

Explanatory Memorandum to the Education (Student Finance) (Fee Limit and Loan Amounts) (Miscellaneous Amendments) (Wales) Regulations 2024

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 and Welsh Language's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Finance) (Fee Limit and Loan Amounts) (Miscellaneous Amendments) (Wales) Regulations 2024. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and the Welsh Language
15 February 2024

Part 1

1. Description

1.1 The Education (Student Finance) (Fee Limit and Loan Amounts) (Miscellaneous Amendments) (Wales) Regulations 2024 (“the 2024 Regulations”) amend:

- the Higher Education (Amounts) (Wales) Regulations 2015;
- the Education (Student Support) (Wales) Regulations 2017; and
- the Education (Student Support) (Wales) Regulations 2018.

1.2 The 2024 Regulations will amend those regulations to:

- increase the full-time undergraduate tuition fee caps for academic years beginning on or after 1 August 2024;
- apply these caps to all qualifying students studying at a Welsh institution; and
- increase the amount of tuition fee loan for academic years beginning on or after 1 August 2024 accordingly.

1.3 Raising the tuition fee cap does not increase the tuition fee charged, which is a matter for the institution providing the course.

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

2.1 None.

3. Legislative background

3.1 Sections 22 and 42(6) of the Teaching and Higher Education Act 1998 and sections 5(3) and 55 of the Higher Education (Wales) Act 2015 provide the Welsh Ministers with the powers to make these regulations.

3.2 Sections 5(3) and 55 of the Higher Education (Wales) Act 2015 enable the Welsh Ministers to increase the tuition fee cap by prescribing a “maximum amount”. A fee limit specified within a higher education institution’s fee and access plan cannot exceed this maximum amount. The power to prescribe the maximum amount is framed broadly, with no express qualifications or limitations on how it may be exercised.

3.3 The functions of the Secretary of State in sections 22(1) and (2)(b) and (d) of the Teaching and Higher Education Act 1998 were transferred to the National Assembly for Wales, so far as they relate to making provision in relation to Wales, by section 44 of the Higher Education Act 2004 (c. 8). Section 44 of the Higher Education Act 2004 also provided that the functions in section 22(2)(a) of the

Teaching and Higher Education Act 1998 were to be exercised by the National Assembly for Wales concurrently with the Secretary of State, so far as they relate to making provision in relation to Wales. The Secretary of State's function in section 42(6) of the Teaching and Higher Education Act 1998, in so far as being exercisable in relation to Wales, was transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, article 2 and Schedule 1 (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).

- 3.4 The 2024 Regulations are subject to the Negative Procedure by virtue of section 42(2) of the Teaching and Higher Education Act 1998 and section 55(5) of the Higher Education (Wales) Act 2015. Only the first regulations to be made under section 22 of the 1998 Act and section 5(3) of the 2015 Act are subject to the Affirmative Procedure (by virtue of section 42(4) of the 1998 Act and section 55(3) and (4) of the 2015 Act respectively). As first regulations have been made in both cases, all subsequent regulations, including these, are subject to the Negative Procedure.

4. Purpose and intended effect of the legislation

- 4.1 The Higher Education (Wales) Act 2015 provides for a maximum fee level (the "tuition fee cap") to be charged to certain people ("qualifying persons") on certain courses ("qualifying courses"). A qualifying course, a description of which is provided for by regulations (the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015), is one which is captured by a provider's "fee and access plan", a plan which must be approved by the Higher Education Funding Council for Wales. A fee and access plan enables regulated providers to state how they will go about achieving certain policy objectives of the Welsh Ministers. If the plan is approved, providers may, for the courses in their plan, charge qualifying persons (also provided for by the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015) a fee up to the fee cap. The amount they will charge is specified in their fee and access plan.
- 4.2 Fee caps apply only to qualifying persons. These are students who have a connection to the UK and fall into three broad groups: those settled in the UK, EU nationals and certain others undertaking courses in Wales, and refugees and others who require humanitarian protection. Students may qualify for a tuition fee loan to meet the immediate cost of their education.
- 4.3 The level of tuition fee charged (up to the limit) to a student is a matter for the provider of a course.

- 4.4 From the 2017/18 academic year the UK Government increased the maximum fee that some institutions in England could charge students undertaking certain full-time undergraduate courses by £250 to £9,250 to reflect inflation over the preceding twelve months. No further increases have been made. This one-off increase was connected directly to the UK Government’s introduction of its Teaching Excellence Framework. As this was not Welsh Government policy, no increase was made in Wales. The Welsh Ministers make available a loan of up to £9,250 for those studying at institutions in England.
- 4.5 The 2024 Regulations amend existing regulations as outlined in paragraphs 4.6–4.9. Additional amendments to regulations relating to the amount of financial support for those undertaking undergraduate and doctoral study have been made via the Education (Student Finance) (Amounts) (Miscellaneous Amendments) (Wales) Regulations 2024.

Tuition fee caps

- 4.6 The maximum tuition fee caps that may be charged to qualifying persons on qualifying courses by a regulated provider in Wales will be increased for academic years beginning on or after 1 August 2024.
- 4.7 From 1 August 2024, the *per annum* tuition fee caps will be as follows (and will match those in England).

Existing and new tuition fee caps*		
	Existing	New
Full-time undergraduate	£9,000	£9,250
The final year of certain courses	£4,500	£4,625
Academic year(s) which are work placements/sandwich	£1,800	£1,850
Academic year(s) of courses provided in conjunction with an overseas institution	£1,350	£1,385
* The three lower fee limits are linked by policy to the full-time undergraduate fee cap at the rate of 50%, 20%, and 15% respectively.		

- 4.8 These changes to tuition fee caps will apply to all new and continuing students who are qualifying persons on qualifying courses. Whilst the 2024 Regulations will change the tuition fee cap a regulated provider may charge for a higher education course it provides, the level of tuition fee charged to a student is a matter for the provider, as is the timing of any changes.

Tuition fee loan

4.9 Tuition fee loans for eligible students will be increased to accommodate each of the new limits for academic years beginning on or after 1 August 2024.

5. Consultation

5.1 There is no statutory requirement to consult on these regulations and consultation has not been undertaken.

5.2 Establishing limits on the fees that may be charged by regulated providers is established policy. Increasing the value of these tuition fee caps is a direct response to the ongoing inflationary pressures experienced by regulated providers. These have now become too urgent to ignore, especially so when the Welsh Government's budget is under exceptional pressure and other options limited. In order that these new fee limits are put in place as soon as possible, so allowing providers to begin increasing their fees and reduce the financial pressures on them, it was decided to introduce for the 2024/25 academic year which begins on 1 August 2024. The limited time available to legislate for this change given the timing of the launch of the Student Finance Wales undergraduate application service in March 2024 did not allow for consultation to be undertaken. The Welsh Government is also mindful that these increases are significantly less than inflation, and so the real value of fees charged has fallen substantially over the last ten or more years. Finally, the Welsh Government notes that students ordinarily resident in Wales who study in England may already be charged these higher fee amounts.

5.3 The proposal has been discussed with key stakeholders. Discussions with key stakeholders have continued ahead of making these regulations.

PART 2 – REGULATORY IMPACT ASSESSMENT (RIA)

An RIA has been conducted for the 2024 Regulations.

6. Options

Option 1: Business as usual

6.1 If the 2024 Regulations are not made and tuition fee caps are not increased then the implications would be as follows:

- regulated providers of higher education, who have experienced significant cost inflation, would not be able to increase fees, reducing revenue and putting further pressure on their financial position. Calls for increased direct funding or an overhaul of the student finance system may intensify.
- Student debt would be unaffected. While there would be no direct (price) impact on participation, the ongoing reduction of resource available to providers of higher education may begin to impact the quality, and other aspects, of provision, making higher education less attractive.

Option 2: Make the Regulations

6.2 Making the 2024 Regulations ensures that the implications outlined above are avoided and that regulated providers are able to offset cost increases. The increase in the tuition fee caps will assist regulated providers of higher education in Wales in continuing to provide an outstanding education to their students. This is the preferred option.

6.3 No other options were considered. Students and the sector will recognise the amount of the increase as it will place regulated providers in Wales on an equal footing with English institutions, ending the longstanding discrepancy in the fee charging positions in each country.

7. Costs and benefits

Option 1: Business as usual

7.1 Leaving the existing student support regulations in place would mean no additional costs are incurred via the student support system. Providers will continue to experience cost pressures with no scope to increase fees charged to a majority of their students, and with a maximum fee level below that which providers in England may charge.

Option 2: Make the 2024 Regulations

- 7.2 Changes to policy have been prompted by the significant cost increases experienced by providers of higher education and the recognition that all opportunities to increase investment in public services must be considered in the current financial context. The pressure on the Welsh Government's budget for the 2024-25 financial year has resulted in budget reductions to the Higher Education Funding Council for Wales and reduces the scope for directly supporting providers. Increasing the tuition fee cap will enable regulated providers to charge higher fees that reflect some of the cost increases they have experienced.
- 7.3 The tuition fee regime has been in place in Wales since 2011. Inflation has been significant during this period. As such, the real value of the fee has fallen. Accelerating inflation in the last year or two has seen that trend exacerbated. CPIH increased by 29% between 2011 and 2022.
- 7.4 Any change to the tuition fee charged by a provider of a course may impact students at Welsh regulated institutions in the 2024/25 academic year. If fees are increased, an eligible student will be able to apply for an increased maximum fee loan of up to £9,250 (and similarly for the linked tuition fee caps). While a student has no upfront costs to meet, debt is likely to increase marginally as a result (£750 in total for a typical three-year undergraduate course). There is a low risk that this will push students to look elsewhere as the incentive to study in Wales (i.e. at a slightly lower cost) is removed.
- 7.5 A £250 increase represents a 2.8% increase in the headline tuition fee. This may not be of such significance to deter applications, particularly given demand for courses at English institutions which already charge this fee, and the long-term trend is one of increasing participation in higher education. Nevertheless, the last few years have been unusual as the cost-of-living crises has affected students quite substantially. As a result, students may become more sensitive to increases in costs.

Modelling the fee loan costs

- 7.6 The costs arising from increasing the maximum tuition fee loans are set out below. This assumes the increase will apply to all students.

Tuition fee loan costs for Welsh students studying in Wales

Academic year costs	<i>£millions</i>			
	2024/25	2025/26	2026/27	2027/28
Max fees £9,000	£297.8	£303.9	£308.0	£312.2
Max fees £9,250	£306.1	£312.3	£316.6	£320.9
Cost of increasing fee cap	£8.3	£8.4	£8.6	£8.7
RAB charge on extra cost	£0.7	£0.8	£0.8	£0.7

Assumes full loan to cover all Tuition Fee costs, for forecast number of students taking loans

Financial year costs	<i>£millions</i>			
	2024-25	2025-26	2026-27	2027-28
Max fees £9,000	£295.4	£300.8	£305.9	£310.0
Max fees £9,250	£299.4	£309.1	£314.4	£318.6
Cost of increasing fee cap	£4.0	£8.4	£8.5	£8.6
RAB charge on extra cost	£0.3	£0.7	£0.9	£0.7

Costs for Financial year 24-25 include 2023/24 costs at existing £9,000 cap

Assumes full loan to cover all Tuition Fee costs, for forecast number of students taking loans

7.7 The change to undergraduate full-time tuition fee support will increase the total student loan outlay in 2024/25 for Welsh Government from a projected £1,038m to £1,046m.

8. Competition Assessment

8.1 The making of the 2024 Regulations has no impact on the competitiveness of businesses, charities, or the voluntary sector.

9. Post-Implementation Assessment

9.1 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.