

Explanatory Memorandum to the Education (Student Loans) (Repayment) (Amendment) (No.5) Regulations 2022

This Explanatory Memorandum has been prepared by the Higher Education Division and is laid before 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) (No.5) Regulations 2022.

Jeremy Miles MS
Minister for Education and Welsh Language
22 December 2022

Part 1

1. Description

- 1.1 The Education (Student Loans) (Repayment) (Amendment) (No.5) Regulations 2022 (“the 2022 No.5 regulations”) amend the Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2022 (SI 2022/1335) (“the 2022 No.4 regulations”).

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

- 2.1 The Education (Student Loans) (Repayment) Regulations (“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 The 2022 No.4 regulations made various amendments to the 2009 regulations.
- 2.3 This composite statutory instrument is subject to the negative resolution procedure. As the regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

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 and sections 5(4) and 6(1)(a) and (2)(a) of the Sale of Student Loans Act 2008.
- 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 section 22(2)(a), (c) and (k) are exercisable by Welsh Ministers concurrently with the Secretary of State in relation to Wales. The functions in section 22(2)(j), (3)(e) and (f) and (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.

4. Purpose and intended effect of the legislation

- 4.1 An error has been identified in the commencement provisions in the 2022 No.4 regulations (SI 2022/1335) which means aspects of the instrument relating to the prevailing market rate interest rate cap for Plan 2 (post-2012 undergraduate) and Plan 3 (Postgraduate) student loans may not come into force on 16 January as intended.
- 4.2 This error may create uncertainty and lead to further difficulty when the relevant provision needs amending in February 2023. To rectify this, the 2022 No.5 Regulations will correct the commencement provision.

5. Consultation

- 5.1 There is no statutory requirement to consult on these regulations and no consultation has been undertaken.

Part 2 – Regulatory Impact Assessment (RIA)

- 6.1 As this instrument makes amendments to update an error in subordinate legislation and the amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation, an RIA is not required. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.