

Explanatory Memorandum to the Education (Student Support) (Miscellaneous Amendments) (Wales) (No. 2) Regulations 2020

This Explanatory Memorandum has been prepared by the Higher Education Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister for Education's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Support) (Miscellaneous Amendments) (Wales) (No 2) Regulations 2020. I am satisfied that the benefits justify the likely costs.

Kirsty Williams MS
Minister for Education
9 July 2020

Part 1

1. Description

The Education (Student Support) (Miscellaneous Amendments) (Wales) (No 2) Regulations 2020 ('the Regulations') amend:

- the Education (Student Support) (Wales) Regulations 2017 ('the 2017 Regulations'); and
- the Education (Student Support) (Wales) Regulations 2018 ('the 2018 Regulations').

The Regulations amend provision in the 2017 Regulations and 2018 Regulations relating to the recovery of overpayments of loans for living costs; and amend provision in the 2018 Regulations to allow students to receive or continue receiving support for distance learning courses if coronavirus prevents them start or continue their course outside Wales or the UK respectively.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

There are no matters of special interest arising.

3. Legislative background

The Regulations are made under sections 22 and 42(6) of the Teaching and Higher Education Act 1998 ('the 1998 Act'). Section 22 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. This power enables the Welsh Ministers to prescribe, amongst other things, the amount of financial support (grant or loan) and who is eligible to receive such support.

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)(j), (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) of the 1998 Act 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 (Transfer of Functions) Order 1999 (SI 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.

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 make regulations to provide the basis for the system of financial support for students ordinarily resident in Wales and EU students studying in Wales taking designated courses of higher education. The 2017 Regulations provide for financial support for students taking designated higher education courses which begin before 1 September 2018 and the 2018 Regulations provide for financial support for students taking designated higher education courses which begin on or after 1 September 2018.

The Regulations apply to the provision of support to students in relation to academic years which begin on or after 1 August 2020. They provide for the following amendments:

The 2017 and 2018 Regulations are amended so that where an overpayment of loan for living costs has been made to a student, the Welsh Ministers are able to add the overpayment to the student's loan balance to be repaid in accordance with the Education (Student Loans) (Repayment) Regulations 2009. The 2017 and 2018 Regulations currently provide that, unless specific conditions are met concerning the failure of a student to provide information, an overpayment of a loan for living costs may only be recovered by subtracting the overpayment from a future loan payment. The amendment provides the Welsh Ministers with the same discretion that the Secretary of State for Education enjoys in the English student support regulations, avoids imposing hardship on students (by avoiding reducing future loan payments) and enables any overpayments which were made as final payments to be recovered (i.e. where there was no future loan payment anticipated).

The coronavirus pandemic continues to affect all aspects of life. A student undertaking a distance learning course in Wales may find themselves unable to meet certain conditions in the 2018 Regulations due to reasons connected with the pandemic and through no fault of their own. New students are required to be in Wales on the first day of the first academic year of their distance learning course. Continuing students are required to undertake their course in the UK. They may be prevented from meeting these conditions by reasons connected to the pandemic. Therefore, the 2018 Regulations are amended to:

- enable continuing students to receive support for their distance learning course if reasons connected to the coronavirus pandemic prevent them from being in the UK; and
- enable new students to receive support for their distance learning course if reasons connected to the coronavirus pandemic prevent them from being in Wales on the first day of the academic year.

These amendments ensure that no students are disadvantaged by circumstances outside their control.

5. Consultation

No consultation has been undertaken.

6. Regulatory Impact Assessment

An RIA has been conducted for the Regulations.

Options

Option 1: Business as usual

If the Regulations are not made the principal implications are that distance learning students who are unable to travel due to the coronavirus pandemic will be made ineligible for student support, and the Welsh Ministers' ability to recover overpaid loans for living costs will be less effective, increasing the cost of student loans to the public purse.

Option 2: Make the Regulations

Making the Regulations ensures that the implications noted above are avoided resulting in a legislative framework that correctly reflects the Welsh Ministers' policy

for student support, ensures all students are able to receive appropriate support, while minimising unnecessary costs.

Costs and benefits

Option 1: Business as usual

There are no additional costs or benefits to option one.

Option 2: Make the Regulations

Distance learners whose ability to travel to Wales for the first day of the first academic year is affected by coronavirus would be ineligible for support under normal circumstances. Continuing distance learning students may be unable to return to the UK but still able to undertake their courses. The amendment preserves the current policy intent and imposes no additional costs. The benefit to the student is the ability to receive support to undertake their course.

Recovering an overpaid loan by way of the student's income contingent loan balance to be repaid in accordance with Education (Student Loans) (Repayment) Regulations 2009 has the benefit of i) avoiding hardship for the student by not reducing a future loan payment and ii) ensuring any overpayment made when no further loan payment is anticipated can be recovered. Recovering payment by any other method available to the Welsh Ministers may have similar benefits.

A potential additional cost is the interest that will be accumulated on the overpayment if added to the student's income contingent loan balance. It should be noted that choice of recovery method will be determined according to the circumstances in each case. Students also have the facility to make a voluntary repayment against their outstanding loan balance at any time, so negating the additional loan balance and interest charged by using the overpaid amount to make the voluntary payment.

It is not possible to estimate the cost associated with this amendment in any meaningful way. The number of overpayments which may be treated differently after this amendment will depend on i) the overall number of overpayments made and ii) the number which are added to the loan balance rather than subtracted from a future loan payment, or recovered by other means, which would require a number of assumptions. The cost would be the interest charged over the period in which the

overpayment remains outstanding, which would also require arbitrary assumptions regarding the timing of the repayment of the overpayment.

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 revised annually and are continually subject to detailed review, both by policy officials and delivery partners in their practical implementation of the regulations.

Summary

The making of the Regulations is necessary to update aspects of the higher education student support system for students ordinarily resident in Wales and EU students studying in Wales in the 2020/21 academic year.