

SL(6)148 – The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2022

Background and Purpose

These [Regulations](#) amend the following student support regulations:

- the Education (Fees and Awards) (Wales) Regulations 2007;
- the Education (European University Institute) (Wales) Regulations 2014;
- the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provisions) (Wales) Regulations 2015;
- the Education (Student Support) (Wales) Regulations 2017; and
- the Education (Student Support) (Wales) Regulations 2018.

Specifically, the amendments made by these Regulations:

- make individuals granted leave to enter or remain as a relevant Afghan citizen and certain family members under the immigration rules, the Afghan Relocations and Assistance Policy Scheme and the Afghan Citizens Relocation Scheme eligible for student support, home fee status and the tuition fee cap;
- extend eligibility to home fee status and the tuition fee cap to students from the Crown Dependencies studying higher education courses in Wales;
- increase the amount of undergraduate support (disabled student's grant, grants for dependents (including childcare grant) and maintenance loan);
- decrease the amount of tuition fee grant whilst increasing the amount of tuition fee loan for students who began their courses on or after 1 September 2012 but before 1 August 2018 so that overall tuition fee support is unchanged;
- ensure that students on the International Learning and Exchange programme will receive the same support as those on the Erasmus+ scheme and the Turing Scheme established by the Secretary of State for Education;
- remove references to the 'grace period' in relation to the EU Settlement Scheme in the undergraduate student support regulations; and
- make postgraduate social work students in receipt of a social work bursary eligible to apply for disabled student's grant where a course begins on or after 1 August 2022.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd



is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2 – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 18(b) attempts to amend regulation 27(9)(a) of the Education (Student Support) (Wales) Regulations 2017 by substituting the maximum amount of weekly childcare charges used to calculate the amount of childcare grant paid to an eligible student. The figure that these Regulations state should be substituted is “£138.31”, but the figure included in the Education (Student Support) (Wales) Regulations 2017 is “£138.81”.

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Chapter 2 of Parts 2 and 4 amend student support regulations to provide for Afghan citizens granted leave to enter or remain in the United Kingdom to be treated as home students for the purpose of fees charged by higher education institutions. Chapter 2 of Parts 3 and 6 amend student support regulations to provide for the same Afghan citizens to be eligible for student support. The amendments also apply in relation to the partners and dependent children of those Afghan citizens.

The following definition of “partner” of a relevant Afghan citizen is included in the immigration rules:

“276BK1. For the purposes of rules 276BA1-276BS5 a partner of a relevant Afghan citizen, including where the relevant Afghan citizen has already been granted entry clearance, leave to enter or remain or indefinite leave to enter or remain, is a person who:

(i) is the relevant Afghan citizen’s spouse; or

(ii) is the relevant Afghan citizen’s civil partner; or

(iii) has been living together with the relevant Afghan citizen in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application.



This definition applies in relation to the relevant provisions of the immigration rules (paragraph 276BA2, 276BS2, 276BJ2 and 276BO2) referred to in the amendments made by these Regulations.

Regulations 4(b), 7, 11(b) and 38(b) introduce four categories of relevant Afghan citizen that are within the scope of the relevant provisions. The fourth of these is a person granted:

"indefinite leave to enter or remain in the United Kingdom outside the immigration rules as the spouse, civil partner or dependent child of a person falling into paragraph (g) or dependent child of such a spouse or civil partner;"*

* "paragraph (g)" is replaced with "paragraph (c)" in regulation 7 and "paragraph (iii)" in relation to regulation 38(b).

The provision only applies to a spouse or civil partner and there is no reference to a person having similar status to paragraph 276BK1(iii) of the immigration rules (i.e., living together with the relevant Afghan citizen in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application). It is not clear from the Afghan Citizens Resettlement Scheme whether such a person would be eligible for indefinite leave to enter or remain in the United Kingdom.

Is it the policy intention that a person living together with a relevant Afghan citizen in a relationship akin to marriage or civil partnership for at least two years prior to the date of an application is outside of the scope where their partner has indefinite leave to enter or remain in the United Kingdom, outside the immigration rules on the basis of the Afghan Citizens Resettlement Scheme?

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Regulation 39 amends Schedule 4 to the Education (Student Support) (Wales) Regulations 2018 by inserting a new paragraph 13F. Within new paragraph 13F(2) there is reference to "eligible student", whereas all other references within paragraph 13F(1) are to "eligible postgraduate student". Both defined terms are used in different contexts within the 2018 Regulations.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Committee notes that it previously reported on amendments to the Education (European University Institute) (Wales) Regulations 2014 made by the Education (European University Institute) (Wales) (Amendment) (EU Exit) Regulations 2021.

The Committee's report on those 2021 Regulations identified a merits point in relation to the definition of "*person granted leave to remain as a protected partner*". A Government response was received in relation to that merits point on 3 December 2021. The response stated:



“The first sub-paragraph of the definition of “person granted leave to remain as a protected partner” should have included reference to paragraph 289D of the immigration rules. The Government will look to schedule an amendment in an appropriate future instrument.”

As these Regulations amend the Education (European University Institute) (Wales) Regulations 2014, they may have been an “appropriate future instrument” in which to bring forward the correction.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

8 February 2022



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee