

Explanatory Memorandum to The Education (Student Loans) (Repayment) (Amendment) Regulations 2014

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 2014.

Huw Lewis – Minister for Education and Skills
12 March 2014

1. Description

The Regulations further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). The amendments cover a range of issues, from the confirming that the pre-2012 repayment threshold is to continue to increase annually by RPI for the lifetime of the pre-2012 loan book to technical language amendments.

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. 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 operated by Her Majesty's Revenue and Customs ("HMRC"). Some other provisions are made by the Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

This composite statutory instrument is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. Given the composite nature of the 2009 Regulations and that no routine Parliamentary processes exist by which to lay bi-lingual regulations 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) are exercisable concurrently with the Secretary of State. 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 subsequently became functions of the Welsh Ministers by virtue of 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 relate to 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:

Information notices: The amendment will enable the Welsh Ministers, or student loans company on their behalf, to require from a borrower information as to the borrower's financial position as may be needed to determine if the borrower is in receipt of any income. For example, in a situation where a borrower declares that they are unemployed and unable to repay their student loan.

Pre-2012 loan repayment threshold: The previous Regulations state that the pre-2012 loan repayment threshold will increase annually by the Retail Price Index (RPI) until 2015. The amendments will ensure that the threshold will continue to increase annually by RPI beyond 2015 for the lifetime of the pre-2012 loan book. This is the only provision which the Welsh Ministers have power to make in this current set of amendments.

HMRC amendments: There will be further changes to Real Time Information (RTI), in certain circumstances, inaccuracies by employers and to introduce new penalty provisions for late returns.

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 HRMC. The effect of the Regulations were explained to the HMRC Student Loans Consultation Group, which HRMC 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)

A RIA was not undertaken in relation to these Regulations as there is no impact on business, charities, or voluntary bodies. There is no impact on statutory duties (sections 77-79 Government of Wales Act 2006 or statutory partners (sections 72-75 GOWA 2006).

Vulnerable borrowers (those with protected characteristics) will not generally be disadvantaged by these policies. There may be a potential issue in relation to the availability of interest-bearing loans for Muslim students. The UK Government will continue to monitor the effect of the Regulations on Muslim students in England and Wales, both in terms of their acceptance of university placements and student loans. The Department for Business, Innovation and Skills (BIS) is considering this issue further and Welsh Government officials will liaise with colleagues in BIS if the need for any change is identified.

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.