

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT LOANS) (REPAYMENT) REGULATIONS 2009

2009 No. 470

1. This explanatory memorandum has been prepared by the Department for Innovation Universities and Skills and is laid before Parliament by Command of Her Majesty. It will also be laid before the National Assembly for Wales, under Standing Order 29, as these are Composite Regulations also made by the Welsh Ministers.

This memorandum contains information for the Joint Committee on Statutory Instruments and for the National Assembly for Wales.

2. **Purpose of the instrument**

- 2.1 This Statutory Instrument revokes and consolidates with amendments the Education (Student Loan) (Repayment) Regulations 2000 (SI 2000/944) (“the 2000 Repayment Regulations”) and all subsequent amending Regulations. The opportunity has been taken to modernise the language, references and drafting style.

- 2.2 The consolidated Instrument contains some substantive amendments from the provision made by the 2000 Repayment Regulations. It incorporates amendments made to the general taxation system by the Finance Acts 2007 and 2008 which are due to come into force on 6 April 2009 to ensure that the student loan repayment system keeps step with the tax and PAYE collection system.

- 2.3 The Instrument updates a number of references to tax legislation more generally and makes alterations particularly to the calculation of income for the purposes of borrowers making repayment through the self –assessment system at Part 3.

- 2.4 It introduces the ability for the Welsh Ministers to charge costs and expenses to overseas borrowers for obtaining their details when they have failed to provide them, or for enforcing the loans.

- 2.5 It makes provision for the treatment of loans made by Welsh Ministers which are subject to transfer arrangements pursuant to the Sale of Student Loans Act 2008 (c. 10).

- 2.5 Lastly, the Instrument introduces a direct debit scheme for borrowers repaying through PAYE to opt out of PAYE in the last 2 years of the loan, to avoid over-repaying.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. Legislative Context

4.1 The Instrument makes fresh provision for the repayment of income-contingent student loans. There have been numerous amendments to the previous 2000 Repayment Regulations and it was therefore right to consider an updated, consolidating version of those Regulations.

4.2 At the same time as consolidating the Instrument, the Department is also making consequential amendments to reflect tax legislation included in the Finance Acts of 2007 and 2008. These changes implement new information-requesting powers; powers of inspection; and new penalties. References to Inland Revenue have been updated to refer to HMRC.

4.3 Provisions relating to the interest chargeable on the loans (in relation to England) and the consequences of the insolvency of a borrower (in relation to England and Wales and Northern Ireland) have previously been contained in Student Support Regulations also made under section 22 of the Teaching and Higher Education Act 1998 which are made every year. Welsh provision for interest chargeable on the loans has been made by the Welsh Ministers under their own student support (Assembly Learning Grants) Regulations. As the provision which is made each year does not generally vary and may be considered to fit more logically with the provisions on repayment in any event, the Department has taken the opportunity to move those provisions into these Regulations. This is intended to increase clarity and simplicity.

4.4 Provision dealing with repayments by borrowers whose loans have been transferred pursuant to the Sale of Student Loans Act 2008 was, for England, inserted into the 2000 Repayment Regulations by the Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2715). These present Regulations now make the same provision for both England and Wales.

5. Territorial Extent and Application

5.1 This instrument extends primarily to England and Wales only.

5.2 The Instrument also makes provision which applies across the United Kingdom however in so far as it makes provision for the taxation system. Parts 3 and 4, and any necessary provisions of Part 2 which relate to Parts 3 and 4 will also extend to Scotland if the Scottish Ministers determine that repayment of the loans should be made through the tax system.

5.3 Part 6 extends to Northern Ireland to the extent that it makes provision for the effect on any loan or loans of a borrower's bankruptcy in that jurisdiction.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 These Regulations, like their predecessor, provide the principal terms and conditions of income-contingent student loans taken out by students and are incorporated by reference into the loan contract. In the main, they replicate the provisions made by the previous, first Regulations, albeit that the language and style have been updated.

7.2 As the loans are primarily collected through the tax system, the Regulations need to keep pace with changes in that system. Consequential amendments to the existing provisions were necessary to reflect tax legislation changes in the Finance Acts of 2007 and 2008. These changes implement new information-requesting powers, powers of inspection of records, and new penalties provisions applying to tax and the PAYE system.

7.3 Some borrowers move overseas. Where a borrower has not informed the Student Loan Company (who administer the scheme under delegated powers from the Secretary of State and Welsh Ministers) that they have moved overseas, costs and expenses arise as a result of taking steps to find the borrower's address; obtain their income details; serve notice of their liability to make repayments; and, where necessary, implement measures to recover the loan in part or in full. These costs can be added to the borrower's account as it is not reasonable for this cost to accrue to the public purse. Provisions which had already been made for the Secretary of State have been extended to Wales by these Regulations.

7.4 It was a feature of the previous system that information lags meant that borrowers in PAYE could make significant over-repayments of their loans before deductions from earnings ceased. Provision is now included to permit borrowers to make direct debit payments in the last two years of their loan rather than for sums to be deducted. This scheme is voluntary, and borrowers need not take advantage of it.

7.5 The annual interest provisions (made by the Secretary of State for England and the Welsh Ministers for Wales) and insolvency provisions (in relation to England and Wales and Northern Ireland) have been moved from the English Student Support Regulations and the Welsh Assembly Learning Grants and Loans Regulations to this Statutory Instrument as it seemed more efficient and clearer for the borrower and general reader to keep all repayment provisions together in one Instrument.

- *Consolidation*

7.6 The Department indicated in the Explanatory Memorandum to the Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2008 (SI 2008/2715) that serious consideration was being given to consolidation in spring 2009, in the light of the number of amendments to the 2000 Repayment Regulations. This is that consolidation.

8. Consultation outcome

8.1 No formal consultation exercise was undertaken as these changes are not intended to have any material impact on borrowers or business. HMRC, SLC and the Scottish Executive have been consulted on this Statutory Instrument and their comments incorporated into the draft. The Instrument has been jointly drafted with the Welsh Assembly Government in any event.

9. Guidance

9.1 Taxation changes would be publicised by the HMRC. The new provisions for direct debit payments and charges for overseas borrowers will be publicised by the Student Loan Company. The effect of these Regulations has been set out to the Employer Student Loan Sub-Group which is convened by HMRC to inform and consult employers, representative bodies and payroll software providers on matters related to the collection of student loans repayments.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument on that basis.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The main changes in this Instrument will not be monitored or reviewed as they reflect taxation changes. The measurable provision in this Instrument is the introduction of direct debits as a method of reducing over-repayments. It is difficult at this time to set a measure as it is not known what the take up will be of making payments through direct debits rather than the taxation system. The Department is working closely with the SLC in setting up the process which will not come into force until 21 December 2009 and measures will be set up in the coming months.

13. Contact

Karen Duncan at the Department for Innovation, Universities and Skills; Tel: 01325 391092 or email: karen.duncan@dius.gsi.gov.uk can answer any queries regarding the instrument for England and UK-wide provisions.

Chris Jones at the Department for Children Education and Lifelong Learning and Skills; Tel: 02920826215 or email: jonesca@wales.gsi.gov.uk can answer any queries regarding the instrument for Wales.