

Explanatory Memorandum to the Education (Student Support) (Repayment) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by Higher Education Division and is laid before Senedd Cymru 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 Support) (Repayment) Regulations 2021. I am satisfied the benefits justify the likely costs.

Kirsty Williams MS
Minister for Education
26 February 2021

PART 1

1. Description

The Education (Student Loans) (Repayment) (Amendment) Regulations 2021 ('the Regulations') provides for amendments to be made to the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) ("the 2009 Regulations").

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

The Regulations further amend 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 Senedd Cymru 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 exceptionally be made in English only.

3. Legislative background

The Regulations will be subject to the negative procedure and made using powers under sections 22, and 42(6) of the Teaching and Higher Education Act 1998. In particular section 22(2) provides for regulations to prescribe requirements or other provisions, whether as to repayment or otherwise. Section 22(3) makes provision for regulations made by virtue of section 22(2) to include requirements for such loans to be repaid in such manner, at such times, and to such person or body as may be prescribed from time to time.

The Secretary of State's functions in section 22(2)(2)(a) of the 1998 Act were transferred to the National Assembly for Wales so far as they relate to making provision in relation to Wales by section 44 of the Higher Education Act 2004 and are exercisable concurrently with the Secretary of State. The Secretary of State's

function in section 42 was transferred, in so far as exercisable in relation to Wales, to the National Assembly for Wales by S.I. 1999/672. All the above functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

4. 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. Whilst the Regulations will enable the change in England and Wales, the changes will apply to the whole of the UK.

Scottish Student Loans Repayment Threshold'

The Scottish First Minister announced, as part of the Programme for Government 2017-18, that the Scottish student loan repayment threshold would rise to £22,000 by the end of the current Parliamentary term. The Minister for Further Education, Higher Education and Science confirmed to the Scottish Parliament in June 2018 that the repayment threshold rate would increase to £25,000 by April 2021.

In order to protect the current and future terms and conditions relating to loan repayments for Scottish borrowers, a new repayment threshold needs to be created to allow Scottish Ministers control over any future changes to these terms and conditions.

Amendments are required to the 2009 Regulations to make provision for this new repayment threshold. Such amendments will define what a Scottish student loan is and will also clarify which repayment threshold applies in cases where the borrower has more than one plan type loan.

The Regulations will also provide for how an apportionment of repayment is to be calculated in cases where a student is repaying a Welsh student loan and a Scottish student loan.

The creation of a new Scottish repayment threshold will not change the general terms and conditions of Welsh student loans. Currently, where a borrower has loan balances across more than one plan type then repayment instalments are 9% of gross annual income above the lowest applicable income threshold. This will not change – where students are repaying a Welsh student loan and a Scottish student loan, the amount of their repayment will be apportioned between the repayment plans.

Regulation 17 More Frequent Data Sharing (MFDS) correction – Date of Repayment

The Education (Student Loans) (Repayment) (Amendment) Regulations 2019 which amend the 2009 Regulations were laid in January 2019. Regulation 17(ca)(ii) is amended to remove the impression that HMRC has a discretion to select the date of the deemed receipt of repayment where an adjustment is made.

Modernisation of Student Loans Company communication processes

Currently the 2009 Regulations provides for the SLC to issue correspondence in relation to 'Confirmation of Customer Details' in paper format or via electronic format subject to prior agreement of the recipient. An amendment is made to remove the requirement on SLC to obtain prior agreement from the recipient for correspondence to be issued in electronic format to enable efficient operation.

Similarly, the 2009 Regulations provide for SLC to serve Information notices at the recipient's home address. An amendment is made to remove the reference to the recipient's home address so that electronic forms of communication can be used.

5. Consultation

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

6. Regulatory Impact Assessment (RIA)

An RIA has been conducted for the Regulations.

Options

Two options have been considered, which are set out below. The Welsh Government is constrained by the need to operate a single unified repayment system for England and Wales by Her Majesty's Customs and Revenue.

Option 1: Business as usual

No changes would be made to the Regulations under this option.

Option 2: Make the Regulations

Introduce the Regulations to make provision for Scottish Part 4 loan plans and to apportion repayments between those loans and Welsh loans; to remove the impression that HMRC has a discretion to select the date of the deemed receipt of repayment where an adjustment is made and to enable the SLC to communicate with borrowers electronically.

Costs and benefits

Option 1: Business as usual

If the Regulations are not amended, then it will not be possible for the SLC to modernise processes to enable use of electronic format of communication to be used without prior approval of the recipient. It will also mean that the Regulations will continue to give the impression that HMRC has discretion to decide the date of an adjusted repayment. Additionally the Regulations will not enable repayments to take account of the new Scottish student loans threshold.

This is the baseline option and as such there are no additional costs or benefits associated with this option.

Option 2: Make the Regulations

By amending the Regulations, the Welsh Ministers ensures that it delivers benefits to borrowers. The changes will clarify that HMRC has no discretion to decide the date of an adjusted repayment. The changes will mean that SLC will be able to modernise its operation processes and in doing so become more efficient. Additionally the changes will also mean that the Regulations will provide for students to repay when in receipt of Scottish student loans.

The changes which will enable SLC to correspond electronically with borrowers are expected to generate administrative cost savings for the SLC.

The changes associated with the new Scottish student loans threshold may have a very small cost impact on 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. Insofar as a small number of Welsh borrowers may have both a Scottish student loan and a Welsh student loan, the amount repaid to the Welsh loan may fall, and thus the RAB charge, which the Welsh Government must fund, rise. However, due to existing restrictions on students having more than one loan, this is likely to happen only very rarely so the impact on the RAB charge would be small.

As the anticipated expenditure associated with the changes can be met from within existing resources, there are no new financial implications for the Welsh Ministers arising from the regulatory amendments as detailed above.

Competition Assessment

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

Post-Implementation Assessment

The regulations governing the repayment of student support are revised occasionally and are subject to ongoing review, both by policy officials and delivery partners in their practical implementation of the regulations.

Summary

The making of the Regulations is necessary to ensure that SLC will be able to modernise its operation processes and in doing so become more efficient. Additionally the changes will also mean that the Regulations will provide for students to repay when in receipt of Scottish student loans.