

EXPLANATORY MEMORANDUM TO THE EDUCATION (STUDENT SUPPORT) (WALES) REGULATIONS 2015

The Explanatory Memorandum has been prepared by the Higher Education Division of the Department for Education and Skills 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) (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Huw Lewis AM

Minister for Education and Skills

27 January 2015

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 2015. These Regulations replace the existing Education (Student Support) (Wales) Regulations 2013 (S.I. 2013/3177), as amended.

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 on the payment of financial support to students studying courses of higher or further education designated by the Welsh Ministers. In particular, this power enables the Welsh Ministers to prescribe different categories of student, 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) Regulations 2015.

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 replace the existing legislation governing academic year 2014/15 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. These Regulations will govern the 2015/16 academic year and will enable the Welsh Ministers to make awards of grants and loans to eligible students. In amending and replacing the existing legislation, these Regulations introduce a number of policy changes together with some technical amendments.

The specific policy changes incorporated within the Regulations 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 being raised to £3,810 and a non-means tested tuition fee grant of up to £5,190. 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 £3,805 to reflect the increase in the maximum fees allowable there, which have been raised from £3,685. The fee support package remains unchanged for other continuing students.

b. Increases in the amounts of loans for living costs

Loans for living costs are increased by 3.34%, in line with inflation. Students who started their studies on or after the 1 September 2012 will be eligible for a maximum maintenance loan of £5,376 (depending on household income) or £7,532 if the student studies in London.

c. Definition of a disability

The Education (Student Support) (Wales) Regulations 2013 currently stipulate that Disabled Students' Allowance ("DSA") can be awarded to students who incur extra costs while studying as a result of their disability. However, they do not explicitly define who should be treated as disabled for the purpose of student support.

This instrument introduces the definition of disability in the Equality Act 2010 to the Regulations to define more clearly who is entitled to DSA

support and who is not. Students who fall within the definition will be eligible to apply for DSA support. Student Finance Wales will require evidence that a student has a disability within the meaning of the Equality Act 2010, i.e. a long term condition which has a substantial adverse impact on their day to day activity (including education). Information about the precise nature of the evidence required and how the definition may be interpreted will be contained within guidance. This applies to all full-time, full-time distance learning, part-time and postgraduate students applying for DSA after 1 September 2015. This is a technical change which clarifies existing policy.

d. Changes to Childcare Grant

From academic year 2015/16 full-time and part-time students will not be entitled to apply to Student Finance Wales for a Childcare Grant where that student's partner is receiving financial support for childcare through a healthcare bursary from the National Health Service. This change will apply to students starting or continuing courses in respect of an academic year beginning on or after 1 September 2015.

e. Definition of taxable income

This is a technical change. The regulatory definition of taxable income will improve clarity and confirm the correct policy intent. This will have no direct impact on students.

f. End-on courses

The specific circumstances which are captured by the term 'end-on' are set out in detail for full-time students within the body of the Regulations and certain courses omitted in the Education (Student Support) (Wales) Regulations 2013 have been inserted in line with the original policy intent.

When the student support package for part-time students was changed in academic year 2014/15 the Regulations were not amended to facilitate part-time students being brought within the 'end-on' provision. This omission is corrected within these Regulations and the original policy intent achieved. In effect this means that under certain prescribed circumstances, if a part-time student was in receipt of the part-time means-tested Fee Grant, they would maintain their eligibility for the grant even though they were pursuing a different part-time course.

These Regulations also extend the provisions for end-on courses to include full-time distance learning students in prescribed circumstances and to incorporate more higher education courses.

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 2015/16 to commence early in 2015.

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 2014, 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 £110 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.
- If the changes to the administrative provisions surrounding childcare grants were not made, households with these students could potentially receive double public funding for the same purpose.
- If the definition of disability, as set out in the Equality Act 2010 is not inserted into the Regulations, there will continue to be some doubt over who qualifies for this grant and there could be inequality in its application.
- If the changes to the provisions relating to end-on courses were not made, a part-time student in receipt of the part-time means-tested Fee Grant, would not maintain their eligibility for the grant when subsequently pursuing a different part-time course. Neither could full-time distance learning students be treated as end-on students and maintain their eligibility to their existing support package.

Option 2: Do minimum – make the legislation

Making the Regulations will ensure:

- The legislative framework is in place for academic year 2015/16, 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.
- The categories of students entitled to apply for DSA support is defined more explicitly in line with the Equality Act 2010.

- The provision for end-on students within the regulations will reflect existing policy intent.

Costs and benefits

Option 1: Do nothing

- This option could result in households with students being supported by Student Finance Wales and by the NHS bursary scheme potentially receiving double public funding for their childcare provision. Although the number of students affected is likely to be minimal this would result in an unnecessary cost to the Welsh Government.
- If the definition of disability, as set out in the Equality Act 2010 is not inserted into the Regulations, there will continue to be some doubt over who qualifies for this grant meaning there could be inequality in its application and extra costs incurred when paid unnecessarily.
- 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 definition of disability will be clarified in accordance with the Equality Act. The definition of taxable income will also be clarified in line with existing policy intent. The financial impact of these changes is expected to be minimal.
- 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 costs to the Welsh Government will be met from existing budgets.
- 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 in line with 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 £9m in 2015-16 for maintenance and tuition fee loans.

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 22 October 2014 and was open for six weeks. Key stakeholders consulted include:

- All HEIs in Wales
- Universities Wales
- Further education colleges in Wales
- NUS Wales
- Student Loans Company
- Higher Education Funding Council for Wales
- UCAS

The full list of those consulted is attached at **Annex A**. The consultation period lasted six weeks. 4 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 made 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 2015/16 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)

Annex B

Consultation Exercise

Set out below is a summary of the responses received on the proposals to replace the *Education (Student Support) (Wales) Regulations 2013 No. 3177 (W.316)*, which came into force on 10th January 2014.

Summary

4 responses were received, one of which stated they had no comments.

Responses to the policy changes to be included in the Regulations for academic year 2015/16:

Levels of tuition fee and maintenance Support

Respondents were supportive of the change in levels of tuition fee and maintenance support.

Definition of a disability

The proposed amendment to make explicit the definition of a disability within the regulations, with reference to the Equality Act 2010 gave rise to a number of comments. One respondent discussed a perceived impact on Higher Education Institutions, and two others mentioned the need for early sight of associated guidance, and the necessity of ensuring the guidance was as comprehensive as possible, in particular with regard to interpretation. These concerns have been noted and the guidance will be issued as soon as possible following further consultation with the Student Loans Company (SLC) and other stakeholders about the implementation of the policy.

However, it should be noted that the insertion of the definition is not regarded as a change in the current policy, but as a way of making it explicit. As with all delivery the Welsh Government will continue to monitor and review the administration of the grants alongside our stakeholders to ensure students are benefiting in line with policy intent.

Changes to Childcare Grant (CCG)

No concerns were raised regarding the change to childcare grants.

Definition of taxable income

The intention to change the regulatory definition of 'taxable income' was welcomed.