

Explanatory Memorandum to the Education (Student Loans) (Repayment) (Amendment) Regulations 2022

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

Minister for Education and Welsh Language'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 2022. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language
16 March 2022

Part 1

1. Description

1.1 The Education (Student Loans) (Repayment) (Amendment) Regulations 2022 (“the 2022 Regulations”) further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) (“the 2009 Regulations”) to:

- implement a one year freeze on the Plan 2 (post-2012 undergraduate) student loan repayment threshold and interest rate thresholds for Welsh borrowers; and
- maintain the repayment threshold bands and lower and higher interest rate threshold bands at the current levels for borrowers who are resident overseas.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 The 2009 Regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State. They govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which begin 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.

2.2 This composite statutory instrument is subject to the negative resolution procedure in Senedd Cymru 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 exceptionally be made in English only.

3. Legislative background

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

3.2 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 by Welsh Ministers concurrently with the Secretary of State in relation to Wales.

The functions in sections 22(2)(j), 22(3)(e) and (f) and section 22(5) remain Secretary of State functions in relation to Wales. The functions so transferred and which became exercisable concurrently 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.

3.3 This instrument will follow the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 The level of earnings at which a borrower must start to repay their student loan is provided for in the 2009 Regulations. Borrowers begin repayment of their student loan once their earnings are above a certain threshold (the income level above which borrowers are required to make repayments after leaving study). Plan 2 borrowers (those ordinarily resident in Wales or an EU student studying in Wales who began a non-postgraduate course on or after 1 September 2012) repay 9% of their earnings that are above the threshold.

4.2 The Plan 2 repayment threshold was set at £21,000 from 6 April 2016 to 5 April 2018 and has since increased in line with average earnings each year. The threshold is currently set at £27,295 a year, £2,274 a month or £524 a week. If current policy were to continue, the threshold would automatically rise by a further 4.6% to £28,555 on 6th April 2022.

4.3 The 2009 Regulations also provide for the interest rate thresholds for Plan 2 student loans to adjust annually in-line with changes to average earnings. Plan 2 loans have variable interest rates. Interest is charged at a rate of RPI+3% until the statutory repayment due date (the end of the tax year in which the borrower completes the course or the borrower leaves the course, or, for part-time courses, the fourth anniversary of the course start date occurs) is reached. After this point, the interest rate charged varies depending on the borrower's income. The lower interest threshold – below which borrowers are charged an interest rate of RPI+0% – is aligned with the repayment threshold (currently £27,295). Interest then increases on a sliding scale to RPI+3% for borrowers earning over the higher interest threshold (currently £49,130).

4.4 The purpose of the 2022 Regulations is to maintain the Plan 2 repayment threshold at its current level of £27,295 for financial year 2022-23. In line with this, the post-study interest rate thresholds that apply to Plan 2 loans will also be kept at their current levels for financial year 2022-23.

4.5 Student loan borrowers who are resident overseas are unable to repay their student loans through HMRC so repay directly to the SLC through a repayment

plan based on their expected income. The repayment threshold for these borrowers varies according to where in the world they reside. There are seven applicable threshold bands (labelled A to G) into which borrowers are assigned based on their country of residence. Countries are divided into these bands annually by the Department for Education using World Bank Price Level Index data that compares their relative cost of living. The English repayment threshold is used as a baseline, sitting in Band E, and the other bands are calculated as a percentage of the English threshold. The same banding system is used to calculate the lower and higher interest rate thresholds for borrowers who are resident overseas.

- 4.6 In line with the changes for Welsh borrowers, the repayment threshold bands and lower and higher interest rate threshold bands for borrowers who are resident overseas will be maintained at their current levels for financial year 2022-23.

5. Consultation

- 5.1 There is no statutory requirement to consult on these regulations and no consultation has been undertaken. The window to make the 2022 Regulations was limited. The UK Government, which is also introducing these changes via these composite regulations, did not consult. Consultation would have resulted in the opportunity to make composite regulations being missed.

Part 2 – Regulatory Impact Assessment (RIA)

An RIA has been conducted for the 2022 Regulations.

6. Options

Option 1: Business as usual

- 6.1 If the 2022 Regulations are not made, the repayment threshold (and accompanying interest rate thresholds) would automatically increase in line with average earnings for 2022-23.
- 6.2 This would present practical issues in the repayment of loans for Welsh borrowers that could not be resolved in advance of the 2022-23 financial year. These practical implications arise because certain functions of the repayment system are not functions of the Welsh Ministers.

Option 2: Make the Regulations

- 6.3 Making the 2022 Regulations ensures that the provision for repayment by Welsh borrowers continues uninterrupted for the 2022-23 financial year and the practical issues outlined above are avoided.

7. Costs and benefits

Option 1: Business as usual

- 7.1 Continuing with business as usual would mean a cost to the Welsh Government in setting up an alternative repayments system for Welsh borrowers. There would be no benefit to the Welsh Government in leaving the existing regulations in place.
- 7.2 Benefits would be seen by borrowers. Those with incomes below the repayment threshold would continue to make no repayments towards their student loan and those with incomes above the threshold would pay less during 2022-23, and every subsequent year of the loan term, than they would if the freeze were implemented.

Option 2: Make the Regulations

- 7.3 Under the 2022 Regulations, Plan 2 borrowers will continue to repay 9% of their gross annual earnings above £27,295 during the 2022-23 financial year. Comparing this to the case where the threshold is not frozen for 2022-23, most Plan 2 borrowers earning above the repayment threshold will repay around £113 more during 2022-23; their repayments will also be higher in every subsequent year of the loan term.
- 7.4 The latest modelling of predicted student loan repayments for Welsh Plan 2 borrowers estimates that, as a result of the freeze in the repayment threshold, total PAYE repayments in the 2022-23 financial year will increase by approximately £7 million. The benefits arising from these additional repayments would accrue to the UK Government rather than to the Welsh Government directly.
- 7.5 The one-year freeze in the Plan 2 repayment threshold imposed by the 2022 Regulations will bring about a modest non-cash cost saving to the Welsh Government. The Resource Accounting and Budgeting (RAB) charge is the estimated cost to Government of borrowing to support the student finance system. It is based on predicted future loan write-offs and interest subsidies in net present value terms. Predicted repayments will increase as a result of the threshold freeze, and thus the RAB charge, which the Welsh Government must fund, will fall. This serves to make the student support system more affordable.

- 7.6 Welsh Government modelling estimates that the one-year freeze in the Plan 2 repayment threshold will decrease the forecast non-cash expenditure for 2021-22 by approximately £24.2 million.
- 7.7 The freeze in the repayment threshold will have differing impacts on individual Plan 2 borrowers in the short term and long term, depending upon their future income. Borrowers with incomes below the repayment threshold will continue to make no repayments towards their student loan, however as a result of the threshold freeze there will be a larger proportion of borrowers who are required to make repayments. Over the long term, the highest-earning graduates (who go on to repay their student loan in full) will benefit from the threshold freeze, since they will pay off their loans more quickly, and with less added interest. Conversely, those on middle incomes (who repay some but not all of their student loan) will make higher repayments in each year of their loan term.
- 7.8 Welsh Government modelling of predicted student loan repayments for Welsh borrowers suggests that under the current system, approximately 35% of Plan 2 borrowers will go on to repay their loan in full. Under the 2022 Regulations, with the one-year threshold freeze for 2022-23, this figure would rise to 37%. This further illustrates that the threshold freeze will make the student support system more affordable.
- 7.9 The latest modelling suggests that, on average for Plan 2 borrowers entering repayment in April 2022, the one-year threshold freeze imposed by the 2022 Regulations would result in an increase of approximately 4% in repayments over the loan term. Broken down by gender, this figure is 6% for female graduates and 3% for male graduates – so female graduates would likely be harder hit by the threshold freeze.
- 7.10 It is estimated that around 75% of full-time student loan borrowers entering repayment in April 2022 will be aged 18 to 25. Modelling suggests that their lifetime repayments will increase as a result of the threshold freeze. Borrowers who enter repayment at an older age, or who have already been in repayment of their loan for several years, are likely to be less affected in the long term by the threshold freeze because they will be closer to retirement age, and/or have fewer years remaining before their student loan is written off.
- 7.11 The differing impacts on graduates by ethnicity, disability status and other protected characteristics are more uncertain.

8. Competition Assessment

- 8.1 The making of the 2022 Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

9. Post-Implementation Assessment

- 9.1 The 2022 Regulations implement a freeze on the Plan 2 repayment threshold and interest rate thresholds for a temporary period of one financial year. Policy for the 2023-24 financial year will be considered in accordance with the usual process and timescales.