

EXPLANATORY MEMORANDUM TO THE EDUCATION (STUDENT SUPPORT) (AMENDMENT) (WALES) REGULATIONS 2016

The Explanatory Memorandum has been prepared by the Higher Education Division and is laid before the National Assembly for Wales under 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) (Amendment) (Wales) Regulations 2016. I am satisfied that the benefits outweigh any costs.

Huw Lewis AM
Minister for Education and Skills

29 January 2016

1. DESCRIPTION

These Regulations are required in order to underpin the higher education student support system for students (fee grants, fee loans, maintenance grants and maintenance loans) who are ordinarily resident in Wales and are taking designated higher education courses in respect of academic years beginning on or after 1 September 2016. These Regulations amend the existing Education (Student Support) (Wales) Regulations 2015 (S.I. 2015/54).

2. MATTERS OF SPECIAL INTEREST TO THE CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE

None.

3. LEGISLATIVE BACKGROUND

Section 22 of the Teaching and Higher Education Act 1998 (“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 different categories of students, financial support (grant or loan) and categories of attendance on higher education courses. This provision, together with sections 42(6) and 43(1) of the 1998 Act provide the Welsh Ministers with the power to make the Education (Student Support) (Wales) (Amendment) Regulations 2016.

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 so far 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 sections 42(6) and 43(1) 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).

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 follows the Negative Resolution procedure.

4. PURPOSE AND INTENDED EFFECT OF THE LEGISLATION

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 the existing legislation governing academic years beginning on or after 1 September 2015 which sets out 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. The amendments will apply to academic years beginning on or after 1 September 2016 and will enable the Welsh Ministers to make awards of grants and loans to eligible students. In amending the existing legislation, these Regulations introduce a number of changes, and make some corrections, together with some technical amendments.

The changes (except those which make corrections) are set out below:

a. Changes in the amounts of tuition fee loans and grants

Students who commenced their studies on or after 1 September 2012 will be entitled to tuition fee support to cover the cost of their course or of up to £9,000 per annum, whichever is smaller. The maximum fee chargeable by higher education institutions in England, Wales and Scotland is unchanged at £9,000. Support will consist of an entitlement to a non-means tested tuition fee loan and that being raised to £3,900, alongside a non-means tested tuition fee grant of up to £5,100. Eligible new system students who are continuing a designated course provided by an institution in Northern Ireland, and who began that course before 1 September 2012, will be able to claim an increased non-means tested tuition fee loan of up to £3,925 to reflect the increase in the maximum fees allowable there, which have been raised from £3,805. The fee support package remains unchanged for other continuing students.

b. Increases in the amounts of loans for living costs

The loans for living costs are increased by an average of around 10%. Students who started their studies on or after the 1 September 2012 will be eligible for a maximum maintenance loan of £6,183 (depending on household income) or £8,662 if the student studies in London.

c. Electronic signature

Students applying for fees and living costs support can already complete almost all of the application process online. However, all applicants must also currently sign a paper declaration form, which confirms that the student has read and agreed to the terms and conditions of the repayable loan. The SLC is carrying out further work on potential options for introducing electronic signatures to the student

application process. These regulations amend the 2015 Regulations to expressly provide that a loan contract can be signed by electronic signature, ready for when the application process is amended.

d. The removal of qualification to the Childcare Grant (CCG) where an eligible student declares an entitlement to Tax Free Childcare (TFC)

The UK Government is expecting to introduce Tax Free Childcare (TFC) for working families in early 2017. The UK Government will pay 20% of childcare costs up to a maximum of £10,000 – up to £2,000 for each child up to the age of 12. Both parents must be in work and earning under £150,000. Whilst it is unlikely that many students in higher education will be entitled to TFC, there is a possibility that a small number of full time students on lower household incomes could be double funded through TFC and CCG.

This instrument amends the 2015 Regulations to prevent a student from receiving CCG where that student or the student's partner has made a statement that they are eligible for TFC for a three month entitlement period.

e. Provision to allow Welsh Ministers to revoke or suspend designation of higher education courses

Whilst it is arguable that the power to revoke or suspend the designation of courses is currently implicit within the regulations, these regulations expressly confer the ability for Welsh Ministers to revoke or suspend designation of courses of higher education on a case by case basis.

5. IMPLEMENTATION

This legislation updates the current student support system for academic year 2015/16 and will enable the Welsh Government's delivery partner (the Student Loans Company) to implement the system changes and enable the application cycle for academic year 2016/17 to commence early in 2016.

6. CONSULTATION

There is no statutory requirement to consult on these Regulations. However, in line with usual practice, engagement with stakeholders was undertaken late in 2015, in the form of a six week consultation. A summary of the results of the consultation are included in the Regulatory Impact Assessment below.

REGULATORY IMPACT ASSESSMENT

Options

Option 1: Do nothing

In the event of these Regulations not coming into force, then several student groups would be directly affected.

- Our commitment of maintaining no up-front fees for continuing students studying in Northern Ireland would not be achieved as the available fee loan would be £120 less than the maximum course fees chargeable.
- Students would be worse off in real terms if the inflationary increase were not applied to their loans for living costs, meaning that their ability to meet their expenses would be eroded further.
- When the SLC are able to introduce a paperless application process, Welsh students would not be able to benefit from it, and would have to continue submitting paper declarations.
- Potentially there could be duplication of government funding for a family's childcare, if the ability to claim CCG alongside the new TFC were not removed.

Option 2: Do minimum – make the legislation

Making the Regulations will ensure:

- The legislative framework is in place for academic year 2016/17, meaning that students can submit their applications for and receive student support.
- The Programme for Government commitments on financial support for students continues to be met.
- Duplication of public funding for childcare grants within specified student households is avoided.

Costs and benefits

Option 1: Do nothing

- If the increases in loans were not implemented the Welsh Government would not incur any additional costs but there would be no additional benefits to students and the manifesto commitment to maintain financial parity in real terms with students entering higher education in 2011/12 would not be met either.

Option 2: Make the legislation

- By making the Regulations the Welsh Ministers are ensuring that the Welsh student support system has a proper underpinning legal framework and the Programme for Government commitments will be maintained.
- The Student Loans Company (SLC) will also benefit from the knowledge that they are acting within the requirements of the Welsh legislation. The groups of students directly affected by this amendment will benefit as explained above.
- The cost of increasing the fee loans for continuing students in Northern Ireland will be negligible since there are less than 10 students still studying under these terms and conditions.
- The increase in loans for living costs for all students will ensure that their income increases, and in most cases increases significantly above inflation. The cost of the inflationary aspects of the loans paid to students is provided as annually managed expenditure by HM Treasury and is expected to be in the region of £30m in 2016-17.
- Making the legislation will avoid the duplication of government funding for a family's childcare, in the small number of cases where a student may be eligible for TFC. Given the number of students involved, the impact of this on UK Government is expected to be minimal.
- As noted above, the SLC is undertaking further work on potential options for introducing electronic signatures to the application process, this will include consideration of the relative costs and cost-savings.

COMPETITION ASSESSMENT

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

CONSULTATION

There is no statutory requirement to consult on these Regulations. However, a Student Finance Wales Information Notice relating to the changes outlined above, was issued to all stakeholders and interested parties on 10 November 2015 and was open for six weeks until 22 December 2015. Key stakeholders consulted included:

- All HEIs in Wales
- Universities Wales
- Further education colleges in Wales
- NUS Wales

- Student Loans Company
- Higher Education Funding Council for Wales (HEFCW)
- UCAS
- Welsh Refugee Council
- Race Council Cymru
- Careers Wales
- Stonewall Cymru
- Chwarae Teg
- Children in Wales
- Barnardos
- Disability Wales
- Age Cymru
- Care Council for Wales
- National Deaf Children's Society
- Royal National Institute of Blind People

The full list of those consulted is attached at **Annex A**. 5 written responses were received – a summary of the consultation responses is at **Annex B**.

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 by the 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 for students ordinarily resident in Wales and EU students studying in Wales for the 2016/17 academic year.

Annex A - List of Consultees

Further Education Institutions

Bridgend College
Cardiff and Vale College
Coleg Gwent
Coleg Harlech Workers Educational Association
Coleg Ceredigion
Coleg y Cymoedd
Coleg Sir Gâr
Coleg Cambria
Gower College Swansea
Grŵp Llandrillo Menai
Merthyr Tydfil College Limited
Neath Port Talbot College
Pembrokeshire College
St David's Catholic College
YMCA Community College

Higher Education Institutions

Aberystwyth University
Bangor University
Cardiff University
Cardiff Metropolitan University
Glyndŵr University
Open University
Royal Welsh College of Music and Drama Limited
Swansea University
University of South Wales
University of Wales: Trinity St Davids
Coleg Cymraeg Cenedlaethol

Private Institutions providing designated Higher Education courses

The Academy of Contemporary Music
Academy of Live and Recorded Arts
Arts Educational Schools London
Bath Spa University
Belfast Bible College
Brighton Institute of Modern Music
Centre for Alternative Technology
City & Guilds of London Art School
Elim Pentecostal Church
The Institute of Contemporary Music Performance
The Interactive Design Institute
Kaplan Open Learning
London Centre of Contemporary Music
London School of Theology

London Studio Centre
Luther King House Theological College
Mattersey Hall College and Graduate School
National Design Academy
Nazarene Theological College
Norland College
Oak Hill College
Open College of the Arts
St Johns Nottingham
Staffordshire University
Tech Music School London
University of East London
University of West London
University of Greenwich
Wales Evangelical School of Theology

Organisations

Higher Education Funding Council for Wales
Universities Wales
Colegau Cymru
NUS Wales
National Association for Student Money Advisors (NASMA)
Student Loans Company
The Universities and Colleges Admissions Service (UCAS)
Welsh Refugee Council
Race Council Cymru
Careers Wales
Stonewall Cymru
Chwarae Teg
Children in Wales
Barnardos
Disability Wales
Age Cymru
Care Council for Wales
National Deaf Children's Society
Royal National Institute of Blind People

Annex B - Consultation Exercise

Set out below is a summary of the responses received on the proposals to amend the *Education (Student Support) (Wales) Regulations 2015 No. 54 (W.5)*, which came into force on 19 February 2015.

Summary

5 responses were received.

Responses to the policy changes to be included in the Regulations for academic year 2016/17:

Levels of tuition fee and maintenance support

Respondents were accepting of the change in levels of tuition fee support and welcomed the above inflation increase in maintenance support.

Changes to child care grant (CCG) to avoid double funding for students receiving Tax Free Childcare (TFC)

There was agreement that it was fair to prevent double government funding. The only concerns expressed were relating to the differential between the two schemes, and also ensuring that during the administration of the policy, only the intended exclusions should apply.

One respondent stated the student should be able to choose which benefit to receive. This is the policy intent, and information provided by Student Finance Wales for the students will include an explanation of the impact of the TFC on the CCG. Welsh Government will continue to liaise with HMRC and SLC around this implementation of this change and the related issues.

Electronic signatures

Since this change will not be implemented in the immediate future it was not included as part of the engagement exercise. More information around the change will be made available to the affected parties before any change in the administrative system is made.