

EXPLANATORY MEMORANDUM TO THE EDUCATION (STUDENT SUPPORT) (AMENDMENT) (WALES) REGULATIONS 2018

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 (Student Support) (Wales) (Amendment) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Kirsty Williams AM
Cabinet Secretary for Education

6 July 2018

Description

The Education (Student Support) (Wales) (Amendment) Regulations 2018 ('the Regulations') make amendments to the Education (Student Support) (Wales) Regulations 2018 ('the 2018 Regulations').

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 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 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, provides the Welsh Ministers with the power to make the Regulations.

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 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.

Purpose and intended effect of the legislation

The Welsh Ministers make regulations annually to provide the basis for the system of financial support for students who are ordinarily resident in Wales and taking designated courses of higher education.

The 2018 Regulations provide for financial support for students taking designated higher education courses which begin on or after 1 August 2018. The 2018 Regulations also provide support for courses which begin before 1 August 2018 and are subsequently converted from full-time to part-time or part-time to full-time on or after 1 August 2018.

The 2018 Regulations introduced a number of changes to student support for students commencing their studies in the 2018/19 academic year. These changes were made as a result of the *Independent review of higher education funding and student finance arrangements* ('the Diamond review'). In addition, the 2018 Regulations represent a comprehensive redraft and simplification of the previous student support regulations.

An amendment is required to reframe the calculation of special support payments to resolve an unintended consequence of the interaction between the 2018 Regulations and the Universal Credit Regulations 2013 related to the financial assessment of a student for the purposes of Universal Credit. The calculation is presented as a series of steps and a worked example is below.

Assume a student living at home, studying full-time, with household income of £35,000. The Steps of regulation 4 provide for the following:

Step 1. Maintenance grant payable under regulation 46 is £3,488. Base grant payable under regulation 45 is £1,000.

Step 2. The amount of base grant and maintenance grant to be treated as a special support payment under regulation 50 is £4,488.

Step 3. The applicable amount of living support is £7,650.

Step 4. Amount (a) is £7,650. Amount (b) is £4,488 + £3,325 = £7,813. The greater amount is £7,813 and is the maximum amount of living support.

Step 5. The notional maximum amount of maintenance loan is £7,813 - £4,488 = £3,325.

Step 6. The maintenance loan payable to the student is £3,325 - £0 = £3,325.

So, the student will receive a special support payment of £4,488 and a maintenance loan of £3,325, which is a total amount of support of £7,813.

Amendments have also been made relating to the calculation of maintenance grants and loans when a student's eligibility changes within an academic year if the student becomes an eligible student, when a student becomes a prisoner, is otherwise absent from the course, or ceases to be an eligible student.

IMPLEMENTATION

The Regulations enable the Welsh Government's delivery partner (the Student Loans Company) to implement necessary changes to the operation of the system of student support for 2018.

CONSULTATION

There is no statutory requirement to consult on the Regulations. The 2018 Regulations were developed as a response to the Diamond review. This included a wide-ranging and sustained programme of engagement with stakeholders over more than two years which substantially shaped the policy for student support and its implementation, both of which underpin the 2018 Regulations.

A consultation on a number of the recommendations made in the Diamond review was undertaken during 2016 and into 2017 (Student support funding for students ordinarily resident in Wales, WG30133)¹.

Further engagement was undertaken late in 2017, in the form of a Student Finance Wales Information Notice (SFWIN)².

¹ <https://beta.gov.wales/support-funding-students-resident-wales>

² <https://www.studentfinancewales.co.uk/media/196984/sfwin-04-2017-changes-to-student-support-in-ay201819.pdf>

REGULATORY IMPACT ASSESSMENT

The policy underpinning the 2018 Regulations was developed as a direct response to the Diamond review, which addressed the areas of widening access, supporting the skill needs of Wales, strengthening part-time and postgraduate provision, and ensuring long-term financial sustainability. The Diamond review considered a range of options for student support, settling on a set of changes recommended to the Cabinet Secretary for Education, recommendations that were largely accepted.

The 2018 Regulations made provision for those changes. The Regulatory Impact Assessment³ which accompanied the laying of the 2018 Regulations with the National Assembly for Wales is a comprehensive overview of the impact of those regulations. The Regulatory Impact Assessment ('RIA') which accompanied the 2018 Regulations provides the appropriate impact analysis for these Regulations, which make amendments that fall within the scope of the RIA, and which is supplemented here with additional detail.

Options

Two options were considered.

Option 1 – do nothing

In the event of the Regulations not being made the principal implication is that the policy changes recommended as part of the Diamond review would not be fully implemented and that the Student Loans Company would not properly be able to operate the student support system in Wales for the academic year beginning in August 2018.

Option 2 – make the regulations

Making the Regulations ensures that the Diamond review recommendations are fully implemented. In turn, this contributes to ensuring that the changes to widening access, supporting the skill needs of Wales, strengthening part-time and postgraduate provision, and financial sustainability have proper effect.

Costs and benefits

³ <http://senedd.assembly.wales/documents/s72450/SL5189%20-%20EM%20The%20Education%20Student%20Support%20Wales%20Regulations%202018.pdf>

Option 1 – do nothing

There would be neither additional cost nor benefit; however certain aspects of the 2018 Regulations would not operate as intended.

Option 2 – make the regulations

By making the Regulations the Welsh Ministers ensure that the Welsh student support system has an appropriate underpinning legal framework and that policy operates as intended. The Regulations reflect policy developed as a result of the Diamond review. The Regulatory Impact Assessment which accompanied the 2018 Regulations describes the costs and benefits which accrue. Additional cost analysis is detailed table 1 and summarised in the following paragraphs.

The amendments to regulations 56 of the 2018 Regulations and the inclusion of a new regulation 58A mean that the amount of student support that the Department of Work and Pensions will assess as the unearned income of a student who is entitled to Universal Credit will accord with the Welsh Ministers' policy intent. There is no cost to Welsh Government associated with this change as the amendments only change the way the calculation method is presented, not the amounts of support payable to students.

Students affected by regulations 81 and 93–95, those whose eligibility for student support is affected in an academic year, will be assessed for support in a fair and equitable manner based upon the number of days they attend a course.

Regulation 7 amends regulation 81(2) of the 2018 Regulations. Regulation 81 provides for students who become eligible to receive student support based upon the time remaining in the academic year.

Regulations 93–95 of the 2018 Regulations are amended by regulations 8, 9 and 10. Regulation 93 provides for a recalculation of support when a student becomes a prisoner, regulation 94 for recalculation when a student is absent from a course, and regulation 95 provides for a recalculation when a student's period of eligibility ends or is terminated.

All else equal, regulation 7 will increase the cost of providing student support, regulations 8 and 9 will have minor cost implications, and regulation 10 may decrease the cost of providing support. The change in the total cost of providing student support that these changes represent are not material and

are expected to fall within the margin of inherent uncertainty associated with forecasting the costs of providing student support.

Table 1 – Cost analysis

| Amendment | Impact |
|--|---|
| <p>The amendments to regulation 56 of the 2018 Regulations and the inclusion of a new regulation 58A mean that the amount of student support that the Department of Work and Pensions will assess as the unearned income of a student who is entitled to Universal Credit will accord with the Welsh Ministers' policy intent.</p> | <p>There is no cost to Welsh Government associated with this change as the amendments only change the way the calculation method is presented, not the amounts of support payable to students.</p> |
| <p>Students who become eligible to receive student support will be assessed based upon the number of days remaining in the academic year (regulation 7).</p> | <p>It is not possible to predict how many students will become eligible for support during the year, or at what point in the year they might become eligible. As students would currently be assessed based on the number of quarters rather than days remaining, this amendment could in theory result in immaterial additional costs, depending on the number and timing of students becoming eligible.</p> |
| <p>Recalculation of support when a student becomes a prisoner will be assessed based upon the number of days remaining in the academic year (regulation 8).</p> | <p>It is not possible to predict how many students will become prisoners during the year, or at what point in the year. Numbers will be very small (if any). There is no cost associated with this amendment as the regulation has been made more permissive, but it does not alter the calculation that will be applied to determine entitlement.</p> |
| <p>Recalculation of support when a student is absent from a course will be assessed based upon the number of days</p> | <p>It is not possible to predict how many students will be absent from a course, or at what point in the year. There is no cost</p> |

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| <p>remaining in the academic year (regulation 9).</p> | <p>associated with this amendment as the regulation has been made more permissive, but it does not alter the calculation that will be applied to determine entitlement.</p> |
| <p>Recalculation when a student's period of eligibility ends or is terminated will be assessed based upon the number of days remaining in the academic year (regulation 10).</p> | <p>It is not possible to predict how many students' eligibility will end, or at what point in the year. As students would currently be assessed based on the number of payment periods rather than days remaining, this amendment could in theory result in a negligible reduction in costs, depending on the number and timing of students becoming ineligible.</p> |

COMPETITION ASSESSMENT

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

POST-IMPLEMENTATION ASSESSMENT

The regulations governing the student support system are usually revised annually and are continually subject to detailed review, both by policy officials and delivery partners in their practical implementation of the regulations. An evaluation plan for the Welsh Government response to the Diamond review has been developed. This will monitor, among other things, numbers, participation and retention of higher education students.

SUMMARY

The making of these Regulations is necessary to prevent unintended consequences arising from certain the provisions of the 2018 Regulations, and accordingly to confirm the intended basis for the higher education student support system for students ordinarily resident in Wales and EU students studying in Wales in the 2018/19 academic year.