

Explanatory Memorandum to the Children Act 1989 (Higher Education Bursary) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Children Act 1989 (Higher Education Bursary) (Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Leighton Andrews
Minister for Children, Education and Lifelong Learning

Date:

1. Description

Under section 23C(5A) of the Children Act 1989 (“the 1989 Act”) , it is the duty of a local authority to pay a relevant amount (higher education bursary) to a former relevant child who pursues higher education in accordance with their pathway plan. Section 23C (5A) will be commenced on the same date or shortly after these Regulations are made.

These draft Regulations prescribe the relevant amount and the meaning of higher education. They also make provision as to how the relevant amount may be provided – as a lump sum or by instalments, for the suspension of payment should the pursuit of higher education be interrupted and for the recovery of any payment paid by mistake.

2. Matters of special interest to the Constitutional Affairs Committee

None.

3. Legislative background

Section 23C(5B) of the Children Act 1989 was inserted by section 21 of the Children and Young Persons Act 2008. It was commenced on 26 April 2010 and enables the appropriate national authority to, by regulations:

- (a) prescribe the relevant amount for the purposes of subsection (5A),
- (b) prescribe the meaning of ‘higher education’ for those purposes,
- (c) make provision as to the payment of the relevant amount and
- (d) make provision as to the circumstances in which the relevant amount (or any part of it) may be recovered by the local authority from a former relevant child to whom a payment has been made.

Under section 30A of the Children Act 1989, the appropriate national authority is, in relation to Wales, the Welsh Ministers.

Under section 104A of the Children Act 1989, the first regulations to be made by the Welsh Ministers in the exercise of the power conferred by section 23C(5B)(b) (prescribing the meaning of ‘higher education’) must not be made unless a draft of the regulations has been laid before and approved by resolution of the National Assembly for Wales, i.e. it is an affirmative procedure.

4. Purpose & intended effect of the legislation

The purpose of the regulations is to:

- a) set the amount of the higher education bursary;
- b) prescribe the meaning of "higher education" for the purposes of determining eligibility for the higher education bursary;
- c) set out what the arrangements should be in terms of the timing of payments of the higher education bursary and

- d) the circumstances in which payments can be withheld or recovered by the local authority.

5. The scale of the issue

We wish to ensure that those former relevant children who go on to higher education receive additional financial support from local authorities to address the financial disadvantage they face as a result of the lack of family support. The only issue is in relation to how many former young people pursue higher education.

Definitive numbers are unknown, partly because these statistics are not formally collected in Wales and partly because care leavers at 18 years old are entitled, as adults, to choose whether or not to reveal their previous status of being in care. Some former relevant children may therefore be in higher education but their status as a former relevant child is unknown to the institution. Any data collected would therefore have the caveat of potentially not capturing all care leavers. Choosing not to reveal previous care history is seen as an important part in the young person's development towards independence.

However, improving partnership working and communication links between looked after children's teams, leaving care teams and further and higher education institutions often means that support can be thoughtfully provided, as and when needed by the young person.

The scale of the issue will therefore be based on an estimated number of care leavers from Wales who successfully embark on, not just apply for, a course of higher education. It is estimated that some 10% of care leavers pursue higher education, i.e. approximately 12 a year.

6. Further explanation of how this number has been estimated

Looked after children, who were eligible for entry to higher education in this academic year (2010-11) were in Year 11 in 2006-7 and were the first young people to benefit from the support enabled through the RAISE (Raising the Attainment and Individual Standards of Education) Looked-after Children's (LAC) grant.

Data was provided directly to the Welsh Assembly Government by the local authorities as part of the monitoring process of the RAISE LAC grant. Of the 412 young people reported as being in Year 11 in 2006-7, 33 (8%) gained 5 or more GCSEs at grades A*- C and therefore had the potential to pursue first further education then higher education. As the RAISE grant has continued more looked after children, on average 48 young people, are now reported as gaining 5 GCSEs grades A*-C. Further interrogation of the data suggests about a quarter of these apply and are accepted for study at a HE level. This trend is

positive and encouraging but statistically represents a small percentage of looked after children who pursue higher education.

Official statistics refer to a slightly different cohort of young people and include those who ceased to be looked after, who are aged 16 or over and who have achieved 5 GCSEs or more at A*-C grades. This averages 54 young people over the last 3 years, i.e. about 9% of the population and concurs with the RAISE data as those who would be eligible.

Therefore our best estimates of those eligible and ready to study a higher education course is 12 of those former relevant children per year who gained 5 or more A*-C grades at GCSE.

This estimate translates to an overall budget requirement of approximately £24,000 in total, assuming that all those eligible will choose to reveal their former care status and apply for the HE bursary. Incurred cost to local authorities is therefore estimated as between £2,000 to £8,000, with some local authorities not having to provide this bursary at all.

7. Those affected

Former relevant children who pursue a course of higher education on or after 1 September 2010 would benefit.

The expression "former relevant children" is defined in section 23C (1) of the Children Act 1989 (the "1989 Act") and includes those who are over 18 and who were either relevant children or eligible children within the meaning of the 1989 Act immediately before their 18th birthday.

8. Objectives

The primary objective is to ensure former relevant children do not leave university with disproportionately large debts compared to their peers. A secondary positive effect may be to encourage more participation in higher education by former relevant children.

9. Risks if legislation is not made

Finance should not be a barrier to the more vulnerable achieving their potential. On leaving HE, former relevant looked after children will continue to be more disadvantaged than their peers. If this leads to fewer care leavers obtaining degrees, society will then also lose the economic and social benefits of these former relevant children obtaining degrees.

10.Improving access/ outcomes for disadvantaged/ excluded sections of society

The provision of a higher education (HE) bursary may encourage care leavers to realise their aspirations despite the potential for incurred debt. It may also encourage care leavers to declare their previous status and subsequently consent to sharing personal information between corporate parents and HE institutions. Good communication will further enable coordinated support and monitoring between the corporate parent and the higher education establishment, just as parents would have an awareness of issues surrounding their child whilst attending university.

Former relevant children are one of the most disadvantaged groups in society. The legislation will improve access and aid aspiration for those wishing to pursue higher education. This legislation also contributes to the many facets of our Child Poverty Strategy that seeks to address the needs of those who are disadvantaged.

5. Consultation

The details of a consultation that has been undertaken are included in the Regulatory Impact Assessment.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

We want to redress the financial disparity between young people leaving care and their peers, given the barriers that they face when going on to HE.

We considered:

The relevant amount

Options were

- not to provide a bursary at all but this led to the current inequitable position.
- an amount of £2,000 as the amount identified in the research reported in Going to University from Care, Jackson, Ajayi and Quigley (2005).
- an amount in excess of £2,000 but this could not be justified given the current economical climate.

The timing and method of payment

We considered payment at the start, during and end of the course. We also considered the payment as a lump sum or by instalment and when those instalments should be. As the circumstances surrounding former relevant children vary from individual to individual, we concluded that a flexible approach should be prescribed in the Regulations, to be determined by consideration of the young person's wishes. Written into the Regulations are specific

commencement and final payment restrictions to ensure the young person benefits from all of the funding during the time of study.

The definition of 'higher education'

To be as inclusive as possible and given the extensive number of higher education courses becoming increasingly available, the definition of 'higher education' for the purpose of the higher education bursary includes all higher education courses for which student support is available from the Welsh Ministers under regulations made under section 22 of the Teaching and Higher Education Act 1998, provided that the course is of at least 2 academic years' duration.

It is understood that young people with a background in care may need to study on a part-time or a full time basis so both of these options are included in the Regulations.

The option to provide a bursary as a lump sum or as instalments

Enabling a flexible arrangement for payment of the HE bursary ensures that the local authority will enable the young person to have a say in the effective management of his/her personal finances.

The inclusion of timescales for payment of the first and final instalments ensures the young person will receive all of the funding during the period of study.

Recovery of payment

Although it is unlikely that a HE bursary would be paid in error, there may be circumstances where this may unfortunately occur. Making provision enabling the local authority to recover any payment made by mistake therefore safeguards against a wrongful spend of the public purse.

Costs

The average annual cost to the Welsh Assembly Government is £24,000 and is based on an average of 12 former relevant children receiving a HE bursary of £2,000.

Funding for the academic year 2010-11 has been made available to local authorities in the £1 million RAISE LAC grant. This has been distributed using the Standard Spending Assessment formula that was agreed with the Welsh Local Government Association. At no time over the 5 years of tracking RAISE data has the number of care leavers who had the potential to pursue a HE course, exceeded the amount of allocated RAISE LAC funding to that local authority.

RAISE LAC funding for 2011-12 has been ring-fenced within the School Effectiveness Grant (SEG) and is projected in the SEG for 2012 – 2014.

Benefits

Over the working life the productivity of graduates over non-graduates is, on average, higher by at least £190,000. In addition, there are demonstrable wider benefits to society from higher education. Graduates are more likely to hold better quality jobs, lead healthier lifestyles and have greater involvement in their children's education.

In order for the benefits of the introduction of a higher education bursary to outweigh the costs it would require only around 5 former care leavers who currently do not obtain degrees to do so – an average of less than 1 former care leaver per local authority.

The increase in lifetime productivity of someone who, as a result of a policy intervention, gains a university degree is estimated using the method below:

- Data from the Labour Force Survey on lifetime earnings of graduates compared with individuals with 2 or more A-Levels only, controlling for such background characteristics that affect earnings such as age, sex, and ethnicity. This includes the opportunity cost earnings foregone by graduates in the course of their studies.
- 3.5% discount rate for the first 30 years, 3.0% thereafter as per HM Treasury's Green Book (2003). The discount has been included in the calculation so that lifetime earnings are given Net Present Value terms.
- 25 Non-wage labour costs, the additional cost of employment.

Summary

Funding to local authorities to support this legislation has been arranged from within the RAISE LAC grant of 2010-11, followed by the School Effectiveness Grant (SEG)2011 -14 .

The payment of a bursary to former relevant children who pursue a HE course may lead more care leavers to achieve their potential and aspiration to gain HE qualifications. The HE bursary will reduce the disparity compared with their peers that is currently evident in the burden of debt.

Consultation

A consultation has taken place between 20 October 2010 and 15 December 2010 (8 weeks in total). A longer consultation event was not possible if the higher education bursary is to be made available to former relevant children in academic year 2010-11. The consultation was made available to the public via the internet and several key stakeholders/organisations were notified separately on more than one occasion, for their valued opinion as front line services.

9 responses were received from a wide variety of interest:

1. Assistant Director of Children Services;
2. Student Services at Swansea University;
3. A Leaving Care Team;
4. A care leaver;
5. Buttle UK, the Trust who first commissioned the research 'Going to University from Care';
6. Bridgend Local Authority;
7. A Looked After Children's Education Coordinator;
8. The Children's Commissioner for Wales; and
9. HEFCW – The Higher Education Funding Council for Wales.

The consultation requested opinions on the proposed definition of higher education, 7 out of 9 (78%) responses agreed that the proposed definition of higher education was the right one for purpose.

There was agreement with the suggested flexibility for the timing and type (by lump sum or instalment) of the payments to be in accordance with the young person's Pathway Plan and wishes.

The inclusion of a clause on recovery of payment was agreed with by 6/9 of the responses with comments referring to the need to sensitively handle any recovery of payments made in error.

Of those respondents who disagreed with the proposals or were unsure about what the regulations did, the overriding concern was about guaranteeing maximum flexibility in relation to the amount and timing of payments. This suggests some misunderstanding of the scope for flexibility already provided for within the regulations. It is therefore intended to provide further clarification within a guidance document.

- **No changes/amendments were made to the legislation as a result of the consultation.**

Competition Assessment

There will be no effect on business, charities and/or the voluntary sector.

Post implementation review

The subordinate legislation will be reviewed as part of the evaluation of the School Effectiveness Grant (SEG). Local authority self evaluation will form part of the evaluation. As the SEG is newly created (January 2011) details are as yet unavailable. The SEG is projected to 2014, when it will be appropriate to carry out a 3 year review that should include a review of the implementation of the HE Bursary regulations.