

Explanatory Memorandum to the Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017

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

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Repayment of Student Loans and Postgraduate Master's Degree Loans (Amendment) Regulations 2017.

Kirsty Williams AM
Cabinet Secretary for Education
11 August 2017

1. Description

The Regulations further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). The amendments cover a range of issues but are principally concerned with ensuring the repayment of the postgraduate Master's loan by Welsh borrowers.

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 bilingual 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 to 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 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 2009 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:

Postgraduate Master's Loan repayments - the amendments in these Regulations will provide a mechanism for the repayment of postgraduate loans made under the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017, as amended. The provisions in relation to Welsh borrowers taking out a postgraduate Master's loan are as follows:

- Repayments will begin at £21,000 and are income contingent;
- Interest charged at RPI +3%;
- Repayment at 6% of salary above threshold from April 2019;
- Repayments to be made concurrently with any undergraduate debt repayments;
- Any outstanding postgraduate debt to be written off thirty years from the date at which interest begins accruing.

Removal of April 2016 as a trigger for repayment – a borrower with a post-2012 loan is not required to repay any part of that loan before 6 April 2016. The Regulations will remove this date as it is now passed. The amendments will also introduce a date of 6 April 2019 as the first date on which a borrower is required to repay a postgraduate master's degree loan.

Minimum refund amount – where the Student Loans Company ("SLC"), acting on behalf of the Welsh Ministers, receive either a voluntary payment or a repayment from HMRC which results in the borrower's pre-2012 loan being repaid in full whilst there remains an outstanding balance on the post-2012 loan, then the SLC must notify the borrower that any overpayment will be treated as a voluntary payment subject to a minimal exception. If the overpayment is £5 or less then the SLC can simply apply that sum against the balance of the post-2012 loan automatically without contacting the borrower. The Regulations will amend this minimal figure from £5 to £10. The amendments will also extend these provisions to allow overpayments on one loan to be treated as a voluntary payment on another loan where a student has any two of a pre-2012 loan, a post-2012 loan and a postgraduate master's degree loan.

Treatment of certain over-repayments –the 2009 Regulations require employee borrowers to declare whether or not any student loan liability that they have relates solely to a post-2012 student loan. If they fail to do so, the income threshold for making repayments will be set at the level for pre-2012 loans rather than that for post-2012 loans. The 2009 Regulations treat repayments made by a borrower on income between the thresholds as direct payments that are not refundable. The amendment will allow these borrowers to request a refund of such repayments.

Overseas borrowers' income threshold – where the SLC decide that an overseas borrower can repay by income-related instalments, the amount payable equates to 6% or 9% (depending on the type of loan) of the borrower's income above the applicable income threshold. The threshold is calculated and based on the most recent World Bank price level data for the borrower's country of residence. The amendment will allow the SLC to determine the applicable threshold in cases where the SLC is unable to calculate the price level index for the borrower's country of residence.

Interest rate on deferred loans – the 2009 Regulations allow teachers to defer repayments on certain loans. The amendment will set the interest rate that will apply to a loan during the deferral period.

5. Consultation

All relevant stakeholders were consulted on the postgraduate Master's loan scheme, including the key repayment terms, during the consultation exercise completed in May 2016.

6. Regulatory Impact Assessment

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).