that persons with leave to enter or remain in the UK on the grounds of family life would not be denied student support (as long as all other criteria are met). This reflects the Welsh Ministers’ policy for

student support, and ensures that relevant students are able to apply for appropriate support.

Costs and benefits

Option 1: Business as usual

Leaving the previous regulations in place would mean no additional costs are incurred via the student support system. Students with leave to remain on the grounds of family life who are ordinarily resident in Wales and meet the other eligibility criteria would not be eligible for support.

Option 2: Make the Regulations

By making the Education (Student Finance) (Amendments to Student Eligibility) (Wales) Regulations 2019 the Welsh Ministers ensure that the Welsh student support system has a proper underpinning legal framework and that policy commitments to higher education and students can be met. Students who have leave to remain on family grounds, are ordinarily resident in Wales, and meet all other eligibility criteria will benefit from the changes to support outlined above. The benefits of a higher education to the individual, to the economy and to society are well established.

The changes outlined relating to persons with leave to remain on the grounds of family life are expected to have no or negligible financial implications for the Welsh Government. It is not possible to determine how many such persons may take up support for study, but the number will be very small.

CONSULTATION

There is no statutory requirement to consult on the Regulations and no consultation has been carried out on this occasion.

COMPETITION ASSESSMENT

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

POST-IMPLEMENTATION ASSESSMENT

The main 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.

SUMMARY

The making of these Regulations is necessary to establish the basis for, and update aspects of, the higher education student support system.