

**Explanatory Memorandum to the Education (Student Finance)
(Miscellaneous Amendments) (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.

Cabinet Secretary's 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 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Cabinet Secretary for Education
13 February 2019

1. Description

The Education (Student Finance) (Miscellaneous Amendments) (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"); and
- f) the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations ("Doctoral 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 and the Doctoral 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 students taking designated courses of higher education who are eligible students undertaking designated courses. The Regulations apply to academic years beginning on or after 1 September 2019 and introduce a number of changes to student support and related matters, as set out below.

The 2017 Regulations and 2018 Regulations provide for financial support for students taking designated higher education courses which begin on or after 1 September 2017 and on or after 1 August 2018 respectively. 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.

Increase the amount of Disabled Student's Grant

The amount of Disabled Student's Grant available to eligible students under the 2017 Regulations and the 2018 Regulations will increase by 6.1 per cent. Table 1 below sets out the existing and increased amounts of support. The increased amounts will apply to both new and continuing students (i.e. all cohorts) in 2019/20.

The maximum amounts of support available to eligible disabled students has not changed since 2012. The maximum amounts available to students ordinarily resident in England were increased by the UK Government in 2018/19, including a rise to £20,000 in the amount of the Disabled Student's Grant available to postgraduate students. The increase provided for by the Regulations will ensure that eligible students receive increased support and are not disadvantaged when compared to their English counterparts.

Table 1

Case	Current amount in 2018/19	Increased amount in 2019/20
Expenditure required on a non-medical personal helper	£21,181 (full-time) £15,885 (part-time)	£22,472 (full-time) £16,853 (part-time)
Expenditure required on major items of specialist equipment	£5,332	£5,657
Other expenditure	£1,785 (full-time) £1,338 (part-time)	£1,894 (full-time) £1,420 (part-time)
Amount of postgraduate Disabled Student's Grant	£10,590	£20,000

Increase the amount of maintenance support available to 2018 cohort students

The amount of maintenance loan available under the 2018 Regulations to those eligible students who began their courses on or after 1 August 2018 will be increased. The Diamond Review of Higher Education and Student Finance in Wales ('the Diamond Review') introduced the principle that maintenance support should be based upon the National Living Wage and the increase reflects the National Living Wage projection for 2019. The amount of base grant and maintenance grant and the associated income thresholds for means-testing are unchanged. Increasing loan rather than grant ensures continued affordability.

Table 2 below sets out the existing rates and the increased amounts.

Table 2

Table reference in 2018 Regulations	Loan amount in 2018/19	Loan amount in 2019/20
Table 7, Category 1, Living at home	£6,650	£6,840
Table 7, Category 1, London rate	£10,250	£10,530
Table 7, Category 1, Elsewhere rate	£8,000	£8,225
Table 7, Category 2, Elsewhere rate	£3,325	£3,420
Table 7, Category 3, London rate	£5,125	£5,265
Table 7, Category 3, London rate	£4,000	£4,110
Table 8, Living at home	£7,650	£7,840
Table 8, London rate	£11,250	£11,530
Table 8, Elsewhere rate	£9,000	£9,225
Table 8A, Living at home	£3,325	£3,420
Table 8A, London rate	£5,125	£5,265
Table 8A, Elsewhere rate	£4,000	£4,110
Table 9, Living at home	£80	£84
Table 9, London rate	£153	£162
Table 9, Elsewhere rate	£120	£127
Table 10	£5,650	£5,815
Table 10 A	£6,650	£6,815

Maintenance support for 2012 cohort students

The amount of maintenance support made available under the 2017 Regulations to eligible students who began their courses on or after 1 September 2012 but before 1 August 2018 is increased each year in order to reflect cost of living increases. For 2019/20, maintenance support is being increased in the way established for previous cohorts, via an uplift to the maintenance loan equivalent to the projected increase in RPIX of 2.8% for the 2019-20 financial year (OBR projection). The amount of maintenance grant and the associated income thresholds for means-testing are unchanged.

Table 3 below sets out the existing rates and the increased amounts.

Table 3

Regulation reference in the 2017 Regulations	Loan amount in 2018/19	Loan amount in 2019/20
Regulation 43, paragraph 2(i)	£5,529	£5,684
Regulation 43, paragraph 2(ii)	£10,007	£10,288
Regulation 43, paragraph 2(iii)	£8,517	£8,756
Regulation 43, paragraph 2(iv)	£8,517	£8,756
Regulation 43, paragraph 2(v)	£7,143	£7,344
Regulation 43, paragraph 3(i)	£5,006	£5,147
Regulation 43, paragraph 3(ii)	£9,112	£9,368
Regulation 43, paragraph 3(iii)	£7,408	£7,616
Regulation 43, paragraph 3(iv)	£7,408	£7,616
Regulation 43, paragraph 3(v)	£6,617	£6,803
Regulation 45, paragraph (1) (a) (i)	£2,625	£2,699
Regulation 45, paragraph (1) (a) (ii)	£4,920	£5,058
Regulation 45, paragraph (1) (a) (iii)	£3,500	£3,598
Regulation 45, paragraph (1) (a) (iv)	£3,500	£3,598
Regulation 45, paragraph (1) (a) (v)	£3,500	£3,598
Regulation 45, paragraph (1) (b) (i)	£2,625	£2,699
Regulation 45, paragraph (1) (b) (ii)	£4,920	£5,058
Regulation 45, paragraph (1) (b) (iii)	£4,186	£4,304
Regulation 45, paragraph (1) (b) (iv)	£4,186	£4,304
Regulation 45, paragraph (1) (b) (v)	£3,500	£3,598
Regulation 45, paragraph (1) (c) (i)	£4,147	£4,263

Regulation reference in the 2017 Regulations	Loan amount in 2018/19	Loan amount in 2019/20
Regulation 45, paragraph (1) (c) (ii)	£7,505	£7,716
Regulation 45, paragraph (1) (c) (iii)	£6,388	£6,567
Regulation 45, paragraph (1) (c) (iv)	£6,388	£6,567
Regulation 45, paragraph (1) (c) (v)	£5,357	£5,508
Regulation 45, paragraph (2) (a) (i)	£1,996	£2,052
Regulation 45, paragraph (2) (a) (ii)	£3,763	£3,869
Regulation 45, paragraph (2) (a) (iii)	£2,727	£2,804
Regulation 45, paragraph (2) (a) (iv)	£2,727	£2,804
Regulation 45, paragraph (2) (a) (v)	£2,727	£2,804
Regulation 45, paragraph (2) (b) (i)	£1,996	£2,052
Regulation 45, paragraph (2) (b) (ii)	£3,763	£3,869
Regulation 45, paragraph (2) (b) (iii)	£3,060	£3,146
Regulation 45, paragraph (2) (b) (iv)	£3,060	£3,146
Regulation 45, paragraph (2) (b) (v)	£2,727	£2,804
Regulation 45, paragraph (2) (c) (i)	£3,755	£3,860
Regulation 45, paragraph (2) (c) (ii)	£6,834	£7,026
Regulation 45, paragraph (2) (c) (iii)	£5,556	£5,712
Regulation 45, paragraph (2) (c) (iv)	£5,556	£5,712
Regulation 45, paragraph (2) (c) (v)	£4,963	£5,102
Regulation 50 paragraph 1 (a)	£80	£84
Regulation 50 paragraph 1 (b)	£153	£162
Regulation 50 paragraph 1 (c)	£166	£177
Regulation 50 paragraph 1 (d)	£166	£177
Regulation 50 paragraph 1 (e)	£120	£127

Adjust the balance between tuition fee grant and tuition fee loan for 2012 cohort students

In line with policy introduced in the 2012/13 academic year, the amount of tuition fee grant is being decreased and tuition fee loan increased for 2012 cohort students (i.e. students who start their course on or after 1 September 2012 but before 1 August 2018) by the projected rate of inflation (RPIX OBR projection, as above).

Table 4 below sets out the existing rates and the amended amounts.

Table 4

Regulation reference in the 2017 Regulations	Amount in 2018/19	Amount in 2019/20
<i>Fee grant</i>		
Regulation 16, paragraph 3, sub-paragraph (a)	£4,800	£4,665
Regulation 16, paragraph 3, sub-paragraph (b)	£4,200	£4,335
Regulation 16, paragraph 4, sub-paragraph (a)	£2,480	£2,410
Regulation 16, paragraph 4, sub-paragraph (b)	£2,020	£2,090
<i>Fee loan</i>		
Regulation 19, paragraph 3, sub-paragraph (a)	£4,200	£4,335
Regulation 19, paragraph 4, sub-paragraph (a)	£2,020	£2,090

Student support for unaccompanied children

The Regulations will create a new eligibility category in respect of individuals granted leave to remain under Section 67 of the Immigration Act 2016 for the purposes of the 2014 Regulations, the 2017 Regulations, the 2018 Regulations and the Doctoral Regulations. Consequential amendments are also made to the 2017 Regulations and the 2015 Regulations to provide that such students are treated for tuition fee purposes as home students and qualifying persons respectively.

In June 2018 the Home Office introduced a new category of limited leave – Section 67 of the Immigration Act 2016 leave (‘section 67 leave’) – for those unaccompanied children transferred to the UK under Section 67 of the Immigration Act 2016 who do not qualify for leave under the current Immigration Rules as refugees or other protection-based leave. This is the so-

called 'Dubs amendment', designed to assist unaccompanied children who are refugees. Individuals who qualify for section 67 leave will have the right to study, work, access public funds (claim benefits and housing support) and healthcare, and apply for indefinite leave to remain without paying a fee after five years.

The new eligibility category will also include dependent children of those granted leave to remain. The Immigration Act 2016 will permit the dependent child of a person granted leave to be granted leave to enter or remain for the same duration as that person provided that certain requirements are met. For the purposes of this eligibility category, a dependent child means a child who is under 18 years of age and for whom the person has parental responsibility.

Additionally, all other residency criteria 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.

The UK Government is making the same change. New and continuing students with section 67 leave will be eligible for support.

Designation of courses in England for the purpose of student support

Until 2017, courses offered by publicly funded providers in England were designated by the student support regulations – so-called 'automatic designation'. From 2017, courses offered by providers maintained or assisted by recurrent grants from the Higher Education Funding Council for England were so designated. The Higher Education Funding Council for England was abolished in March 2018. A new system for course designation in England, operated by the Office for Students, is to take effect from 1 August 2019, making it necessary to revise the conditions of designation in the 2017 Regulations, the 2018 Regulations and the Doctoral Regulations.

The Higher Education and Research Act 2017 makes provision for the establishment of an Office for Students ('OfS'). The OfS must establish and maintain a register of English higher education providers ('the Register'), which may be divided into different parts representing such different categories of registration as the OfS may determine. The OfS has commenced publishing the

Register and is in the process of registering higher education providers for 2019/20 onwards.

The Register is in two parts: i) Approved (fee cap) providers and ii) Approved providers. Within the Approved (fee cap) part of the register, providers are further classified according to whether they have an Access and Participation Plan or not. Providers with an Access and Participation Plan may charge higher fees, up to a legal maximum, than those without a plan, who may only charge a lower amount (fee limits are unchanged from 2018/19). Access and Participation plans set out how higher education providers will improve equality of opportunity for underrepresented groups to access, succeed in and progress from higher education. The UK Government will make available fee support to students accordingly. Providers on the Register are regulated by the OfS.

Full and part-time undergraduate, postgraduate Master's and doctoral courses, as well as postgraduate courses for the purpose of providing Disabled Student's Grants, provided by a provider in the Approved (fee cap) part of the Register will be automatically designated by the Welsh Ministers. Providers of higher education which are not in this part of the Register will be able to apply to the Welsh Ministers, via the Higher Education Funding Council for Wales, for 'specific designation' in accordance with established policy. The franchised courses (except postgraduate courses for the purpose of providing Disabled Student's Grants) of providers who are in the Approved (fee cap) part of the Register and have an Access and Participation Plan will, where the franchisee is on the Register, be automatically designated. A franchisor not in this part of the Register, or not on the Register, will have to apply for specific designation of franchised courses.

Continuing support is also provided for in the Regulations in order that continuing students at providers who before 1 August 2018 had courses automatically designated but who do not register in the relevant part of the register or those who may face a fee increase (up to the legal maximum) are protected and able to complete their course. In both cases, courses will be designated, and continuing students will be eligible for support at the ordinary provider rate, the maximum made available.

Consequential amendments as a result of the change from JACS to HECoS course coding

Students who have an equivalent level qualification to that which the regulations provide support for are not usually eligible for support. One exception to this is for certain part-time STEM courses, which have been

specified in the regulations using the Joint Academic Coding System ('JACS'), which is maintained by the Universities and Colleges Admission Service ("UCAS"). JACS is being replaced in AY 2019/20 with a new subject coding system – the Higher Education Classification of Subjects ('HECoS'), which is maintained by UCAS and the Higher Education Statistics Agency. JACS is used by various bodies involved in the administration of higher education. The Regulations have been updated to the new standard.

HECoS does not directly align with JACS. Whilst single headings from the JACS system were used to describe the courses which were subject to an exemption, this is no longer possible under the HECoS system. HECoS subject codes have been used which preserve the original exceptions.

5. Regulatory Impact Assessment

Options

Option 1: Business as usual

In the event of the Regulations not being made the principal implications are:

- students eligible for a Disabled Student's Grant would not receive an increase in the value of support and would be worse off than their counterparts in England;
- 2012 and 2018 cohort students would not receive a cost-of-living increase to their maintenance loan;
- 2012 cohort students would not have their tuition fee loan and grant amounts adjusted according to established policy. This would put pressure on Welsh Government budgets for student support;
- those with section 67 leave would be unable to access student support for higher education and the benefits its confers;
- new students undertaking part-time exception courses from 2019/20 may not be eligible for support as intended; and
- courses provided by institutions in England would cease to be designated for the purposes of student support and there would be inadvertent policy changes to the designation of others.

Option 2: Make the Regulations

Making the Regulations ensures that the problems noted above are avoided, the legislative framework reflects the Welsh Ministers' policy for student support, and 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. There would be no benefit to students ordinarily resident in Wales, as the changes described above would not be implemented.

Option 2: Make the Regulations

By making the Education (Student Finance) (Miscellaneous Amendments) (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 are ordinarily resident in Wales 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.

Disabled Student's Grant

The uplifts to the maximum amounts of support available to disabled students are estimated to cost between £0.3m and £0.4m. This does not represent an additional cost against projected budget requirements, as default forecasting assumptions include inflationary increases in support provided.

Maintenance and tuition fee support

The cost of ongoing reforms and routine changes to student support for living costs and tuition fees were established when new support arrangements were introduced by the Education (Student Support) (Wales) Regulations 2018. Now that the new policies are established, additional costs reflect the continued 'phase-in' of a new cohort of students on the new arrangements and routine inflationary changes to the maximum levels of relevant student support products. These drivers are included in student finance forecasts by default and do not, therefore, represent any cost in addition to established budget requirements.

The requirement for the provision of additional loans from Her Majesty's Treasury to enable the continuation of existing undergraduate student support policy is established. The estimated cost of the additional loans between 2018-19 and 2019-20 is around £100m. In addition, the Government subsidy on the provision of loans (Resource Accounting and Budgeting ('RAB') charge, or non-cash) will increase by around £40m between 2018-19 and 2019-20. Most of the increased budget requirements result from a new intake of students on the arrangements established by the Education (Student Support) (Wales) Regulations 2018, with a relatively small proportion as a consequence of routine uplifts to maximum loan amounts. Also largely as a consequence of the continuation of established policy, the combined cost of maintenance and tuition fee grants for undergraduate students is estimated to be around £45m lower in 2019-20 than in 2018-19.

Section 67 leave – unaccompanied children

The changes outlined relating to the unaccompanied children are expected to have no or negligible financial implications for the Welsh Government. It is not possible to determine how many unaccompanied children may take up support for study, but the number will be very small. The UK Government will grant leave to 480 refugees, a small proportion of which can be expected to become ordinarily resident in Wales, and fewer still to pursue a higher education.

Designation of courses in England

Making the regulations will ensure courses currently designated for the purposes of student support continue to be. There may be some additional cost if students at providers subject to the lower rate of fee support are provided a higher rate of fee support as part of transitional protection. This is unlikely to be extensive and the cost implications are expected to be nil or negligible.

Changes in the coding of part-time exception courses

The regulations will ensure courses currently considered as exceptions to equivalent level qualifications restrictions on access to support for part-time study continue to be considered as such. There is, therefore, no additional cost.

CONSULTATION

There is no statutory requirement to consult on the Regulations, but a short consultation was carried out in December and February 2019 to ascertain views from stakeholders in two policy areas:

- a. a new residency category in the regulations so that individuals granted leave to remain under Section 67 of the Immigration Act 2016 will be eligible students for the purpose of student support;
- b. new designation arrangements for English HEIs as a result of the introduction of the Office for Students (OfS).

A summary of the consultation responses has been published. A Student Finance Wales Information Notice detailing some of the changes was issued in December 2018.

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 (and connected matters) for students ordinarily resident in Wales and EU students studying in Wales in the 2019/20 academic year.