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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Proposed changes to the student finance support package in the 2019/20 academic year

Date of issue: 19 December 2018
Action required: Responses by 1 February 2019

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Changes to the Student Finance Support Package in the 2019/20 Academic Year

- Overview** This consultation seeks views on certain proposed changes to the student finance support package in the 2019/20 academic year.
- How to respond** Responses to this consultation should be e-mailed/posted to the address below by **1 February 2019** at the latest.
- Further information and related documents** **Large print, Braille and alternative language versions of this document are available on request.**
This consultation document can be accessed from the Welsh Government's website at <http://www.gov.wales/consultations>
- Contact details** For further information:

Higher Education Division
Skills, Higher Education and Lifelong Learning Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

email: HEDConsultationsMailbox@gov.wales

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

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For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail: Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

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What are the main issues?

This consultation is about the proposed changes to the provision of financial support to students who begin a higher education course in the 2019/20 academic year. The Welsh Ministers intend to make support available to students ordinarily resident in Wales, and are seeking views on changes to the existing policy. The deadline for response is 1 February 2019.

The changes are:

- a new category of person eligible to access student support – those with Section 67 leave to enter or remain in the UK; and
- changes to the designation of courses in England.

The student support regulations do not currently make provision for any of the proposed changes.

Changes to the rates of financial support available to students are also being made. These are published in a Student Finance Wales Information Notice, which is available from <https://www.studentfinancewales.co.uk/practitioners/policy-information/information-notices.aspx>.

This consultation will run for six weeks. The proposals that are being consulted upon are of relatively narrow and specialist interest only. Responses are welcomed no later than 1 February 2019

Where are we now?

New category of eligible person

In June 2018, the Home Office introduced a new category of limited leave to enter or remain – Section 67 of the Immigration Act 2016 leave (‘Section 67 leave’) – for those unaccompanied children who have transferred to the UK who do not qualify for leave under the current Immigration Rules as refugees or other protection-based leave. This is the so-called ‘Dubs amendment’, designed to assist unaccompanied children (‘Dubs children’). Individuals who qualify for Section 67 leave will have the right to study, work, access public funds (claim benefits and housing support) and healthcare, and apply for indefinite leave to remain after five years. Section 67 leave is described in the Immigration Rules (rules 352ZG – 352ZS). Further guidance on the changes to Immigration Rules has been issued by the Home Office.

To be eligible for transfer to the UK, Dubs children must have been present in Europe before 18 January 2018 and it must be determined, following individual assessment, that it would be in the child’s best interests to come to the UK, rather than remain in their current host country, be transferred to another member state, or to be reunited with family outside Europe.

Dependent children of Dubs children will be granted leave to enter or remain for the same duration as their parent provided that certain requirements are met. A child means an individual who is under 18 years of age and for whom the person has parental responsibility.

The student support regulations in Wales make provision for a number of residency categories, but do not include those with Section 67 leave.

Changes to the designation of courses in England

Courses are designated such that eligible students may access support to undertake them. The Welsh Ministers must be assured that appropriate protections are in place for students and the public purse, and effective plans for the delivery of policy priorities, most notably widening access, have been made before a course is designated. The Welsh Ministers regulate providers based in Wales to ensure this. For higher education institutions in England, the regulatory regime of the UK Government provides similar assurances.

Until 2017, full and part-time undergraduate courses offered by publicly funded providers in England were designated by the student support regulations – so-called ‘automatic designation’. From 2017, full-time undergraduate courses offered by providers maintained or assisted by recurrent grants from the Higher Education Funding Council for England (‘HEFCE’) were automatically designated. Part-time undergraduate, postgraduate Master’s and doctoral courses offered by publicly funded providers are also automatically designated, as are postgraduate courses for

the purpose of providing Disabled Students' Grants. Providers who have courses which are not automatically designated can apply to have their courses designated – referred to as specific designation.

HERA makes provision for the establishment of the Office for Students ('OfS'). The OfS is changing the way in which courses in England are designated, which necessitates changes to the way in which they are designated by the Welsh Ministers. The OfS must establish and maintain a register of English higher education providers ('the Register'), which may be divided into different parts representing such different categories of registration as the OfS may determine. The OfS has commenced publishing the Register and is in the process of registering higher education providers for 2019/20 onwards.

The Register is in two parts: i) Approved (fee cap) providers and ii) Approved providers. Within the Approved (fee cap) part of the Register, providers are further classified according to whether they have an Access and Participation Plan or not. An Access and Participation Plan is a plan that complies with sections 30 to 32 of HERA. Providers with an Access and Participation Plan may charge higher fees, up to a legal maximum, than those without a plan, for certain qualifying courses. The UK Government will make available fee support to students accordingly. Providers on the Register are regulated by the OfS. All courses on the Register will be automatically designated by the UK Government.

Respondents should note that the proposals in this consultation documents do not affect the designation of courses providers in Wales.

The case for change

New category of eligible person

The rationale for making the change is to enable persons with section 67 leave to be considered as eligible students for the purposes of student support in Wales, and for home fee status and capped tuition fees to apply in the same way they do to other eligible students. This continues the longstanding policy of treating refugees and others with leave to enter or remain as eligible for student support, enabling them to undertake higher education with all the benefits that confers. In addition, by making this change, there will be parity in the treatment of this group by the Welsh Government and the UK Government, which is making the same change.

Changes to the designation of courses in England

Current policy is to automatically designate the full-time undergraduate courses of providers in England which are maintained or assisted by recurrent grants from HEFCE for courses which begin on or after 1 September 2017, and, for courses which began before then, automatically designate the courses of providers which are publicly funded. Part-time and postgraduate courses provided by publicly funded providers are automatically designated.

A new approach to implementing existing policy is required due to the introduction of the OfS Register.

Our proposal

New category of eligible person

It is proposed to include a new residency category in the student support regulations so that individuals granted leave to remain under Section 67 of the Immigration Act 2016 will be eligible students for the purpose of student support. This will include support for undergraduate, postgraduate Master's, and doctoral study.

A new category is required for those with Section 67 leave and their dependent children in order to make them eligible for student support. For the purposes of this eligibility category, a dependent child means a child who is under 18 years of age and for whom the person with Section 67 leave has parental responsibility.

Those granted Section 67 leave will have been refused refugee status or humanitarian protection. As such, they will not fall within one of the existing residency categories and a new category will be required.

The policy intention is that those granted leave should be eligible for undergraduate and postgraduate support from 2019, as well as home fee status and capped tuition fees. A number of statutory instruments will need amending as a result.

In addition to having section 67 leave, the student must be:

- ordinarily resident in Wales on the first day of the first academic year of the course; and
- lawfully ordinarily resident in the UK and Islands throughout the three year period immediately preceding the first day of the first academic year of the course.

Changes to the designation of courses in England

It is proposed that full and part-time undergraduate, postgraduate Master's and doctoral courses of a provider in England should be automatically designated by the Welsh Ministers if the provider is in the Approved (fee cap) category with an Access and Participation Plan or Statement, as should postgraduate courses for the purpose of providing Disabled Students' Grants. Access and Participation Plans set out how higher education providers will improve equality of opportunity for underrepresented groups to access, succeed in and progress from higher education. Access and Participation Statements must be published by all of the providers who wish to appear on the Register, and set out the commitment to supporting access by students from underrepresented groups. This provides policy continuity – these providers are subject to appropriate regulation, fee caps, and commit to widening participation.

Providers of higher education who are not in the Approved (fee cap) category will be able to apply to the Higher Education Funding Council for Wales (HEFCW) for 'specific designation' in accordance with established policy. If specific designation is granted, students ordinarily resident in Wales on these courses may be eligible for student support.

The table below summarises the proposed designation arrangements for own and validated provision. Validated provision is that provision delivered by a provider but where the award is validated by a provider with appropriate awarding powers.

| Own and validated provision* | | |
|---|--|-------------|
| Course type | Register | Designation |
| Full-time undergraduate, part-time undergraduate, postgraduate Master's, postgraduate Disabled Student's Grants, doctoral | Approved (fee cap) with access and participation plan | Automatic |
| | Approved (fee cap) with access and participation statement | Automatic |
| | Approved with access and participation statement | Specific |
| | Not on register | Specific |

* Providers with validated provision must register with the OfS and are no different to providers with their own Degree Awarding Powers.

The Welsh Government believes continuing to designate certain courses on a specific, course-by-course basis allows line of sight to what is being designated and helps mitigate the risk that may exist upon the introduction of a new regulatory system. There is an established policy for the specific designation of courses on a course-by-course basis. This will be kept under review, and provides adequate scope for a transition to a system based upon the automatic designation of all courses on the Register if and when appropriate.

Specific designation is usually on a course-by-course basis. We are considering whether, for new applications for specific designation, to designate all of a provider's eligible courses.

The student support, postgraduate Master's and doctoral regulations make provision for the designation of courses delivered by one provider on behalf of another – so-called 'franchised' provision – and the position requires updating appropriately. While the student support regulations do not make provision for part-time courses in this

respect, the relevant regulation only requires a provider to be publicly funded, which provides broad scope for provider-to-provider relationships.

The table below summarises the proposed designation arrangements for franchised provision.

| Franchised provision | | | |
|--|---------------------------------|------------------------|-------------|
| Course type | Franchisor (lead) | Franchisee (deliverer) | Designation |
| Full-time undergraduate, part-time undergraduate, postgraduate Master's, doctoral. | Approved fee cap with plan | On register | Automatic |
| | Approved fee cap with statement | On register | Specific |
| | Approved with statement | On register | Specific |

Any franchised provision in which either party is not on the Register will require specific designation. Arrangements where neither party is on the Register may be considered for specific designation.

The responsibility for provision in a franchise arrangement rests with the franchisor. The arrangements proposed above balance risk and operational practicality.

Further Education Institutions

The higher education courses of Further Education Institutions ('FEIs') in England are automatically designated by virtue of being publicly funded. We do not intend making special provision for this to continue in these new arrangements. If an FEI does not register, then the regulatory protections provided by HERA are absent (but recognising that some similar protections may be in place by virtue of an FEI's relationship with the UK Government) and therefore these courses should not normally be designated. FEIs will be delivering 1) their own degrees (if they have full Degree Awarding Powers, although we are not aware of any that do) 2) provision franchised from a HEI or 3) provision validated by a HEI. In cases 1 and 3 provision will be designated in accordance with the FEI's category of registration. In the case of 2, provision will be designated in accordance with the franchisor's category of registration.

In terms of operational impact (i.e. ignoring those FEIs who do not have any Welsh students), the number of FEIs with students who lose the automatic designation of their courses will be limited to those who choose not to register who have franchised

provision. These providers are able to apply to the Higher Education Funding Council for Wales for specific designation.

The number of Welsh part-time undergraduates in English FEIs is estimated to be in the low tens, spread across a slightly smaller number of institutions. The number of Welsh full-time undergraduates in English FEIs is estimated to be around 250 in around 60 institutions.

Transitional protection

As a matter of policy for students ordinarily resident in Wales, it has been determined that transitional protection will usually be required where a provider does not register. The course will require designation in order that students are assisted to complete their course – so-called ‘teach-out’. It is also proposed that students who may face a fee increase due to a provider’s category of registration are provided with the maximum amount allowable under regulations in order that they are able to complete their course.

Transitional protection will apply to existing cohorts. New students will not be supported at providers which do not register, unless the provider secures specific designation from HEFCW for new students.

Designation arrangements under a Tertiary Education and Research Commission for Wales are still being determined. The proposals consulted upon in Public Good and a Prosperous Wales – the next steps (WG33639) are unaffected by these proposals.

Impact

Under these proposals, those who are granted Section 67 leave may be eligible for student support. The Home Office have reported that during 2016 and 2017, 220 unaccompanied children arrived in the UK. Approximately 170 of these children were awarded either refugee or humanitarian protection. It is estimated that 480 children will arrive in the UK by 2020. Whilst it is not possible to predict the number of people granted Section 67 leave and who will become ordinarily resident in Wales, numbers are expected to be very low.

We believe that the changes proposed will encourage students from a variety of backgrounds to attend higher education and promote equality of access.

The Welsh Government do not believe that these proposals give rise to any negative or adverse impact on the opportunities for persons to use the Welsh language, and have no impact on treating the Welsh language no less favourably than the English language. However, we welcome your views.

Implementation

Following consultation and any changes that are made to the detail of these proposals, we intend to implement the new arrangements for the 2019/20 academic year. Subordinate legislation will be required and we anticipate laying draft regulations before the National Assembly for Wales in spring 2019.

A summary of responses to this consultation will be produced and published on or before the date on which legislation is laid.

Our questions

1. Do you agree that a new residency category for individuals granted leave to remain under Section 67 of the Immigration Act 2016 should be added to the regulations, to enable them to be eligible students for the purpose of student support?
2. Do you agree to the proposed changes for the designation of courses in England?
3. Please explain what, if any, impact you believe the proposed policy would have on opportunities for persons to use the Welsh language and on treating it no less favourably than the English language. In particular:
 - any positive or adverse effects of the proposed policy;
 - how the policy could be formulated or revised so that it would not have any adverse effects or so that it would have decreased adverse effects; and
 - how the policy could be formulated or revised so that it would have positive or increased positive effects.
4. Are there any other issues about our proposal that you would like to raise?

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: