

EXPLANATORY MEMORANDUM TO THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT) REGULATIONS 2019

The Explanatory Memorandum has been prepared by the Higher Education Division and is laid before the National Assembly for Wales under Standing Order 27.1.

The 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 2019.

Kirsty Williams AM
Minister for Education
7 February 2019

Description

The Education (Student Loans) (Repayment) (Amendment) Regulations 2019 ('the Regulations') provides for the Student Loans Company ('SLC') and Her Majesty's Revenue and Customs ('HMRC') to undertake increased data sharing to assist with the reduction of over-repayments of student loans from April 2019 in respect of academic years beginning on or after 1 August 2019.

Matters of special interest to the Constitutional and Legislative Affairs Committee

The Regulations further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) ('the 2009 Regulations') as amended. 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 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 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 Regulations and that no routine Parliamentary processes exist by which to lay bilingual regulations before Parliament, these Regulations will be made in English only.

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 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.

This instrument will follow the negative resolution procedure.

Purpose and intended effect of the legislation

Loans are made available to support eligible students ordinarily resident in Wales undertaking designated courses of higher education. The 2009 Regulations provide for the repayment of those loans. The terms of the repayment are set in order to balance the need for adequate returns to the taxpayer while ensuring loans are not a disincentive to undertaking higher education. The 2009 Regulations make provision for the repayment of student loans in England and Wales.

These composite Regulations made by the Secretary of State and Welsh Ministers amend the 2009 Regulations. The changes are needed to allow the implementation of 'more frequent data sharing' ('MFDS') between HMRC and SLC and will take effect from 6 April 2019. MFDS will reduce the number of over-repayments that borrowers make, so making the process more straightforward and accurate for borrowers. Whilst the Regulations will enable the change in England and Wales, the change will apply to the whole of the UK. The UK led change for MFDS is the beginning of a series of proposed improvements through HMRC's Transformation Programme.

MFDS will enable the sharing of data in real-time, rather than just annually. This will enable SLC to apply repayment data quickly and accurately to a student's loan. Under current procedures, HMRC currently share annual data with the SLC about student loan repayments, which are made via tax collections through the PAYE system, at the end of the relevant tax year. HMRC send the data to SLC between April and the end of July. SLC then process the repayments and update all customer accounts by October of each year. This has a number of adverse consequences for borrowers, which MFDS will be able to address.

Overpayments

SLC are unable to identify if a borrower has paid off their loan in the period up until the end of the tax year and are unable to ask HMRC to inform employers to stop making PAYE loan repayment deductions. This means that many borrowers over-repay on their loans and have to request a refund. The

amounts involved for borrowers can be quite large. It is estimated that the average over-repayment is £1,000. Borrowers can switch to direct debit payments when they are within 23 months of paying off their loans, to avoid the risk of over-repaying but the uptake of this option is low.

Account balance

Borrowers do not have easy access to up-to-date information about their loan balance. To get an up-to-date balance in-year, borrowers have to contact SLC with information about all their repayments made since their last year-end statement.

Repayment dates

Currently SLC receive information from HMRC at the end of the tax year about the total amount repaid by each student loan borrower. This amount is then applied to each account in 12 equal instalments across the year (or as many equal instalments as the number of months an individual borrower had PAYE income during the tax year) based on an operational assumption that the borrower's income has been consistent throughout the year, and interest will be applied on that basis. In reality, the profile of individual borrowers' repayments may of course be much more variable.

The Regulations make provision to allow HMRC and the SLC to use the data already provided by employers on a more frequent basis. This will provide an up to date loan balance for the borrower and enable a more accurate calculation of any interest applied. It will enable borrowers to apply for a settlement quotation at any time and query adjustments if there are employer errors.

Consultation

There is no statutory requirement to consult on these Regulations and no consultation has been undertaken.

Regulatory Impact Assessment

A Regulatory Impact Assessment (RIA) has not been conducted as the changes are technical in nature. The changes improve the repayment system for those in repayment by providing for the more timely sharing of information relating to repayments, but do not alter the underlying repayment policy. The

legislation has no impact on the statutory duties (sections 77 -79 GOWA 06)
or statutory partners (sections 72-75 GOWA 06).