

EXPLANATORY MEMORANDUM TO THE EDUCATION (STUDENT SUPPORT) (WALES) (AMENDMENT) REGULATIONS 2014

The Explanatory Memorandum has been prepared by 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) (Amendment) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Huw Lewis AM
Minister for Education and Skills

1 July 2014

DESCRIPTION

1. These Regulations are required in order to underpin the higher education student support system for students who are ordinarily resident in Wales (fee grants, fee loans, maintenance grants and maintenance loans) and are taking designated higher education courses in respect of academic years beginning on or after 1 September 2014. These Regulations amend the existing *Education (Student Support) (Wales) Regulations 2013 No.3177 (W.316)*.

MATTERS OF SPECIAL INTEREST TO THE CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE

2. None

LEGISLATIVE BACKGROUND

3. 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.
4. 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 section 42(6) of the 1998 Act provides the Welsh Ministers with the power to make these Regulations and the *Education (Student Support) (Wales) Regulations 2013*.
5. Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act, are transferred and delegated to Welsh local authorities and the Student Loans Company under section 23 of the 1998 Act.
6. This instrument follows the Negative Resolution procedure.

PURPOSE AND INTENDED EFFECT OF THE LEGISLATION

7. 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 amend the existing legislation governing academic year (AY) 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 enable the Welsh Ministers to make awards of grants and loans to eligible students. In amending the existing legislation, these Regulations introduce a policy change and correct a minor typographical error.

8. The specific changes incorporated within the Regulations are set out below:

- a. **Access to part-time fee loans for eligible prisoner students**

The purpose of the legislation is to allow eligible prisoner students access to fee loans for designated part-time courses commencing on or after 1 September 2014. These loans will be available on the same terms as they are for other part-time students. The amount of award is dependant on the fee charged by the institution, but will be limited to a maximum of £2,625 overall if studying within Wales, whether their course is at a publicly funded or a private institution.

If a part-time prisoner student undertakes a HE course in the rest of the UK (RUK) which commences on or after 1 September 2014 they will be eligible for a fee loan of up to a maximum of £6,750 at a publicly funded institution. Students attending a private institution within the RUK need to be eligible for a fee loan of up to £4,500. Neither of these scenarios is likely to occur since the usual route for offender learning is through the Open University (Cymru), but cannot be ruled out.

- b. **Provision of a course within the UK**

Courses provided by publicly funded institutions can be automatically designated for support where the course is delivered wholly in the United Kingdom. This is a technical amendment which aligns the Regulations with existing policy intent and current practice.

IMPLEMENTATION

9. This legislation updates the current student support system for academic year 2014/15 and by putting it in place now, it will enable the Welsh Government's delivery partners (the Student Loans Company and Local Authorities in Wales) to implement the system changes in time for the affected students to be paid under the revised system and for the application cycle for academic year 2014/15.

CONSULTATION

10. The details of consultation undertaken are included in paragraph 21 within the RIA below

REGULATORY IMPACT ASSESSMENT

11. Options

Two options have been considered in this RIA:

Option 1: Do nothing – by not amending the existing Regulations eligible prisoners who are part-time students would be liable to pay up-front fees for their courses when the current payment mechanism is removed for students commencing courses on or after 1 September 2014.

Option 2: Make the Legislation – implementing these Regulations will ensure that the legislative framework is in place for academic year 2014/15 and bring benefits to the students mentioned above.

COSTS

Option 1: Do Nothing

12. There are no additional costs associated with this option. In this option, offenders wishing to undertake part-time higher education would be required to pay for their course up-front. Not being able to access fee loans may discourage some offenders from participating in part-time higher education courses.

Option 2: Make the Legislation

13. The Welsh Government will communicate the policy change through the Student Finance Wales website administered by SLC. The Open University will also update their website to reflect the new position. This is not expected to impose an additional cost.

14. Allowing access to fee loans is expected to increase the number of prisoner students undertaking higher education courses compared to the Do Nothing option. There is a cost to the Welsh Government's student finance budget as a result of this increased take-up of courses by prisoners. As noted above (para 8a), the normal route for an offender to undertake higher education is through the Open University Cymru and the maximum award is expected to be £2,625 per annum. The total cost to the Welsh Government will depend upon the number of prisoners that successfully apply for funding. This is difficult to predict but there is no evidence (or opinion) to suggest that these numbers will be large. There are currently approximately 80 offenders ordinarily resident in Wales pursuing part-time Higher Education courses. This is a total number across all cohorts. Using this as a guide there are likely to be no more than 30 new students qualifying for the tuition fee loan in 2014/15 and as such the cost is not expected to exceed £80,000 per annum. It is therefore expected that this additional cost can be accommodated within the normal management of the student finance budget.

15. There is also a cost to the Student Loans Company in processing additional applications. Again, there is no reason to think that the volume of such applications will be large and we have been assured that the Student Loans Company will be able to manage this activity within its existing budgets.

BENEFITS

Option 1: Do Nothing

16. To do nothing would mean that prisoners ordinarily resident in Wales would benefit by being better off than part-time students outside of prison who do not have their courses provided free at the point of delivery but have access to a fee loan to cover the fees.

Option 2: Make the Legislation

17. Two direct and two indirect benefits have been identified.

Directly:

18. The Welsh Ministers continue to be seen to provide a proper legal underpinning for the student support system, enabling delivery of its policy commitments and statutory responsibilities. Offenders will be able to access fee loans and will therefore have continued access to part time study, facilitating their rehabilitation. There is a wide range of evidence available on the social and economic benefits of providing education to offenders while in prison. For example, an analysis published by the Ministry of Justice¹ found that the re-offending rate amongst prisoners in receipt of a grant from the Prisoners Education Trust to participate in an Open University course while in prison was lower than that for a control cohort. In addition this option would mean that prisoners ordinarily resident in Wales were put on a similar footing to part-time students outside of prison.

Indirectly:

19. Delivery partners, notably the Student Loans Company, can continue to be assured of acting within the requirements of the Welsh legislation. The Open University in Wales can expect to maintain their numbers of offenders pursuing their courses enabling them to continue to deliver on their corporate and social objectives.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270089/open-university-report.pdf

Summary of the preferred option

20. The preferred option is to make the legislation in order to ensure offender learners are treated equitably with mainstream part-time students. This will avoid them being either penalised or advantaged because of being in prison and enable them to pursue higher education courses if they satisfy the previously determined eligibility criteria.

CONSULTATION

21. There is no statutory requirement to consult on these Regulations. Much of the consultation on the broad principles of the benefits of education for offenders has been done by other government departments. Evidence was gathered from prisons, and prisoners themselves, as well as the stakeholders mentioned above, in a call for evidence issued by the Ministry of Justice and the Department for Business, Innovation and Skills in August 2010. It was very detailed and specific in its approach, so that a full range of issues was covered, not limited to student finance.
22. The Review of Offender Learning was subsequently published jointly on 18 May 2011 by BIS and the Ministry of Justice and entitled: *Making Prisons Work: Skills for Rehabilitation* was published. Whilst not specific to Wales, the research was relevant as the criminal justice system was not devolved in the Government of Wales Act 2006, and the findings had been taken from across both England and Wales. Specifically it states: *“There is strong support amongst those who responded for continuing access to higher education for prisoners. We agree that higher education is an important learning progression route for some prisoners.”*
23. The introduction of fee loans for students ordinarily resident in Wales undertaking part-time courses was considered by stakeholders in a part-time policy working group which met during 2012. The working group consisted of the National Union of Students, Higher Education Wales, the Students Loans Company, the Open University Cymru, the Higher Education Funding Council for Wales, and Colegau Cymru. As a result of this engagement, the policy was amended to address stakeholders’ concerns.
24. The concerns were mainly regarding the need to maintain significant central funding for part-time courses to avoid any substantial reduction in numbers of students pursuing part-time courses and risking de-stabilising the provision. It had also been proposed to make the changes within the academic year 2013/14. Taking account of the sector’s concerns it was decided to wait a further academic year so that the effects of the policy change within England could be observed.
25. With regard to fee loans for offenders pursuing part-time courses, the National Offender Management Service (NOMS) Cymru, The Open University Cymru and the Prisoner Education Trust have all been consulted about the impact of these changes. Officials met with their

representatives, explained the proposals and contributed to the range of information, advice and guidance they produce for prisons and prisoners. Welsh Government has been assured that the changes are workable.

COMPETITION ASSESSMENT

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

POST IMPLEMENTATION REVIEW

27. 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. Contact with NOMS and the OU will be maintained to determine and review the practical effect of this policy change.