

SL(6)414 – The Education (Student Loans) (Repayment) (Amendment) (No.3) Regulations 2023

Background and Purpose

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (“the 2009 Regulations”), which make provision for the repayment of income-contingent student loans in England and Wales.

Regulation 2 amends the 2009 Regulations to cap the interest that would otherwise be payable on certain undergraduate and postgraduate student loans (under regulations 21A, 21B and 21C). It puts in place a long-term interest rate cap, assessed on a monthly basis (replacing the existing regulation 20B, which was calculated on a quarterly basis and required quarterly amending Regulations to be made). The cap is calculated in relation to a month, first, by calculating the 12 month rolling average in two data sets published by the Bank of England and, then, by taking the lower of the two. The Authority¹ is required to publish the interest rate cap for each month.

Regulation 3 makes amendments to the 2009 Regulations consequential on the change made by regulation 2.

Regulation 4 concerns the scope of the fixed instalment rate, which is relevant to the repayment of student loans by overseas borrowers. It provides for the fixed instalment rate for plan 1 student loans to be calculated in the same way as for plan 2, plan 3 and plan 5 student loans.

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.

¹ The Authority” means - (a) in relation to a plan 1, 2 or 3 loan and subject to regulation 7 - (i) the Welsh Ministers in the case of a loan made or deemed made by them, or (iii) the Secretary of State in any other case; and (c) in relation to a plan 5 loan and subject to regulation 7, the Secretary of State.



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. As a result, the Regulations have been made in English only.

The Explanatory Memorandum explains that:

“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 His 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.

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.”

Merits Scrutiny

The following three points are 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 the purpose and intended effect of the legislation. The Explanatory Memorandum explains that:

“To avoid the need to make quarterly regulations, the 2023 Regulations introduce a permanent provision that creates a system with an in-built cap that would be applied whenever the student loans interest rates would otherwise exceed the PMR. This would provide for Plan 2, Plan 3 and Plan 5 interest rates to be RPI plus up to 3% (depending on the plan type, as per the current regulations) unless the PMR was less than this, in which case the PMR cap would apply. This would mean the Plan 2, Plan 3 and Plan 5 interest rates could change any month when the cap is in force and would see the cap being applied based on the latest published PMR data. Where a PMR cap is applied, all borrowers will see a reduction in the rate of interest applied to their loan balance compared to the uncapped position. For



operational reasons the PMR cap adjustment would be implemented on the first day of the relevant month (where it was applicable to do so)."

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

We note that there has been no consultation on these Regulations. In particular, we note the following paragraph in the Explanatory Memorandum:

"No consultation has been undertaken. A consultation was not deemed necessary as the 2023 Regulations are being implemented to uphold the requirements in the Teaching and Higher Education Act 1998. Furthermore, this is an area of the student finance system where there is very limited scope for Wales to take a different approach for Welsh borrowers and the limited time available to legislate in respect of Welsh loans in response to the UK Government's changes for English borrowers, did not allow for a consultation to be undertaken."

4. 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

Regulation 2(b) inserts the new regulation 20BA in the 2009 Regulations. As such regulation 20BA(6) provides that *"The Authority must publish the interest rate cap in relation to every month, as soon as practicable and by whatever means and in whatever media the Authority thinks fit."* Can the Welsh Government give an indication as to where the monthly interest rate cap will be published?

Welsh Government response

A Welsh Government response is required for point four only.

Committee Consideration

The Committee considered the instrument at its meeting 27 November 2023 and reports to the Senedd in line with the reporting points above.

