

Explanatory Memorandum to the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Higher Education Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with 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) (Postgraduate Master's Degrees) (Wales) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Minister for Education
30 April 2019

1. Description

The Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019, ('the Regulations') provide for the payment of postgraduate Master's degree loans and grants for courses beginning on or after 1 August 2019.

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 the amount of financial support (grant or loan) and categories of attendance on higher education courses. This provision, together with section 42(6) of the 1998 Act, provide the Welsh Ministers with the power to make the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019.

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 section 42(6) 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 will follow the Negative Resolution procedure.

4. Purpose and intended effect of the legislation

The Welsh Ministers intend to continue to support students undertaking a postgraduate Master's degree and have introduced a new package of support in response to the *Review of higher education and student finance arrangements in Wales* ('the Diamond Review'). The Diamond Review highlighted the financial barrier for students wishing to access postgraduate education and recommended that such students receive a similar level of support as undergraduate students.

The Regulations provide for the making of grants and loans to students who are ordinarily resident in Wales and those from the EU studying at a Welsh institution for postgraduate Master's degree courses which begin on or after 1 August 2019. To qualify for grants or loans, a student must be an 'eligible student' studying on a 'designated course'. Support under the Regulations is available to full-time students and part-time students studying at 50% or greater intensity.

Support is paid directly to the student and consists of a mixture of grant and loan support as a contribution to costs. A £1,000 non-means tested universal grant is available for all eligible students. The remaining support includes a means-tested grant up to a maximum of £5,885, available to those with a household income of up to £18,370. The grant reduces by £1 for every £6.937 of household income above that threshold. In addition to the grants a non-means tested contribution to costs loan is available to make up the difference between the total amount of grant support available to the student and the maximum total maintenance support of £17,000. Students who are eligible prisoners are in scope for support, including the £1,000 non-means tested universal grant and loan. However, they are not able to access the means-tested grant. Support for prisoners is capped at the fee amount charged which is paid directly to the student's higher education provider.

There is just one application per course, not per academic year. Full-time courses can be one or two years and part-time courses can be up to four years to be eligible for support. Students, who receive either the universal or means-tested grant, do not have to take out a loan. Students can transfer between eligible courses and change duration of the eligible course. No further support is available if a student withdraws, other than for Compelling Personal Reasons (CPR), which will be available only once.

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, a stateless person or with leave to enter

or remain (including leave to remain under section 67 of the Immigration Act 2016); to an EEA migrant worker or a Swiss worker; to a child of a Swiss national; and to a child of a Turkish worker.

- The loan and grant are 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 Welsh Minister's or another UK administration previously.
- Students must not be in receipt of or have bestowed upon them 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 Master's degrees, including distance learning taught Master's degrees and research degrees leading to a Master's award.
- There is a 50% minimum requirement for courses which have an overseas study element, to be undertaken in the UK.

5. Consultation

The policy was consulted on during the Diamond Review.

6. Regulatory Impact Assessment

Participation in postgraduate higher education

For 2017/18, data from the Higher Education Statistics Authority shows that there were 16,665 Welsh domiciled postgraduate enrolments at UK Higher Education Institutions, an increase of 9% on 2016/17. This increase reverses recent declines to exceed the previous peak of 16,460 in 2010/11. These figures include enrolments on programmes that will be eligible for the support these regulations will provide (i.e. Master's level programmes), as well as those that will not (i.e. postgraduate qualifications below or above Master's level).

Options

Option 1: Do nothing

In the event of the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 not being made the principal implication is that the existing policy for student support would continue and the changes being proposed would not be implemented.

Currently eligible students in receipt of the postgraduate support are able to apply for a loan up to a maximum of £13,000. In the event of do nothing, postgraduate Master's students would not benefit from receiving an enhanced package of support through a mixture of grant and loan, up to a maximum of £17,000.

Option 2: Do minimum – make the Regulations

Making the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 ensures that the levels of postgraduate funding which the Cabinet Secretary for Education (now Minister for Education) agreed to following the Diamond Review are implemented in 2019/20 academic year providing parity with undergraduate support.

It is anticipated that this will contribute to maintaining and improving participation levels in postgraduate Master's courses in higher education. This will ensure that postgraduate Master's students benefit from the £1,000 universal grant available to all eligible students. Students then have a choice to be means tested for the remaining grant up to a maximum of £6,885 (including the universal element), depending on household income and a non-means tested contribution to costs loan is available to make up the difference between the maximum support available of £17,000 and the grant provision.

Costs and benefits

Option 1: Do nothing

Leaving the previous regulations in place would mean no additional costs are incurred via the student support system and students would only be able to access loans at the same value as in 2018/19, at £13,000. The recommendation to increase the value of support through a mixture of grant and loan for postgraduate Master's student support made as a result of the Diamond Review would not be implemented. There would be no benefit to Welsh students as a result.

Option 2: Do minimum – make the Regulations

By making the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019 the Welsh Ministers ensure that policy commitments to higher education and students can be met. The Regulations will reflect the policy developed as a result of the Diamond Review by increasing support through grant for the less advantaged and loans for all. This will provide access to postgraduate study for all regardless of income and align with provision of undergraduate support. Students who are ordinarily resident in Wales and those from the EU studying at a Welsh institution will benefit from the changes to support outlined above. The benefits of a higher education to the individual, to the economy and to society are well established. The contribution to the economy is evidenced by statistics on UK graduates from higher education, which demonstrates a clear advantage to postgraduate leavers, compared with undergraduate leavers, with respect to employment and average salaries. Around 80% of 2016/17 postgraduate leavers were in employment (UK or

overseas), compared with around 65% of undergraduates, six months after graduation. This difference largely reflects the higher proportion of other undergraduate leavers that go on to further study, rather than employment. More than two thirds of 2016/17 postgraduate leavers employed full-time were earning an annual salary of at least £25,000, whereas a similar majority of undergraduate leavers were earning an annual salary below £25,000, six months after graduation.

Impact on students aged 60 and over

Those aged 60 and over are currently unable to access Welsh Government loan support for undergraduate and postgraduate degrees. Her Majesty's Treasury made funding available to the Welsh Government for the provision of loans, but stipulated that the net cost of the loan to Government should be zero. This meant that the Welsh Government had to carefully consider the cost of subsidising students who were unlikely to repay their student loan and a decision was made to align the age restriction for consistency with students in England.

The Regulations restrict eligibility for loan support to those under 60 years of age on the first day of the academic year in which the designated course starts. 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. The aim of the scheme is to increase, in the context of finite resources, high level skills for the economy. The Welsh Government considers that it is necessary to ensure value for money for the taxpayer and takes the view that the imposition of the age limit is rationally connected to that aim. To ensure value for money, sustainable funding is required and the age limit of 60 mitigates against the risk that loans are disproportionately taken out by older students who will be less likely to repay the loan in full or make significant repayments and who would have a limited number of working years in which their skills would be available to the economy.

Analysis carried out by The Welsh Government suggests that, on average, the older a borrower is, the less of their loan they are likely to repay. On average, younger borrowers are expected to repay more than they borrow (due to repaying the full loan plus interest on their account) while the oldest borrowers are likely to repay little of their loan. Although the data does not indicate a clear age at which to cap loans, less than 10% of any loans advanced to borrowers above the existing age 60 limit would be expected to be repaid. On average, younger borrowers contribute towards the loans that older borrowers (with age approaching the current limit) are unable to repay. Although those aged 60 years and over increasingly remain in work, thereby making an economic contribution, it is nevertheless evident that employment falls off after age 60,

from almost 80% of those aged 50–59, to around 50% for those aged 60–64, to around 10% for those aged 65 and over.

The possibility of a less intrusive measure to achieve the Welsh Government's aim has been considered. The conclusion was that a system which required individual investigation and assessment would create a heavy administrative burden which could consume scarce resources. Such a system might also introduce scope for inconsistent decision-making. Taking into account the evidence concerning not only repayment rates of loans but also employment rates (it is not the purpose of the loan to facilitate the uptake of Master's degree courses by students who have no particular intention to return to the workplace), the Welsh Government considers that the age restriction strikes a fair balance and is justified.

Eligible students aged 60 and over studying an undergraduate degree course can access the grant elements of Welsh Government support. It was intended to replicate this for eligible students studying a postgraduate Master's degree course. However, the Welsh Government has been unable to implement the necessary changes to the administrative system in time for the 2019/20 academic year and so interim arrangements are in place. An amount of funding via the Higher Education Funding Council for Wales (HEFCW) will be disseminated to higher education institutions in Wales to provide a non-repayable bursary to eligible students, aged 60 and over, studying postgraduate Master's courses in Wales which begin in the 2019/20 academic year.

The restriction in the Regulations of grant support to those aged under 60 is potentially discriminatory as described above. However, given the administrative restrictions on the student finance system, the only alternative would be not to implement the new package of postgraduate Master's support for any students. This was considered to be disproportionate and would not achieve the Welsh Government's aim. The additional funding provided via HEFCW means that postgraduate Master's students aged 60 and over will still be able to access non-repayable funding and so the Welsh Government consider the age restriction in the Regulations to be proportionate and justified.

The Minister for Education is aware that people are now working longer than they used to and so has made a commitment to keep under review all age limits that are placed on full-time and part-time undergraduate as well as postgraduate Master's student support.

Distributional impact and student debt

Currently postgraduate Master's students accessing support in Wales bear the cost of additional debt through loans. As a result of the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019, the majority of postgraduate Master's degree students will benefit from the universal grant and the means-tested grant based on household income, topped up with loan to the maximum amount. This means that students will have additional support (as a contribution to costs) available to them compared with a student continuing under the existing regulations. Part-time courses can be designated for support for up to four years, which will provide increased flexibility for those that choose this route to qualification.

Eligible postgraduate Master's students starting a designated course on or after 1 August 2019 will have more support available to them compared to a student continuing under the existing regulations. The increase in the maximum support available will amount to £4,000 for all new postgraduate Master's students, which could potentially increase the amount of debt a student incurs. However, this is dependent on household income and those with a lower household income will incur less debt as well as being able to access a grant of up to £6,885. This includes the universal grant of £1,000, which is available to all. Eligible students will continue to have the option to request a loan amount less than the maximum entitlement and do not have to apply for the loan in order to receive any of the grant.

Participation

Postgraduate loans for Welsh resident students were first introduced in 2017/18. Data is available to quantify the effect of providing this support on participation, which has shown that more Welsh residents will have enrolled on eligible programmes. It is anticipated that the new package of student support will at least maintain, and more likely further increase, participation in postgraduate study, particularly those from a low income. Enabling those choosing to study on four year part-time postgraduate Master's courses, which are currently ineligible, to access support may also increase participation.

Cost

The proposed changes to the postgraduate loan for academic year 2019/20 will require the provision of a similar level of cover for loans from Her Majesty's Treasury, compared with the 'do nothing' option. In addition, the Government subsidy on the provision of loans (Resource Accounting and Budgeting (RAB) charge, or non-cash) does not differ markedly from the 'do nothing' option. The provision of the means-tested contribution to costs grant is expected to cost around £12m in the 2019-20 financial year. These estimates are based on latest financial modelling inputs and assumptions, which are subject to routine

review and update as more information becomes available. The costs are very small in the context of overall student loan cover and write-off requirements of Welsh Government.

CONSULTATION

The policy was consulted on extensively as a result of the Diamond Review of higher education and student finance arrangements in Wales. The Review included full consultation with stakeholders both during the Review and following publication of the Report.

COMPETITION ASSESSMENT

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

POST-IMPLEMENTATION ASSESSMENT

The postgraduate Master's regulations will be subject to detailed review, both by policy officials and delivery partners in their practical implementation of the Regulations.

SUMMARY

The making of these regulations is necessary to update aspects of the higher education postgraduate Master's degree student support system for students ordinarily resident in Wales and EU students. The changes will apply in relation to courses beginning in the 2019/20 academic year.