

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.

