

EXPLANATORY MEMORANDUM TO

THE CHILDREN ACT 1989 (HIGHER EDUCATION BURSARY)(ENGLAND) REGULATIONS 2009

2009 No. 2274

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments and the Select Committee on Statutory Instruments regarding the Children Act 1989 (Higher Education Bursary)(England) Regulations 2009, which are laid in draft for approval by both Houses of Parliament.

2. Description

2.1 These regulations deal with the payment by local authorities of the higher education bursary to former relevant children who go on to pursue a course of higher education. 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.

2.2 The purpose of the regulations is to:

2.2.1 set the amount of the higher education bursary;

2.2.2 prescribe the meaning of "higher education" for the purposes of determining eligibility for the higher education bursary;

2.2.3 set out what the arrangements should be in terms of the timing of payments of the higher education bursary and

2.2.4 the circumstances in which payments can be withheld or recovered by the local authority.

2.3 The Government wishes 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 Children and Young Persons Act 2008 (the "2008 Act") amends section 23C of the 1989 Act by requiring local authorities to pay a bursary to former relevant children who undertake a course of higher education as defined by the Teaching and Higher Education Act 1998.

2.4 The Regulations provide that the higher education bursary should be £2,000. The amount is based on evidence¹ that former relevant children finish higher education with an average of £2,000 more debt than their peers.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

¹ (*Going to University from Care: Jackson, Ajayi and Quigley (2005)*)

4.1 Section 21 of the 2008 Act adds to the duties that the local authority owe to former relevant children by amending section 23C of the 1989 Act to require local authorities to pay the “relevant amount” (the higher education bursary) to those who go on to pursue higher education in accordance with their pathway plan. This new duty is in addition to their duty to provide assistance for education and training under section 23C(4) of the 1989 Act. These regulations are made under sections 23C(5B) and 104(4) of the 1989 Act to prescribe the amount of the higher education bursary; the meaning of higher education; the timing of payments; and circumstances in which payments can be withheld or recovered.

5. Territorial Extent and Application

5.1 This instrument applies to local authorities in England only.

6. European Convention on Human Rights

6.1 The Regulations raise no ECHR issues.

7. Policy background

7.1 Government policy is to increase participation in higher education and to widen participation, so that more people from backgrounds that are currently under represented have an opportunity to participate. This particularly includes young people who were looked after children. Currently only 7% of former relevant children aged 19 go on to higher education².

7.2 The response to the Care Matters green paper consultation³ showed there was overwhelming support to tackle the financial disadvantage that students from a care background face. As research showed that these young people finish higher education with an average of £2,000 more debt than their peers, the Government placed before Parliament legislative proposals to require local authorities to pay a higher education bursary to former relevant children who undertake a course of higher education.

7.3 Some local authorities already pay a grant to care leavers who go on to higher education under section 23C of the 1989 Act, which sets out the powers and duties of local authorities in relation to former relevant children. Section 23C(4)(b) places the local authority under a duty to give assistance “to the extent that his welfare and his educational or training needs require it”. Such assistance may take the form of:

7.3.1 Contributing to expenses incurred by the person in question living near the place where he is or will be receiving education or training; or

7.3.2 Making a grant to enable him to meet expenses connected with his education or training (section 24B(2) of the 1989 Act).

7.4 However, the level of support provided varies widely between authorities. Some do not provide any financial support to former relevant children in relation to higher education. Section 21 of the 2008 Act creates a minimum entitlement for care leavers who undertake a course of higher education.

7.5 The regulations will be of interest to local authorities and institutions offering courses in higher education but are not likely to generate much media interest.

8 Consultation outcome

² Children looked after in England (including adoption and care leavers) year ending 31 March 2008

³ Transforming the Lives of Children and Young People in care

8.1 Consultation on the draft regulations ran from 6 April to 1 June 2009. 23 responses were received in total, which included 14 from local authorities, 4 from care leavers who were either undertaking a course in higher education or were thinking about going to university, and 1 from a voluntary sector organisation.

8.2 The consultation asked whether the proposed definition of higher education for these regulations was the right one for this purpose. Of the 23 respondents who answered this question, 21 (91%) said that the regulations were clear in what they expected and 2 (9%) were unsure. The consultation also asked whether the proposed arrangements for payments to give the right level of flexibility for local authorities to decide when payments should be made. Of the 22 respondents to this question 12 (55%) said that they were right, 4 (18%) said that they were not and 6 (27%) were not sure. The consultation asked specifically about the timing of the payment if the local authority paid it in one lump sum – i.e. should it be paid at the beginning of the course. Of the 23 responses, 7 (30%) agreed, 11 (48%) disagreed and 5 (22%) were unsure. The consultation went on to ask whether, if paid in instalments, the final instalment should be paid no later than four academic years after the start of the course. Of the 22 responses, 15 (68%) agreed, 4 (18%) disagreed and 4 (14%) were not sure. Finally the consultation asked whether the proposed circumstances on which the relevant amount can be recovered were right. Of the 20 responses, 9 (45%) agreed, 3 (15%) disagreed and 8 (40%) were unsure.

8.3 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. We have therefore amended the explanatory note to make clear that there is wide scope for flexibility on timings of payments and the amount.

9 Guidance

9.1 The planned revision of the Children Act 1989 guidance will set out what local authorities should take into account in relation to the higher education bursary, including in relation to the timing and amount of payments.

10 Impact

10.1 An Impact Assessment is attached to this memorandum.

10.2 We do not expect that paying the higher education bursary will have any significant cost implications for local authorities. Between 2008 and 2011 the Government is making £1 million available per annum to meet the expected costs of providing this bursary based on the assumption that around 10% of former relevant children will go on to higher education each year.

11 Regulating small business

11.1 The legislation does not apply to small businesses or voluntary sector organisations.

12 Monitoring and review

12.1 We propose to monitor the impact of the higher education bursary through the annual Ministerial stock-take of the reforms implemented through Care Matters to assess the impact on outcomes for care leavers.

13 Contact

Michael Allured at the Department for Children, Schools and Families, Tel: 0207 783 8081 or e-mail: michael.allured@dcsf.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: DCSF	Title: Impact Assessment of The Children Act 1989 (Higher Education Bursary) (England) Regulations 2009	
Stage: Final	Version: 1	Date: 12 June 2009
Related Publications: 'Care Matters: Time for Change' and Children and Young Persons Act 2008 (section 21)		

Available to view or download at:

<http://www.dcsf.gov.uk/publications/timeforchange/>

Contact for enquiries: Michael Allured

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What is the problem under consideration? Why is government intervention necessary?

Due to the absence of family support, former looked after children leave university with an average of £2000 more debt than their peers. This is inequitable. If this leads to fewer care leavers obtaining degrees society would then also lose the economic and social benefits of these former looked after children obtaining degrees.

What are the policy objectives and the intended effects?

The primary objective is to ensure former care leavers do not leave university with disproportionately large debts compared to their peers and to ensure they receive more support so that they do not drop out of University before completing their course. A secondary positive effect may be to encourage participation in higher education by former care leavers.

What policy options have been considered? Please justify any preferred option.

We considered a number of ways of delivering the bursary, including a) statutory guidance, b) a ring-fenced grant, c) delivering the bursary through the Student Loans Company and d) imposing a new statutory duty on local authorities. Option d) was the preferred option for delivering the entitlement with a minimum of bureaucracy. The Regulation making power in s21(2) will enable us to specify the exact nature of financial support, including the minimum amount of bursary, eligibility criteria, payment schedule, conditions of repayment and circumstances in which instalment payments would stop.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Paying an HE bursary is a commitment from 'Care Matters: Time for Change', which will be monitored via a published annual stocktake and OfSTED.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Delyth MorganDate: 12/06/09

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Costs to LAs include the bursary payment itself, and the associated administration costs. The former are estimated to come to £893,200 in the first year and £982,520 in the second year, based on the continuation of a trend increase of care leavers entering HE of 10% p.a. The Government will provide £1 million p.a. to LAs.			
	One-off (Transition) Yrs				
	Average Annual Cost (excluding one-off)				
	£ 1,000,000		Total Cost (PV)	£ 1,966,200	
Other key non-monetised costs by 'main affected groups'					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' The benefits of the proposal will outweigh the costs if it results in 5 additional care leavers obtaining degrees, an average of less than 1 per LA. This estimate is conservative, as it considers only the economic, and not the wider social, benefits of higher education.			
	One-off Yrs				
	Average Annual Benefit (excluding one-off)				
	£		Total Benefit (PV)	£ not estimated	
Other key non-monetised benefits by 'main affected groups' The proposal will redress the inequity that former care leavers graduate with disproportionately larger debts than their peers.					

Key Assumptions/Sensitivities/Risks Funding will provide some incentive for young people to achieve their potential and ensure they no longer leave university with disproportionately more debt than their peers. Use of time lagged data may mean distribution of resources to LAs in any one year might not reflect numbers going to HE.

Price Base Year	Time Period Years 2	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		England	
On what date will the policy be implemented?		September 2009	
Which organisation(s) will enforce the policy?			
What is the total annual cost of enforcement for these organisations?		£	
Does enforcement comply with Hampton principles?		Yes/No	
Will implementation go beyond minimum EU requirements?		Yes/No	
What is the value of the proposed offsetting measure per year?		£	
What is the value of changes in greenhouse gas emissions?		£	
Will the proposal have a significant impact on competition?		Yes/No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background and rationale

1. Outcomes for looked after children are strikingly poor. For example, in 2007:
 - 13% of looked after children gained five GCSEs A*-C compared to 62% of all children.
 - Only 64% of looked after children achieved at least 1 GCSE at A*-G compared to 99% of all children.
 - 46% of looked after children achieved level 4 in English at Key Stage 2 compared to 80% for all children.
 - 44% of looked after children achieved level 4 in mathematics at Key Stage 2 compared to 77% of all children.
 - 29% of former care leavers were not in education, employment or training at 19 compared with 13% of all young people.
 - Only approx 6% of care leavers go on to university.
2. The factors that contribute to these poor outcomes are complex, reflecting the children's pre-care experiences and personal needs. For example:
 - 62% of children looked after are in care because of abuse or neglect, which has a profound effect on a child's ability to engage in education.
 - 45% of 5-17 year olds in care are assessed as having a mental health disorder according to a 2003 ONS survey. This is four times higher than for other children.
 - 28% of looked after children have a statement of special educational needs compared to 3% of the population and if those on school and school action plus are taken into account the number with some form of special needs is around 60%.
3. The Children and Young Persons Act 2008 carries forward the proposal in the Care Matters green and white papers to require local authorities to pay a minimum bursary of £2,000 to care leavers who go on to a course of higher education. This amount is based on research (Going to University from Care, Jackson, Ajayi and Quigley (2005)) that care leavers leave university with an average of £2,000 more debt than their peers. The bursary is intended to ensure that care leavers do not leave university with significantly higher debt than their peers.

4. A potential additional positive consequence of reducing the higher level of debt associated with HE for care leavers may be to encourage more of them to obtain degrees.

Options considered

5. Given the barriers that young people leaving care face going on to HE the Government wanted to redress the financial disparity between them and their peers. The only option which was considered was the payment of a bursary. We considered a number of methods of delivering this commitment. These were via statutory guidance, a ring-fenced grant, delivering the bursary through the Student Loans Company (SLC) or imposing a new statutory duty on local authorities.

Statutory guidance (option a)

6. We considered using section 7 Local Authority Social Services Act 1970 on the duty to provide grant under sections 23C (4) (b) and 24B (2) Children Act 1989. However the duty in s23C (4) is qualified by the expression “to the extent that his welfare...requires it”. In order to deliver the White Paper commitment (endorsed by responses to the extensive Green Paper consultation) we therefore needed to introduce a specific duty on local authorities.

Ring-fenced grant (option b)

7. Establishing a ring-fenced grant would run counter to policy on local government finance and would involve additional administrative burdens for local authorities who would have to establish special arrangements to apply for it. This cannot be justified given the relatively small number of care leavers involved.

Delivering the bursary through the SLC (option c)

8. This would have required the SLC to develop a mechanism to identify care leavers. In addition some care leavers may be reluctant to share information with other agencies about their care leaving status and may therefore be deterred from applying for the bursary.

A duty on local authorities to pay the bursary with associated regulations (option d)

9. This option delivers the Government’s commitment to provide a specific entitlement to a bursary for all former relevant children who pursue a course of higher education with minimal bureaucracy and is by far the most straightforward option for delivering the Government’s policy objective.

10. Section 23C of the Children Act 1989 sets out a local authority’s functions in relation to former relevant children, (i.e. those formerly looked after by the local authority). These functions include, in particular, giving the former relevant child financial assistance in connection with his education and training. It does not, however, require a local authority to provide financial assistance specifically in the form of a bursary payment to support higher education. Section 21 of the Children and Young Persons Act 2008 amends Section 23 by inserting new subsections (5A) to (5C) in Section 23C and places a new duty on local authorities which requires them to make financial payments to all care leavers who go on to pursue a course of higher education as set out in their Pathway Plan. The bursary therefore simply becomes a component part (where relevant) of the general financial assistance, including in relation to education and training, which all local authorities must already provide as part of their duties to former relevant children. Local authorities will therefore use established budgetary routes in order to deliver this bursary as part of the young person’s wider support package. Funding for the bursary has been added to local authorities’ area based grant.

11. Section 21 (2) takes a power for the appropriate national authority to make regulations which a) prescribe the relevant amount of bursary, b) prescribe the meaning of “higher education” to define eligibility, c) make provision about how the payment should be made and d) set out the circumstances in which payment of the relevant amount of bursary may be recovered.

Costings

12. The costs of introducing the requirement to pay a bursary will be a minimum of £2,000 for each former relevant child who undertakes a course of higher education. The average annual costs based on numbers of care leavers going to HE is based on 7% of 5,800 = 406. The funding to cover the cost of this entitlement over which has been allocated to local authorities via area based grant assumed 10% increase in numbers going to HE each year over the CSR period (£893,200 in year 1 and £982,520 in year 2), plus an additional amount to cover associated administration costs.

Benefits

13. The introduction of the bursary will redress the inequity that former care leavers graduate with an average of £2000 more debt than their peers.
14. Over their working life the productivity of graduates is, on average, higher by at least around £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.
15. In order for the benefits of the introduction of a LA 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.
16. 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 the 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 of earnings foregone by graduates in the course of their studies (DIUS internal analysis).
 - 3.5% discount rate for the first 30 years, 3.0% thereafter as per HMT’s *The Green Book (2003)*. The discount rate has been included in the calculation so that lifetime earnings are given in NPV terms (DIUS internal analysis).
 - 25% Non-wage labour costs, the additional cost of employment
17. Evidence based on research by Sonia Jackson (Going to University from Care) suggests that the more support, including financial, that former relevant children had the greater their chances of success. It showed that students who did not receive enough financial support from their local authority often took on too much paid work to the detriment of their academic progress. It also prevented them from engaging fully in university life. Yet most participants in the Jackson study greatly enjoyed their time at university and felt it had given them an opportunity to mature and acquire social and life skills and that they were much better off than other care leavers.
18. Over the period of time during which the research was carried out there were two major pieces of legislation, namely the Children (Leaving Care) Act 2000 and the Children Act 2004, which impacted on looked after children and care leavers (i.e. relevant and former relevant

children). The Children (Leaving Care) Act, which amended the 1989 Children Act, placed a duty on local authorities to provide financial support and accommodation for young people in full-time education. The research found that of the three cohorts studied, Cohort 3 fared considerably better than Cohort 1, who were not covered by the provisions in the Children (Leaving Care) Act requiring local authorities to provide financial assistance to the extent that their welfare requires it. The drop-out rate was considerably lower for Cohorts 2 and 3. Only one Cohort 3 student (2%) decided to leave in the first year compared with eight (17%) in Cohort 1.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

Title: Bursary for care leavers following a course of higher education

Description of policy

Currently only around 6% of care leavers pursue a course of higher education. The payment of a bursary to care leavers (former relevant children) may lead more care leavers to pursue a course of higher education and ensure that they do not leave university with a significantly greater burden of debt than their peers.

It is intended that the regulations setting out the arrangements for paying the bursary will be in place for September 2009.

The DCSF statistical first release Children looked after in England – including adoption and care leavers to March 31 2008 showed that 65% of care leavers were in education, employment or training compared to 91% of their peers.