

## **Explanatory Memorandum to the Education (Student Finance) (Miscellaneous Amendments) (No. 2) (Wales) Regulations 2023**

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

### **Minister for Education and Welsh Language'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) (No. 2) (Wales) Regulations 2023. I am satisfied the benefits justify the likely costs.

Jeremy Miles MS  
Minister for Education and Welsh Language  
14 June 2023

## **Part 1**

### **1 Description**

1.1 The Education (Student Finance) (Miscellaneous Amendments) (No. 2) (Wales) Regulations 2023 (“the 2023 Regulations”) amend:

- the Education (Fees and Awards) (Wales) Regulations 2007;
- the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015;
- the Education (Student Support) (Wales) Regulations 2017;
- the Education (Student Support) (Wales) Regulations 2018;
- the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018; and
- the Education (Student Support) (Postgraduate Master’s Degrees) (Wales) Regulations 2019.

1.2 The 2023 Regulations amend existing student support regulations to:

- make minor corrections to the definition of a person granted leave to enter or leave to remain as a relevant Afghan citizen arising out of changes to the immigration rules;
- make minor corrections to the list of overseas territories and specified British overseas territories; and
- ensure that persons who are granted certain leave to remain in the UK and subsequently awarded British or Irish citizenship do not lose eligibility for student support.

### **2 Matters of special interest to the Legislation, Justice and Constitution Committee**

2.1 None.

### **3 Legislative background**

3.1 The 2023 Regulations are made under sections 1 and 2 of the Education (Fees and Awards) Act 1983; sections 22(1)(a), 22(2)(a) and 42(6) of the Teaching and Higher Education Act 1998 (“the 1998 Act”); and sections 5(5)(b) and 55(2) of the Higher Education (Wales) Act 2015.

3.2 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. This power enables the Welsh Ministers to prescribe, amongst other things, the amount of financial support (grant or loan) and who is eligible to receive such support.

- 3.3 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.
- 3.4 The functions of the Secretary of State under section 42(6) of the 1998 Act were transferred to the National Assembly for Wales, so far as exercisable in relation to Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).
- 3.5 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.
- 3.6 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.
- 3.7 This instrument will follow the negative resolution procedure.

#### **4 Purpose and intended effect of the legislation**

- 4.1 The Welsh Ministers make regulations to provide the basis for the system of financial support for students ordinarily resident in Wales who are taking designated courses of higher education in the UK, and other students studying in Wales.
- 4.2 The 2023 Regulations amend existing student support regulations as outlined in paragraphs 4.3 – 4.7.

### *British Overseas Territories (BOTs) and Overseas Territories*

4.3 The student support and associated regulations will be amended to ensure they are in line with the British Nationality Act 1981 as follows:

- substitute the correct title 'St Helena, Ascension and Tristan da Cunha' for 'St Helena and Dependencies (Ascension Island and Tristan da Cunha)' and other variations; and
- substitute the correct title 'Virgin Islands' for 'British Virgin Islands'.

### *Persons granted leave to enter or leave to remain as relevant Afghan citizens*

4.4 The 2023 Regulations will amend the current definition of a relevant Afghan citizen to add reference to paragraph ARAP 16.1 of Appendix Afghan Relocation and Assistance Policy of the immigration rules.

4.5 The 2023 Regulations will also amend the definition of a relevant Afghan citizen to add provision to refer to indefinite leave to enter the United Kingdom under paragraph ARAP 6.1 of Appendix Afghan Relocation and Assistance Policy of the immigration rules or indefinite leave to remain in the United Kingdom under paragraph ARAP 6.2 of that Appendix.

4.6 The amendments detailed in paragraphs 4.4 to 4.5 above do not change policy but reflect the changes in the immigration rules so that existing policy is given effect.

### *Disapplication of early termination of eligibility*

4.7 The student support regulations provide for a person who has leave to be in the UK as a result of requiring humanitarian protection to be eligible for student support. The 2023 Regulations will amend existing provisions to ensure that these persons do not lose their eligibility for student support when subsequently awarded British or Irish citizenship. Protected persons include refugees, protected Ukrainian Nationals, persons with Stateless Leave, persons who have Humanitarian Protection, persons with Section 67 leave to remain, persons with Calais Leave, and persons with leave to enter or leave to remain as relevant Afghan citizens.

## **5 Consultation**

5.1 A consultation has not been carried as the amendments have not resulted from a change in policy but from a change in terminology or the immigration rules and

to correct the student support regulations to remove a gap in provision as contained in legislation.

## **PART 2 – REGULATORY IMPACT ASSESSMENT (RIA)**

An RIA has been conducted for the 2023 Regulations. The only issue which is substantive is the amendment to ensure that those persons who are granted leave to remain in the UK and subsequently awarded British or Irish citizenship do not have their eligibility for student support terminated.

### **6. Options**

#### *Option 1: Business as usual*

6.1 If the 2023 Regulations are not made then persons who are granted leave to remain in the UK and subsequently awarded British or Irish citizenship will no longer be eligible for student support. This is contrary to policy.

#### *Option 2: Make the Regulations*

6.2 Making the 2023 Regulations ensures that the consequences outlined above are avoided. This is the preferred option.

### **7. Costs and benefits**

#### *Option 1: Business as usual*

7.1 Leaving the existing student support regulations in place would mean no additional costs are incurred via the student support system.

#### *Option 2: Make the 2023 Regulations*

7.2 Making the 2023 Regulations ensures persons who are subsequently granted British or Irish citizenship having been granted leave to remain in the UK will continue to be eligible for student support, in accordance with policy.

7.3 Data is not available on the numbers of persons who may subsequently be awarded British or Irish citizenship having been awarded leave to remain in the UK but numbers are thought to be minimal and costs will be met within existing budgets. It is the case that these students would have been in receipt of financial support prior to the change in their citizenship status.

## **8. Competition Assessment**

- 8.1 The making of the 2023 Regulations has no impact on the competitiveness of businesses, charities, or the voluntary sector.

## **9. Post-Implementation Assessment**

- 9.1 The 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.