

EXPLANATORY MEMORANDUM TO THE EDUCATION (POSTGRADUATE MASTER'S DEGREE LOANS) (WALES) REGULATIONS 2017

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.

Cabinet Secretary's declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Cabinet Secretary for Education

6 April 2017

Description

The Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017 ('the Regulations') provide the basis for the provision of financial support for students who are ordinarily resident in Wales and taking designated higher education courses which lead to a postgraduate Master's degree in respect of academic years beginning on or after 1 August 2017. Support is made available by way of a loan to the student.

Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

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 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 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 (Postgraduate Master's Degree Loans) (Wales) Regulations 2017.

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)(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 provided for 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 is made by the negative resolution procedure.

Purpose and intended effect of the legislation

The Welsh Ministers intend to support students undertaking a postgraduate Master's degree. The increasing economic importance of postgraduate qualifications, and the link between wealth, existing postgraduate study and social mobility, provides a rationale for the provision of financial support. An expansion in the number of students undertaking postgraduate study is anticipated.

The Regulations provide for the making of loans to students who are ordinarily resident in Wales for postgraduate master's degree courses which begin on or after 1 August 2017. To qualify for a loan a student must be an 'eligible student'. A loan is available to students studying 'designated' courses. The maximum loan amount an eligible student can receive is £10,280, other than in the case of an eligible prisoner, where the maximum amount is the value of the fees of the designated course.

Other key aspects are set out below.

- Available to students settled in the UK and ordinarily resident in Wales; to an EU national or family member of an EU national; to those with residency status as a refugee or with leave to enter or remain; to an EEA migrant worker or a Swiss worker; to a child of a Swiss national; and to a child of a Turkish worker.
- Available to students up to 60 years of age.
- Students must not have an equivalent level postgraduate qualification.
- Students must not have had a postgraduate Master's loan from the Welsh Ministers or another UK administration previously.
- Students must not be in receipt of certain other sources of funding.
- Available for study of postgraduate courses offered by providers based in the UK which meet certain designation criteria.
- Courses must be Masters degrees, including distance learning taught Masters degrees and research degrees leading to a Masters award.

- Available for study of full time courses of up to two years duration, part time courses at 50% intensity (of the full time equivalent) or greater, and part time courses which have no full time equivalent but may be completed in up to three academic years.

A very similar support policy has been available to students ordinarily resident in England since 2016.

IMPLEMENTATION

The Regulations provide the basis for the implementation of the Welsh Ministers policy for support of postgraduate Master's study for the 2017/18 academic year, enable the Welsh Government's delivery partner (the Student Loans Company) to implement system changes, and allows applications for support to commence during 2017.

CONSULTATION

There is no statutory requirement to consult on the Regulations. However, a public consultation was undertaken in connection with the Regulations in 2016 (*Support for postgraduate study and part-time engineering, technology or computer science degrees (WG27990)*).

Stakeholders were generally positive and supportive of the proposals. The policy for providing support for postgraduate study is largely unchanged from the proposal consulted upon.

A summary list of stakeholders invited to respond to the consultations is at annex A.

REGULATORY IMPACT ASSESSMENT

Options

Option 1: Do nothing

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

- postgraduate study would remain difficult to finance, constraining the number of students participating;

- studies demonstrate that those undertaking postgraduate study are likely to be from financially better off backgrounds, reinforcing a link between postgraduate study, the benefits it confers, and existing wealth;
- students ordinarily resident in Wales would not have access to the same support that their counterparts ordinarily resident in England enjoy; and
- Welsh higher education institutions may have fewer postgraduate students than otherwise would be the case, leading to lower income and investment.

Option 2: Do minimum – make the Regulations

Making the Regulations ensures 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: Do nothing

Doing nothing would mean no additional costs are incurred via the student support system. However, the benefits of expanded postgraduate study to the individual, to Welsh higher education institutions, to the economy and to society would not be realised.

Option 2: Do minimum – make the Regulations

By making the Regulations, the benefits to postgraduate study outlined above will be realised. Postgraduate students earn more on average than their counterparts with a first degree, a benefit to the individual. The proportion of the workforce qualified at postgraduate level is expected to increase in the coming years as employers demand higher skills. Higher skilled employment leads to the potential for greater economic growth in Wales. Welsh higher education institutions may invest in additional facilities for study, improving the facilities available to all students.

The Regulations restrict support to those under 60 years of age (regulation 3(3)(a)). An age limit is discriminatory under the Equality Act 2010 and the European Convention on Human Rights (article 14 – prohibition on discrimination). Age discrimination can be justified if it meets a legitimate aim and is proportionate. Officials have considered options and have concluded that restricting support to those aged under 60 years is the appropriate policy, and can be objectively justified, for two reasons. First, those aged 60 years

and over will not, on average, repay the loan. Analysis by the Welsh Government shows that a person aged 60 years at repayment can be expected to repay 87% of the loan, falling to just 50% for a person aged 65 years. Second, while those aged 60 years and over increasingly remain in work, thereby making an economic contribution, it is nevertheless true that employment falls off sharply after aged 60, from 78% of those aged 50–59, to 50% for those aged 60–64, to 10% for those aged over 65. This relatively modest economic contribution together with the fact that, on average, loans will not be repaid leads the Welsh Government to conclude that an age restriction is legitimate and proportionate in this case.

The Regulations also make ineligible for support an individual who is receiving support under the Care Standards Act 2000 or the Regulation and Inspection of Social Care (Wales) Act 2016 (regulation 3(3)(j)). These Acts make provision for the postgraduate training of social workers. Analysis and review shows that funding under these Acts is adequate for postgraduate training and to enable individuals to be also eligible for a postgraduate loan would constitute double funding.

The loan for postgraduate study requires the provision of loans from Her Majesty's Treasury. The expected value of loans in the 2017/18 financial year is £21m.

An Equality Impact Assessment has been carried out and is available on request from hepolicy@wales.gsi.gov.uk.

COMPETITION ASSESSMENT

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

POST IMPLEMENTATION ASSESSMENT

The regulations governing the student support system are revised annually and are subject to detailed review, by both the Welsh Government and delivery partners. This will be the case with the Regulations.

SUMMARY

The making of these Regulations is necessary to establish the basis for the higher education student support system for students ordinarily resident in

Wales and EU students studying postgraduate Master's degrees in the 2017/18 academic year.

Annex A – List of Consultees

Higher education institutions

Universities Wales

Further education colleges in Wales

Colegau Cymru/College Wales

NUS Wales

Student Loans Company

Higher Education Funding Council for Wales (HEFCW)

UCAS

NIACE

NASMA

Charities with an interest in higher education

Other representative organisations with an interest in higher education

The general public