

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
22 April 2013

Meeting time:
13:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

CLA241 – The National Assistance (Sums for Personal Requirements) and National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2013

Negative Procedure. Date made: 15 March 2013. Date laid: 18 March 2013.
Coming into force date: 8 April 2013.

CLA242 – The National Assistance and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2013

Negative Procedure. Date made: 15 March 2013. Date laid: 18 March 2013.
Coming into force date: 8 April 2013.

CLA243 – The National Assistance (Assessment of Resources) (Miscellaneous Amendments) Regulations 2013

Negative Procedure. Date made: 15 March 2013. Date laid: 18 March 2013.
Coming into force date: 8 April 2013.

CLA244 – The Council Tax (Additional Provisions for Discount Disregards) (Amendment) (Wales) Regulations 2013

Negative Procedure. Date made: 18 March 2013. Date laid: 18 March 2013.
Coming into force date: 8 April 2013.

CLA246 – The Children (Secure Accommodation) (Amendment) (Wales) Regulations 2013

Negative Procedure. Date made: 19 March 2013. Date laid: 20 March 2013.
Coming into force date: 18 April 2013.

CLA247 – The University of Wales Newport Education Corporation (Dissolution) Order 2013

Negative Procedure. Date made: 19 March 2013. Date laid: 20 March 2013.
Coming into force date: 11 April 2013.

CLA248 – The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc) (Wales) (Amendment) Regulations 2013

Negative Procedure. Date made: 21 March 2013. Date laid: 22 March 2013.
Coming into force date: 12 April 2013.

CLA249 – The National Health Service (Welfare Reform Consequential Amendments) (Wales) Regulations 2013

Negative Procedure. Date made: 21 March 2013. Date laid: 22 March 2013.
Coming into force date: 12 April 2013.

CLA250 – The Firefighters' Pension Scheme (Wales) (Contributions) (Amendment) Order 2013

Negative Procedure. Date made: 26 March 2013. Date laid: 27 March 2013.
Coming into force date: 1 April 2013.

CLA251 – The Firefighters' Pension (Wales) Scheme (Contributions) (Amendment) Order 2013

Negative Procedure. Date made: 26 March 2013. Date laid: 27 March 2013.
Coming into force date: 1 April 2013.

CLA252 – The Buildings Regulations &c. (Amendment) (Wales) Regulations 2013
Negative Procedure. Date made: 26 March 2013. Date laid: 28 March 2013.
Coming into force in accordance with regulation 1(4)

Affirmative Resolution Instruments

3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA245 – The Council Tax (Discount Disregards) (Amendment) (Wales) Order 2013 (Pages 1 – 8)
Negative Procedure. Date made: 18 March 2013. Date laid: 18 March 2013.
Coming into force in accordance with regulation 1.

CLA(4)–11–13(p1) – Report
CLA(4)–11–13(p2) – Order
CLA(4)–11–13(p3) – Explanatory Memorandum

Composite Negative

CLA240 – The Education (Student Loans) (Repayment) (Amendment) Regulations 2013 (Pages 9 – 23)
Composite Negative Procedure. Date made: 13 March 2013. Date laid: 14 March 2013. Coming into force date: 6 April 2013.

CLA(4)0–11–13(p4) – Report
CLA(4)0–11–13(p5) – Regulations
CLA(4)0–11–13(p6) – Explanatory Memorandum

4. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person.

Consideration of Final Report on the Short Inquiry into the Council Tax Reduction Scheme Regulations (Pages 24 – 75)

5. Evidence in relation to the Review of Welsh Ministers Powers in UK Bills

(Indicative Time 2pm)

Rt Hon Carwyn Jones AM, First Minister;
Sarah Canning, Constitutional Affairs and Parliamentary Legislation Team (CAPL)

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=1533>

6. Evidence in relation to the Social Services (Wales) Bill

(Indicative time 2.50pm)

Gwenda Thomas AM, Deputy Minister for Social Services;
Julie Rogers, Deputy Director Social Services Legislation & Policy Division;
Steve Milsom, Deputy Director Policy and Strategies;
Mike Lubienski , Senior Lawyer Social Care Team

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=5664>

7. Paper to note

CLA(4)–11–13(p8) – Letter from Mick Antoniw AM, Member in Charge of the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill

Constitutional and Legislative Affairs Committee

CLA(4)-11-13

CLA245 – The Council Tax (Discount Disregards) (Amendment) (Wales) Order 2013

Procedure: Negative

The Council Tax (Discount Disregards) Order 1992 (“the 1992 Order”) prescribes conditions which must be fulfilled by severely mentally impaired persons and various persons of other descriptions in order for them to be disregarded for the purposes of council tax discounts which are prescribed for by section 11 of the Local Government Finance Act 1992.

The 1992 Order prescribes that to be disregarded for the purposes of council tax discounts a severely mentally impaired person must be in receipt of a qualifying benefit. Article 2(a) and (b) amends the conditions of the 1992 Order so that the daily living component of personal independence payment is included within the definition of a qualifying benefit.

Article 2(c) further amends the 1992 Order to include universal credit, which comprises of an amount paid to a person due to that person’s limited capability for work or limited capability for work and work related activity, within the definition of a qualifying benefit.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument:

Merits Scrutiny

The following point is identified for reporting in respect of this instrument .

The Order adds two benefits to the list of benefits that justifies disregarding persons for council tax purposes. It might therefore, perhaps, be expected that this would add to the number of persons to be disregarded, and so would reduce the income of local authorities. No explanation is given in the Explanatory Memorandum and no Regulatory Impact Assessment has been prepared for this Order. Therefore there is no analysis available of the effect of this Order on local authorities.

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.]

DRAFT SI REPORT

Legal Advisers
Constitutional and Legislative Affairs Committee

March 2013

2013 No. 638 (W. 71)

COUNCIL TAX, WALES

**The Council Tax (Discount
Disregards) (Amendment) (Wales)
Order 2013**

EXPLANATORY NOTE

(This note is not part of the Order)

The Council Tax (Discount Disregards) Order 1992 (“the 1992 Order”) prescribes conditions which must be fulfilled by severely mentally impaired persons and various persons of other descriptions in order for them to be disregarded for the purposes of council tax discounts which are prescribed for by section 11 of the Local Government Finance Act 1992 (“the 1992 Act”).

The 1992 Order prescribes that to be disregarded for the purposes of council tax discounts a severely mentally impaired person must be in receipt of a qualifying benefit. Article 2(a) and (b) amends the conditions of the 1992 Order so that the daily living component of personal independence payment is included within the definition of a qualifying benefit.

Article 2(c) further amends the 1992 Order to include universal credit, which comprises of an amount paid to a person due to that person’s limited capability for work or limited capability for work and work related activity, within the definition of a qualifying benefit.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

2013 No. 638 (W. 71)

COUNCIL TAX, WALES

**The Council Tax (Discount
Disregards) (Amendment) (Wales)
Order 2013**

Made 18 March 2013

Laid before the National Assembly for Wales
18 March 2013

*Coming into force in accordance with
regulation 1*

The Welsh Ministers make the following Order in exercise of the powers conferred upon the Secretary of State by paragraph 2 of Schedule 1 to the Local Government Finance Act 1992⁽¹⁾ and now vested in them⁽²⁾.

Title, commencement and application

1.—(1) The title of this Order is the Council Tax (Discount Disregards) (Amendment) (Wales) Order 2013.

(2) Subject to paragraph (3), this Order comes into force on 8 April 2013.

(3) Article 2(c) comes into force on 29 April 2013.

(4) This Order applies in relation to Wales.

(1) 1992 c.14.

(2) Functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1. Those functions were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

Amendment of the Council Tax (Discount Disregards) Order 1992

2. Paragraph (2) of article 3 of the Council Tax (Discount Disregards) Order 1992⁽¹⁾ is amended as follows—

- (a) at the end of sub-paragraph (k)⁽²⁾ for “.” substitute “;”;
- (b) after sub-paragraph (k) insert—
 - “(l) the standard or enhanced rate of the daily living component of personal independence payment under section 78(3) of the Welfare Reform Act 2012⁽³⁾”;
- (c) after sub-paragraph (l) insert—
 - “(m) universal credit under Part 1 of the Welfare Reform Act 2012 the calculation of which includes an amount under regulation 27(1) of the Universal Credit Regulations 2013⁽⁴⁾ in respect of the fact that the person in question has limited capability for work or limited capability for work and work-related activity or would include such an amount but for regulation 27(4) or 29(4) of those Regulations.”.

Lesley Griffiths

Minister for Local Government and Government
Business, one of the Welsh Ministers

18 March 2013

(1) S.I. 1992/548. Paragraph (2) has been amended by S.I. 1994/543; S.I. 1995/619; S.I. 1996/636 and S.I. 1997/656.
(2) Paragraph (k) was inserted by S.I. 1996/636.
(3) 2012 c.5.
(4) S.I. 2013/376.

The Council Tax (Discount Disregards) (Amendment) (Wales) Order 2013

Explanatory Memorandum

This Explanatory Memorandum has been prepared by the Department for Local Government and Communities and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the above listed Regulations. I am satisfied the benefits outweigh any costs.

Lesley Griffiths

Minister for Local Government and Government Business

18 March 2013

1. Description

These regulations amend the Council Tax (Discount Disregards) Order 1992 to include the Daily Living Component of Personal Independence Payment Enhanced and Standard levels in the list of benefits that a severely mentally impaired person must be in receipt of in order for the discount disregards to be applied to the Council Tax bill of the liable person.

The second amendment concerns those persons whose award of Universal Credit includes an amount in respect of the fact that the person has limited capability for work or limited capability for work and work related activity.

2. Matters of special interest to the Constitutional Affairs Committee

None

3. Legislative Background

The powers to make the necessary amendments to the Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 are contained within paragraphs 2 and 11 of Schedule 1 to, the Local Government Finance Act 1992

The Regulations follow the negative resolution procedure.

4. Purpose and intended effect of the legislation

This Order will ensure that the amount of Council Tax payable will be reduced where a person is classed as severely mentally impaired and is in receipt of the Daily Living Component of Personal Independence Payments (Enhanced and Standard levels). Personal Independence Payments will replace Disability Living Allowances for persons aged 16 to 64 as from the 8 April. The revised scheme will be rolled out in a limited area of England and implemented on a UK basis from June. As receipt of the Disability Living Allowance is one of the qualifying criteria at the moment for a reduction in Council Tax this amendment ensures that this support continues.

The second amendment also reflects changes to the welfare system and ensures that Council Tax liability will be reduced where a person has limited capacity for work or limited capability for work or work related activity. For these conditions to apply then an amount will be payable to an individual as part of their Universal Credit.

5. Consultation

No consultation has been undertaken in respect of this statutory instrument.

6. Regulatory Impact Assessment (RIA)

No RIA has been prepared for this statutory instrument as it is considered that the instrument only facilitates technical and routine amendments. It has no major policy impact.

Constitutional and Legislative Affairs Committee

(CLAC(4)–...–12)

CLAC...

Constitutional and Legislative Affairs Committee Draft Report

Title: ... The Education (Student Loans) (Repayment) (Amendment) Regulations 2013

Procedure: Negative

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (“the Principal Regulations”). The Principal Regulations govern the repayment of income-contingent student loans paid to students under section 22 of the Teaching and Higher Education Act 1998(c.30). The Regulations make a number of detailed technical amendments as explained in the Explanatory Memorandum and in the Explanatory Note to the Regulations.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. *Being composite regulations subject to a parliamentary procedure at Westminster, these Regulations have been made in English only.*

[Standing Order 21.2(ix) – that the instrument is not made in both English and Welsh.]

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. *Most composite instruments are made by the Secretary of State in relation to England and the Welsh Ministers in relation to Wales. In this case the enabling powers are not as clear cut. The powers in section 22 of the Teaching and Higher Education Act 1998 were only partially transferred to the National Assembly by section 44 of the Higher Education Act 2004. Many were retained by the Secretary of State as they relate to the application of the tax system to the repayment of loans.*

Therefore, whilst some of the provisions of these Regulations are made by the Secretary of State in relation to England and the Welsh Ministers

in relation to Wales in the usual way, many are made by the Secretary of State that extend to the whole of the UK as they relate also to those who studied in England or Wales, but are now employed (and taxed) in Scotland or Northern Ireland.

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.]

**Legal Advisers
Constitutional and Legislative Affairs Committee**

April 2013

2013 No. 607

EDUCATION

**The Education (Student Loans) (Repayment) (Amendment)
Regulations 2013**

<i>Made</i>	- - - -	<i>13th March 2013</i>
<i>Laid before Parliament</i>		<i>14th March 2013</i>
<i>Laid before the National Assembly for Wales</i>		<i>14th March 2013</i>
<i>Coming into force</i>	- -	<i>6th April 2013</i>

The Secretary of State for Business, Innovation and Skills makes the following Regulations in exercise of the powers conferred by sections 22 and 42 of the Teaching and Higher Education Act 1998(a).

The Welsh Ministers make the following Regulations in exercise of the powers conferred on the Secretary of State by sections 22 and 42 of the Teaching and Higher Education Act 1998, now exercisable by them(b).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) Regulations 2013 and come into force on 6 April 2013.

(2) Subject to paragraph (3), these Regulations extend to England and Wales only.

(3) Regulations 8 to 18 extend to all of the United Kingdom in so far as they impose any obligation or confer any power on Her Majesty's Revenue and Customs, an employer or a borrower in relation to repayments under Part 3 or 4 of the Education (Student Loans) (Repayment) Regulations 2009(c).

Amendment of the Education (Student Loans) (Repayment) Regulations 2009

2. The Education (Student Loans) (Repayment) Regulations 2009 are amended in accordance with regulations 3 to 18.

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- (a) 1998 c.30; section 22 was amended by the Learning and Skills Act 2000 (c.21) section 146, the Income Tax (Earnings and Pensions) Act 2003 (c.1) Schedule 6, the Finance Act 2003 (c.14) section 147, the Higher Education Act 2004 (c.8) sections 42, 43 and Schedule 7, the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) section 257 and the Education Act 2011 (c.21) section 76.
- (b) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), 3(e) and (f) and (5). Functions under subsections (2)(a), (c) and (k) were exercisable by the Secretary of State concurrently with the National Assembly for Wales. The section 22 functions which were transferred to, or became exercisable by, the National Assembly for Wales were subsequently transferred to the Welsh Ministers by the Government of Wales Act 2006 (c.32) section 162 and paragraph 30 of Schedule 11.
- (c) S.I. 2009/470, amended by S.I. 2010/661, 2010/1010, 2011/784, 2012/836 and 2012/1309.

3. In regulation 3—

(a) in paragraph (1)—

(i) after the definition of “academic year” insert—

““Access to HE Diploma” means a qualification which is specifically designed to prepare persons for study at university;”; and

(ii) after the definition of “borrower” insert—

““designated course” means a course designated by or under the 2011 Support Regulations;

“eligible borrower” means an eligible student under regulation 4 of the 2011 Support Regulations;”; and

(b) in paragraph (2), for “2011 Support Regulations or the 2011 Welsh Regulations” substitute “2011 Support Regulations, the 2011 Welsh Regulations or the Further Education Loans Regulations 2012(a)”.

4. In regulation 13, for paragraph (2) substitute—

“(2) Schedule 38 to the Finance Act 2012 (Tax Agents: Dishonest Conduct) applies for the purpose of repayments under Part 3 or 4 as it applies for the purposes of income tax.”

5. In regulation 19—

(a) in paragraph (3)(d), delete “or”; and

(b) in paragraph (3)(e), for “.” substitute—

“; or

(f) in the case of post-2012 student loans for Access to HE Diplomas where a borrower has achieved at least one Access to HE Diploma and the Authority is satisfied that the borrower, who was an eligible borrower, completes a designated course.”

6. In regulation 20—

(a) in paragraph (4), before “Where the Authority” insert “Subject to paragraphs (6), (6A) and (9)”;

(b) in paragraph (6), after “the Authority must” insert “subject to paragraph (6A)”;

(c) after paragraph (6), insert—

“(6A) Where an amount of £5 or less was not required to repay the student loan which is not a post-2012 student loan and which was a repayment above the repayment threshold for the student loan which is not a post-2012 student loan and not above the repayment threshold for a post-2012 student loan, this amount shall be treated as a direct payment to the Authority under regulation 15(1) for the post-2012 student loan and the Authority is not required to give a notice to the borrower.”; and

(d) after paragraph (8), insert—

“(9) On or after 6 April 2016, where a borrower has any liability to repay only a post-2012 student loan and has—

(a) failed to declare whether or not any liability solely relates to a post-2012 student loan under regulation 43(2); or

(b) failed to inform their employer whether or not any liability solely relates to a post-2012 student loan under regulation 43A,

any repayment above the repayment threshold for a student loan which is not a post-2012 student loan and not above the repayment threshold for a post-2012 student loan, shall be treated as a direct payment to the Authority under regulation 15(1).”

(a) S.I. 2012/1818.

7. In regulation 21A—

(a) in paragraph (2)—

- (i) after “Subject to paragraphs” insert “(2A), (2B), (2C),”; and
- (ii) in sub-paragraph (d), for “.” substitute—

“;

- (e) for any period where sub-paragraphs (a), (b), (c) and (d) do not apply to a borrower, the standard interest rate;”; and

(b) after paragraph (2), insert—

“(2A) Subject to paragraphs (2B) and (2C), during any academic year or part of any academic year, where a borrower makes repayments in accordance with regulation 18 or repays all of the outstanding balance of the student loan under regulation 15(1), post-2012 student loans bear interest at the rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 2010(a) equal to—

- (a) for a borrower to whom Part 3 or 4 applies and also applied for the whole or part of the previous tax year —

- (i) where the interest income the borrower received in the previous tax year is the lower interest threshold or less, the standard interest rate;
- (ii) where the interest income the borrower received in the previous tax year is more than the lower interest threshold but not more than the higher interest threshold, the standard interest rate plus the additional interest rate;
- (iii) where the interest income the borrower received in the previous tax year is more than the higher interest threshold, the standard interest rate plus 3%;

- (b) for a borrower to whom Part 5 applies, where the Authority has determined under regulation 75(1) that the borrower may repay a loan by income-related instalments and the Authority considers that the interest income the borrower is likely to receive in the next 12 month period is—

- (i) the lower interest threshold or less, the standard interest rate;
- (ii) more than the lower interest threshold but not more than the higher interest threshold, the standard interest rate plus the additional interest rate;
- (iii) more than the higher interest threshold, the standard interest rate plus 3%;

- (c) for a borrower to whom Part 5 applies, in any period during which a borrower is required to pay to the Authority a fixed instalment in accordance with a notice served under regulation 73, the standard interest rate plus 3%;

- (d) where sub-paragraphs (a), (b) and (c) do not apply to a borrower, the standard interest rate.

(2B) The interest income applied in paragraph (2A) will be from the tax year in which—

- (a) repayments are made under regulation 18 where—

- (i) a borrower makes repayments under regulation 18 during a tax year;
- (ii) the borrower requests, after the end of the tax year in sub-paragraph (i), that their interest rate is recalculated; and
- (iii) the borrower’s interest income in that tax year is less than the interest income the borrower received in the previous tax year;

- (b) a borrower repays all of the outstanding balance of the student loan under regulation 15(1) where—

(a) S.I. 2010/1011.

- (i) the borrower requests that their interest rate is recalculated after the end of the tax year; and
- (ii) the borrower's interest income in that tax year is less than the interest income the borrower received in the previous tax year.

(2C) Where a borrower repays all of the outstanding balance of the student loan under regulation 15(1) in the tax year specified by regulation 15(2), the post-2012 student loans bear interest at the rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 2010 equal to the standard interest rate.”

8. In regulation 29—

- (a) in paragraph (7) for “paragraph (8)” substitute “paragraphs (8) and (9)”; and
- (b) after paragraph (8) insert—

“(9) The repayment threshold where a borrower has a post-2012 student loan and a student loan which is not a post-2012 student loan is that set out in paragraph (7)(a), (b) or (c) (as the case may be).”

9. In regulation 33, for paragraph (1), substitute—

“(1) Sections 20BA (orders for the delivery of documents) and 20BB (falsification etc of documents) of the 1970 Act, Schedule 23 to the Finance Act 2011^(a) and Schedule 38 to the Finance Act 2012^(b) apply for the purposes of establishing the amount of the repayment a borrower may be required to make under this Part as they apply for the purposes of establishing the amount in respect of which a person is chargeable to income tax.”

10. Omit regulation 41A(1)(c) (but not the “and” after it).

11. In regulation 43(2) after “that Form P46” insert “and in particular on or after 6 April 2016 the borrower must declare whether or not any liability solely relates to a post-2012 student loan”.

12. In regulation 43A after “student loan” insert “and in particular on or after 6 April 2016 the borrower must inform their employer whether or not any liability solely relates to a post-2012 student loan”.

13. In regulation 44—

- (a) in paragraph (2)(a) after “repayment threshold” insert “or default threshold”;
- (b) in paragraph (2)(b) after “repayment threshold” insert “or default threshold”; and
- (c) after paragraph (5) insert—

“(6) The default threshold is applicable until a date specified by HMRC in a notice given under regulation 49(1) to the employer where a borrower has only liability to repay a post-2012 student loan and has—

- (a) failed to declare whether or not liability solely relates to a post-2012 student loan under regulation 43(2); or
- (b) failed to inform their employer whether or not liability solely relates to a post-2012 student loan under regulation 43A.

(7) The default threshold is the repayment threshold for a student loan which is not a post-2012 student loan as set out in regulation 29(7)(b) or (c) (as the case may be).”

14. In regulation 59B, omit paragraphs (6) and (7).

15. After regulation 59B, insert—

(a) 2011 c.11.
(b) 2012 c.14.

“Employees paid in specified circumstances

59BA.—(1) This regulation applies if an employer makes a payment to an employee and all of the circumstances in paragraph (2) apply.

(2) The circumstances are that—

- (a) the payment includes an amount which is a relevant payment for work undertaken by the employee on—
 - (i) the day the payment is made, or
 - (ii) provided that the payment is made before the employee leaves the place of work at the end of the employee’s period of work, the day before the payment is made,
- (b) in respect of the work mentioned in sub-paragraph (a), it was not reasonably practicable for the employer to calculate the payment due before the completion of the work, and
- (c) it is not reasonably practicable for the employer to deliver the information required by regulation 59B(1) on making the payment.

(3) The employer need not deliver the information required by regulation 59B(1) on or before making the payment.

(4) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

(5) Where this regulation applies, the information required under regulation 59B(1) in respect of the relevant payment may be included in a return with the information for any other relevant payment.

Benefits and expenses – returns under regulations 85 to 87 of the PAYE Regulations

59BB.—(1) This paragraph applies if an employer makes a payment of general earnings to an employee which, for the purposes of tax falls to be included in a return under—

- (a) regulations 85 and 86 of the PAYE Regulations (employers: annual return of other earnings (Forms P11D and P9D) – information which must be provided for each employee)(a), or
- (b) regulations 85 and 87 of the PAYE Regulations (employers: annual return of other earnings (Forms P11D and P9D) – information which must also be provided for benefits code employees) or would do if the employee’s employment was subject to the benefits code for the purposes of regulation 85 of the PAYE Regulations.

(2) If the employer is unable to comply with the requirement in regulation 59B(1) to deliver the information required by that regulation on or before making the payment, the employer must instead deliver the information as soon as reasonably practicable after the payment is made and in any event no later than 14 days after the end of the income tax month the payment is made in.”

16. In regulation 59E—

(a) in paragraph (1)—

- (i) omit the “or” after sub-paragraph (c), and
- (ii) in paragraph (d), for “.” substitute—

“, or

- (e) an employer to whom a direction has been given under regulation 67D (11) of the the PAYE Regulations.”;

(a) Regulation 41 of the Education (Student Loans) (Repayment) Regulations 2009, S.I. 2009/470, defines the PAYE Regulations as the Income Tax (Pay As You Earn) Regulations 2003, S.I. 2003/2682.

(b) after paragraph (2), insert—

“(2A) Before 6 April 2014, a Real Time Information employer to whom this regulation applies may proceed as if the employer were a non-Real Time Information employer and the provisions of these Regulations apply accordingly to such employer.”;

(c) in paragraph (3), substitute “On and after 6 April 2014, the” for “An”; and

(d) omit paragraphs (7) and (8).

17. In regulation 59F—

(a) in paragraph (1), substitute “59E” for “59F”;

(b) omit paragraph (6)(a)(ii); and

(c) in paragraph (6)(c), substitute “approved” for “appropriate”.

18. After regulation 59F, insert—

“Failure to make a return under regulation 59B or 59E

59G.—(1) This regulation applies where an employer does not make a return as required by regulation 59B (Real time returns of information about payments of earnings) or 59E (Exceptions to regulation 59B).

(2) The employer must provide the information in the next return made under regulation 59B or 59E for the tax year in question.

(3) If the information has not been provided before 20 April following the end of the tax year in question, the employer must make a return under this paragraph before 20 May following the tax year in question.

(4) A return under paragraph (3)—

(a) must include the information specified in Schedule 2;

(b) must be made as soon as reasonably practicable after discovery of the failure to make the return, and

(c) must be made by an approved method of electronic communications.

(5) Section 98A of the 1970 Act (special penalties in case of certain returns) applies to returns under paragraph (3).”

13th March 2013

David Willetts
Minister of State for Universities and Science
Department for Business, Innovation and Skills

11th March 2013

Leighton Andrews
Minister for Education and Skills
One of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (“the Principal Regulations”). The Principal Regulations govern the repayment of income-contingent student loans paid to students under section 22 of the Teaching and Higher Education Act 1998(c.30).

Regulations 3 to 18 amend the Principal Regulations.

Regulation 3 adds loans made under the Further Education Loans Regulations 2012 (S.I. 2012/1818) to the definition of post-2012 student loans in the Principal Regulations. Regulations 3 and 5 provide for the cancellation of a borrower’s liability in relation to loans for Access to HE Diplomas.

Regulations 4 and 9 substitute new penalties, for dishonest conduct of tax agents, for those in the Principal Regulations.

Regulation 6 provides for the transfer of small credit balances between two types of loan.

Regulation 7 sets out a default interest rate where other provisions of regulation 21A(2) do not apply and provides interest rates for borrowers where they wish to settle their account in full or repay the remaining balance by direct debit at the end of their loan term.

Regulation 8 sets out the repayment threshold for a borrower who has two types of loan.

Regulation 10 amends the definition of Real Time Information employers to exclude certain employers from becoming Real Time Information employers from 6 April 2013.

Regulations 11 and 12 impose requirements on borrowers to specify which type of loan they have on or after 6 April 2016 and regulation 13 imposes a default repayment threshold where borrowers fail to meet the requirements.

Regulations 14 and 18 amend how penalties are imposed where there is a failure to make returns under regulations 59B or 59E of the Principal Regulations.

Regulation 15 inserts new regulations 59BA and 59BB into the Principal Regulations. New regulations 59BA and 59BB make provision for exceptions from the requirement in regulation 59B to deliver information on or before the making of a payment.

Regulation 16 amends regulation 59E to extend the time limit and the categories of employers who are not required to deliver information to Her Majesty’s Revenue and Customs regarding a payment on or before making the payment to employees. The employers specified in regulation 59E(1), which includes those employers whom Her Majesty’s Revenue and Customs has directed are unable to file using an approved method of electronic communications, are for the tax year 2013-14 entitled to file in accordance with the provisions in the Principal Regulations which do not relate to Real Time Information employers.

Regulation 17 removes the requirement to specify the tax year to which the return relates, as it is unnecessary, and it corrects typographical errors.

A Tax Information and Impact Note covering regulations 10 and 14 to 18 of this Instrument was published on 15th March 2012 alongside the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (S.I. 2012/822). This has been updated as a result of changes to the impacts as a result of the year long Real Time Information pilot and is available on the Her Majesty’s Revenue and Customs’ website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. An impact assessment has not been produced for the regulations which are not covered by the Tax Information and Impact Note because they have no impact on businesses or civil society organisations. The Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.

Explanatory Memorandum to The Education (Student Loans) (Repayment) (Amendment) Regulations 2013

This Explanatory Memorandum has been prepared by the Higher Education Division of the Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Loans) (Repayment) (Amendment) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Leighton Andrews – Minister for Education and Skills
11 March 2013

1. Description

The Regulations further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). The amendments introduce a number of technical changes to the repayment system such as the determination of interest income, handling of credit balances and annual HMRC tax changes.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) ("the 2009 Regulations"). The 2009 Regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State and they govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which began on or after September 1998. Although most of the provisions made by the Secretary of State only apply in relation to England, the 2009 Regulations contain provisions (not devolved to the Welsh Ministers) which are made by the Secretary of State in relation to England and Wales which concern the tax system, to the extent that student loans can be collected through the taxation system operated by Her Majesty's Revenue and Customs ("HMRC").

This composite statutory instrument is subject to the negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. Given the composite nature of the 2009 Regulations and no routine parliamentary processes in place to lay bi-lingual regulation before Parliament, these regulations will be made in English only.

3. Legislative background

The relevant legal powers to make these regulations are set out in sections 22 and 42 of the Teaching and Higher Education Act 1998.

The functions of the Secretary of State under Section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions section 22(2)(a), (c), (j) and (k), 3(e) and (f) and (5). Functions under sub-sections 22(2)(a), (c) and (k) were exercisable concurrently with the National Assembly. The functions in sections 22(2)(j), 22(3)(e) and (f) and section 22(5) remain Secretary of State functions. The functions so transferred were subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

This instrument will follow the Negative Resolution procedure.

4. Purpose & intended effect of the legislation

The amendments to the regulations are technical in nature and relate to the statutory functions exercisable in respect of Wales in part by the Welsh

Ministers and in part by the Secretary of State. A summary of the changes is as follows:

Variable Interest Rates at the end of the loan term: The income contingent interest rate, where borrowers wish to settle their account in full or repay the remaining balance by direct debit at the end of their loan term, will be the rate which was applicable during the previous tax year. The Student Loans Company (SLC) will, if requested by the borrower, re-calculate the interest rate after the end of the tax year when actual income details for the year in question is known.

Borrowers moving overseas – interest rate: During the tax year in which a borrower moves overseas, for the part of the tax year spent in the UK, the actual income for the period spent in the UK will determine the applicable interest rate. For the period of the overseas repayment schedule, the predicted income will determine the rate of interest. However, that schedule may take 2-3 months to set up. These regulations allow that SLC will apply a rate of RPI for this period of time.

Small credit balances: Where a borrower has both pre- and post-2012 loans and the pre-2012 loan is over-repaid, the SLC will contact the borrower to offer a refund, and where no contact is received within 60 days the credit balance will be credited to the post-2012 loan balance. The amending regulations permit SLC to automatically credit the outstanding post-2012 loan balance without asking the borrower's permission if the over-repaid credit is £5 or less.

Threshold on change of jobs after 2016: When a borrower changes jobs after April 2016, he or she will be required to supply evidence to their employer of their correct threshold. Where this is not supplied, employers will apply the lower threshold as a default, until such time HMRC advises the employer that the higher threshold applies. The amending regulations allow that where this results in an over-repayment because the borrower has not supplied the correct evidence to their employer, that this is not immediately refunded to the borrower, but instead it serves to reduce the loan balance. These provisions are made by the Secretary of State in respect of both England and Wales.

HMRC amendments: There are further amendments which reflect HMRC's requirements which must be mirrored in our regulations because loan repayments are collected via the tax system. They will enable penalties to be charged to employers who make errors or fail to file returns under Real Time Information (RTI). There is a new penalty regime for dishonest tax agents and modification to the reporting arrangements for certain benefits and expenses. These provisions are made by the Secretary of State in respect of both England and Wales.

RTI aims to reduce administrative burdens for all employers, including small employers (upon whom the current burden of PAYE currently falls disproportionately). The aim is to achieve this by integrating employee

payment and reporting to HMRC into a single payroll process. The Regulations keep student loan collection processes in line with the rest of the PAYE system. The changes concern how repayments are reported to HMRC, with no changes to how student loan repayments are collected.

5. Consultation

No formal consultation was undertaken as a result of these technical changes, as all relevant stakeholders were consulted on the changes to the higher education and student finance system for 2012/13 during the consultation exercise completed in February 2011.

These included proposals for the reform of the student loans repayments; the increase of repayment thresholds from £15,000 to £21,000; and the introduction of a variable progressive rate of interest charged depending on income. Technical consultation papers on the following issues were published on the Welsh Government's consultation web page:

- the implementation of the proposed new system of higher education funding and student finance; and
- the proposed system for part time higher education funding – including student finance for 2012/13.

The taxation changes will be publicised by HMRC. The effect of the Regulations were explained to the HMRC Student Loans Consultation Group, which HMRC uses to consult employers, representative bodies and payroll software providers on matters related to the collection of student loan repayments. Extensive guidance on RTI is published on HMRC's website.

6. Regulatory Impact Assessment (RIA)

Please Note:

Under the Equality Act 2010, the Department, as a public authority, is legally obliged to give due regard to equality issues when making policy decisions. We have considered each of our regulations by reference to our Public Sector Equality Duty. Vulnerable borrowers (those with protected characteristics) will not generally be disadvantaged by these policies. There is a potential issue in relation to the availability of interest-bearing loans for Muslim students. We will continue to monitor the effect of the Regulations on Muslim students, both in terms of their acceptance of university placements and student loans. We are aware also that officials in the Dept for Innovation and Skills are considering this issue further and we will work closely with colleagues in England and elsewhere if the need for any change is identified.

The impact on business, charities or voluntary bodies is nil for policy changes.

All employers, including charities or voluntary bodies will be required to use RTI.

The impact of RTI on the public sector is the same as for any other employer.

By virtue of paragraph(s) vi of Standing Order 17.42

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