

SL(6)308 – The Education (Student Loans) (Repayment) (Amendment) (No. 4) Regulations 2022

Background and Purpose

The Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2022 (“these Regulations”) amend the Education (Student Loans) (Repayment) Regulations 2009 (the “2009 Regulations”), which 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 (and subsequent amendments to them) have been made as composite instruments; meaning they have been made by both the Secretary of State and the Welsh Ministers (in relation to Wales).

The amendments of the 2009 Regulations:

- reorganise student loans within the scope of the 2009 Regulations into five plans, including a new plan 5 loan for certain courses beginning on or after 1st August 2023;
- for borrowers who have a plan 2 loan (formerly a “post-2012 student loan”):
 - maintain the income-based repayment threshold (above which a borrower who has reached the statutory repayment due date in regulation 15 is required to make repayments) at £27,295 until the end of 5th April 2025, and
 - change the annual uprating of the repayment threshold thereafter from a calculation based on differences in average earnings to one based on the retail price index;
- introduce fixed instalment rates, which:
 - are used to calculate repayments by overseas borrowers who have not provided required information about their income,
 - replace the fixed instalments set out in regulation 76 (which is omitted), and
 - for repayments of a plan 2 loan, a plan 3 loan (formerly a “postgraduate degree loan”) or a plan 5 loan, are recalculated annually based on the median salary for graduates;
- consolidate the provisions reducing interest rates on plan 2 and 3 loans applied by S.I. 2021/677, 1005, 1378, 2022/889 and 1151 (which are revoked);
- omit spent provisions;
- make incidental, supplemental or technical amendments.

The change introduced by these Regulations will result in a number of benefits and savings to the Welsh Government, the detail of which is further set out in the Regulatory Impact Assessment contained in Part 2 of the accompanying [Explanatory Memorandum](#).

In consequence of drafting errors in these Regulations, they themselves have been amended by the [No. 5 Regulations](#) of the same name. The Explanatory Memorandum thereto states:



"An error has been identified in the commencement provisions in the 2002 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.

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."

Procedure

Composite Negative

The Regulations were made by both the Welsh Ministers and the Secretary of State, before being laid before both the Senedd and the United Kingdom Parliament.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd. The United Kingdom Parliament can also annul the Regulations, in accordance with the rules for annulment that apply to the United Kingdom Parliament.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(ix) – that it is not made or to be made in both English and Welsh

These Regulations have been made as a composite instrument, meaning the Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the Senedd and the United Kingdom Parliament. We note, as a result, the Regulations have been made in English only.

The Explanatory Memorandum explains that:

"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."

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

We note there has been no formal consultation on these Regulations. In particular, we note the paragraph 5.1 of the Explanatory Memorandum:



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

Bearing in mind these Regulations reorganise student loans under the 2009 Regulations and, in particular, change the manner in which the repayment threshold for Plan 2 loans is calculated post 5 April 2025 and the basis on which Plan 2, 3 and 5 loans are recalculated annually, it is unclear why a consultation was not undertaken.

Welsh Government response

A Welsh Government response is required in relation to reporting point 2.

Committee Consideration

The Committee considered the instrument at its meeting on 23 January 2023 and reports to the Senedd in line with the reporting points above.

