

Explanatory Memorandum to the Education (Student Finance) (Miscellaneous Amendments) Regulations 2023

This Explanatory Memorandum has been prepared by the Higher Education & Delivery Division and is laid before Senedd Cymru 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 Finance) (Miscellaneous Amendments) Regulations 2023.

Jeremy Miles MS
Minister for Education and Welsh Language
11 May 2023

Part 1

1. Description

- 1.1 The Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470), as amended (“the 2009 Regulations”), provide the basis for the repayment of student loans made by the Welsh Ministers. The 2009 Regulations include provision for interest to be charged on student loans.
- 1.2 The Education (Student Finance) (Miscellaneous Amendments) Regulations 2023 (“the 2023 Regulations”) will set a flat interest rate for Plan 2 and Plan 3 student loans at 7.1% for a period of three months from 1 June 2023.
- 1.3 The 2023 Regulations also insert a new formula for the calculation of the fixed instalment rate applicable to plan 3 (postgraduate) loans. Further technical amendments are also made to the 2009 Regulations.
- 1.4 In addition, the 2023 Regulations make further technical amendments on an England only basis in relation to certain England only subordinate legislation.

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. 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. Therefore, the 2023 Regulations are made in English only.
- 2.3 Regulations 5 to 7 of the 2023 Regulations are made in relation to England only to correct drafting errors in relation to subordinate legislation that applies in relation to England only.

3. Legislative background

- 3.1 Sections 22 and 42 of the Teaching and Higher Education Act 1998 enable the Welsh Ministers to make regulations relating to the provision of financial support to students ordinarily resident in Wales who are enrolled on designated courses of higher education, including provision for the repayment of loans.
- 3.2 The 2009 Regulations provide the basis for the repayment of student loans made by the Welsh Ministers and include provision for interest to be charged on student loans. The enabling powers for the 2023 Regulations are section 22(2)(g), (3)(a), (4)(a) and 42(6) of the Teaching and Higher Education Act 1998.
- 3.3 The Welsh Ministers and Secretary of State are required by section 22(4)(a) of the Teaching and Higher Education Act 1998 (“the 1998 Act”) to ensure that the student loan interest rate is either below the prevailing market rate (‘PMR’), or no higher than the PMR where the other terms on which such loans are provided are more favourable to borrowers than those prevailing on the market.
- 3.4 Section 44 of the Higher Education Act 2004 provided for the transfer to the National Assembly for Wales of the functions of the Secretary of State in relation to Wales under section 22(2)(g), (3)(a) and (4)(a) of the 1998 Act.
- 3.5 The functions of the Secretary of State under section 42(6) of the 1998 Act were transferred to the National Assembly for Wales, so far as exercisable in relation to Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).
- 3.6 The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
- 3.7 Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are delegated to the Student Loans Company under section 23 of the 1998 Act.
- 3.8 The 2023 Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

Prevailing Market Rate

- 4.1 Student loans become due for repayment from the beginning of the tax year after the borrower leaves study. For borrowers undertaking undergraduate courses which began on or after 1 August 2012 (‘Plan 2’ borrowers), and borrowers

undertaking postgraduate Master's courses starting on or after 1 August 2017 or doctoral courses starting on or after 1 August 2018 ('Plan 3' borrowers), they are income contingent. Borrowers pay back a fixed proportion of their income above a threshold amount.

- 4.2 Interest is charged on Plan 2 and Plan 3 loans and is linked to inflation via the Retail Prices Index (RPI). The RPI value used in setting interest rates is the annual percentage increase in the retail prices all items index in the twelve months to the March immediately before the start of the academic year for which rates are to be set. RPI increased from 1.5% in March 2021 to 9% in March 2022. The interest rate charged on Plan 2 loans varies depending on income, starting at RPI for those earning £27,295 or less and rising gradually to a maximum of RPI + 3% for those earning more than £49,130. Without intervention, loan interest rates would therefore increase to between 9% and 12% for Plan 2 borrowers. Plan 3 borrowers would see the interest rate rise from 4.5% to 12% – these loans have an interest rate of RPI + 3% throughout the loan term.
- 4.3 Interest rates are set for a time period of an academic year (i.e. 1 September – 31 August). A new interest rate comes into operation on 1 September each year. These interest rates are subject to a capping mechanism, in line with the provision that rates must not exceed the PMR. Welsh Ministers have previously implemented a series of temporary interest rate caps via the Education (Student Loans) (Repayment) (Amendment) (No.2, 3 and 4) Regulations 2021 (S.I. 2021/677, S.I. 2021/1005 and S.I. 2021/1378 respectively), the Education (Student Loans) (Repayment) (Amendment) (No. 2 and 3) Regulations 2022 (S.I. 2022/889 and S.I. 2022/1151 respectively), and the Education (Student Loans) (Repayment) (Amendment) Regulations 2023 (S.I. 2023/129).
- 4.4 The PMR is not defined in primary legislation. The Welsh Government considers that the most appropriate practical measure of the PMR is the interest rate of the most comparable types of commercial loans, as expressed by official data sources. These are the Bank of England effective interest rates for existing and new unsecured personal loans.
- 4.5 The 2023 Regulations introduce a flat rate student loan interest rate of 7.1% for a three-month period from 1 June 2023. This rate will apply to all Plan 2 and Plan 3 borrowers as the PMR is lower than each of the rates which would otherwise apply. All borrowers will see a reduction in the rate of interest applied to their loan balance compared to the uncapped position. Those ordinarily on the higher variable rates on a Plan 2 loan will see a greater reduction than those on the lower rates.

4.6 After expiry of the Regulations on 31 August 2023, the interest rate on Plan 2 and Plan 3 loans will return to the rate specified in the 2009 Regulations, unless they remain above the PMR, in which case further regulations will be required.

Technical changes

4.7 The Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2022 (“the 2022 (No.4) Regulations”) implemented a new repayment plan for English students (Plan 5), revised the fixed instalment rates for overseas borrowers and made various other amendments in relation to repayment thresholds for Plan 2. Following laying of the 2022 (No.4) Regulations, minor drafting issues were identified that are to be corrected through these 2023 Regulations. These are technical amendments and do not make any change to policy.

- The extent provisions included within the 2022 (No.4) Regulations relating to the PMR cap covers all the UK, whereas it should relate to England and Wales only.
- Regulation 74A of the 2009 Regulations sets out the methodology for calculating the fixed instalment rate applicable to overseas borrowers who have failed to provide details of their income to the Student Loans Company (SLC). The Plan 3 fixed instalment rate for borrowers residing overseas was incorrectly included in the formula (within the 2022 (No.4) Regulations) to calculate the fixed instalment rate for Plan 2 and Plan 5 loans. A separate formula should have been included for the calculation of the plan 3 fixed instalment rate, including a multiplier of 0.06, in alignment with how plan 3 student loan repayments are calculated for UK based borrowers.
- Regulations 5 to 7 also make further amendments to correct various drafting errors in subordinate legislation that applies in relation to England only.

5. Consultation

5.1 No consultation has been undertaken.

Part 2 – Regulatory Impact Assessment

6.1 In line with the policy set out in the Welsh Ministers’ code of practice for carrying out regulatory impact assessments for subordinate legislation, an RIA has not been produced.

6.2 An RIA for this statutory instrument is subject to the following exceptions set out in the code (as referred to above):

- *Where the subordinate legislation simply increases a statutory fee, tax rate, payment, grant or allowance by a predetermined formula.*

The 2023 Regulations amends the interest rate cap applied to student loans for Plan 2 and Plan 3 borrowers, using a predetermined formula. The UK Government (UKG) and the Welsh Government both adopted a measure of the prevailing market rate (PMR) as the interest rate of the most comparable types of commercial loans, as expressed by official data sources. These are the Bank of England effective interest rates for existing and new unsecured personal loans. Interest rates are monitored and compared, to the existing rate to be charged on the student loan, and cap (if necessary) at the PMR.

- *Where the subordinate legislation is made in the exercise of statutory powers granted by an Act or Measure which does not in any way give the Welsh Ministers discretion as to how those powers should be exercised.*

Welsh Ministers are restricted by section 22 of the Teaching and Higher Education Act 1998 to ensure interest rates do not exceed the prevailing market rate and have no discretion to do otherwise. Welsh Ministers must reduce the interest rate otherwise payable.

The 2023 Regulations also make technical amendments to update errors in subordinate legislation; these amendments do not alter the policy (or its impact) in any significant way or how it is applied in a given situation.