

## **Explanatory Memorandum to the Education (Student Loans) (Repayment) (Amendment) (No.3) 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 Loan) (Repayment) (Amendment) (No.3) Regulations 2023. I am satisfied the benefits justify the likely costs.

Jeremy Miles MS  
Minister for Education and Welsh Language  
9 November 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 and sets out the fixed instalment rates of repayment, by country banding, for those overseas borrowers who do not provide details of their expected earnings to the Student Loans Company (SLC).
- 1.2 The Education (Student Loan) (Repayment) (Amendment) (No.3) Regulations 2023 (“the 2023 Regulations”) will amend the 2009 Regulations to:
- implement a permanent provision to set the prevailing market rate (PMR); and
  - revise the Plan 1 fixed repayment rate for overseas borrowers.

### **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 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.
- 2.2 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.

### **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 2009 Regulations also provide for fixed instalment rates for overseas borrowers to repay or accrue arrears when they fail to confirm details of their expected earnings which SLC requires to enable calculation of repayments due. The enabling powers for the 2023 Regulations are section 22(2)(g), (3)(a) and (b), (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) or began on or after 1 August 2023 (‘Plan 5’ borrowers – applicable to England domiciled students only), 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, Plan 3 and Plan 5 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.
- 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), the Education (Student Loans) (Repayment) (Amendment) Regulations 2023 (S.I. 2023/129); the Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations (S.I. 2023/898) and the Education (Student Finance) (Miscellaneous Amendments) Regulations 2023 (S.I. 2023/521).
- 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 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).

- 4.6 The permanent provision to set the PMR will come into force on 1 December 2023.

*Fixed instalment rate for overseas borrowers*

- 4.7 Borrowers who reside overseas while in loan repayment should confirm details of their expected earnings to the SLC, as borrowers based in the UK would. SLC then calculate a repayment plan for these borrowers based on 9% (Plan 1, Plan 2 or Plan 5) or 6% (Plan 3) of their earnings that are over the relevant repayment threshold. This is how most overseas borrowers repay their student loans.
- 4.8 However, there are cases in which some overseas borrowers fail to provide their expected earnings and the 2009 Regulations provide for fixed instalment rates at which these borrowers repay or accrue arrears.
- 4.9 The fixed instalment rates are set out in the 2009 Regulations and are grouped by bands, depending on the country of residence of the overseas borrower. Price level indices (PLI) data is used to determine which band a country should fit in. The PLI data provides a comparison of the cost of living in each country to the cost of living in the UK. The 2009 Regulations provide that the UK has a PLI of 100 and the rates for the remaining bands are based on a percentage of the UK fixed instalment rate. All overseas borrowers who do not provide their earning information will pay the fixed instalment rate for the band that their country of residence sits in.
- 4.10 The Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2022 revised the fixed instalment rates for Plan 2 and 3 and introduced an annual uprating for future years which links the rates to the repayments a borrower earning twice average working age graduate earnings in England would make under the relevant loan terms and conditions (T&Cs). The same loan T&Cs applies to Plan 5 borrowers as part of the recent introduction of Plan 5 in England.
- 4.11 The 2023 Regulations amend the Plan 1 fixed instalment rate for overseas borrowers for financial year 2024-25 and introduce an annual uprating for future years, in line with Plan 2, Plan 3 and Plan 5.

## **5. Consultation**

- 5.1 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.

## **Part 2 – Regulatory Impact Assessment**

### **6. Regulatory Impact Assessment**

6.1 An RIA has been conducted for the 2023 Regulations in respect of the Plan 1 fixed instalment rate only.

6.2 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 in respect of the permanent provision to set the PMR has not been produced. The reasons for this are contained within the exceptions stated within the code:

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

The PMR cap applied to student loans for Plan 2, Plan 3 and Plan 5 borrowers uses 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. The 2023 Regulations introduces the formula into legislation and creates a system for how the PMR would be applied.

- *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.

### **Options**

*Option 1: Business as usual*

- 6.3 If the 2023 Regulations are not made the Plan 1 fixed instalment rate for overseas borrowers would not be updated.
- 6.4 This would present practical issues in the collection of loan repayments for overseas Welsh borrowers that could not be resolved in advance of the 2024-25 financial year. The PAYE repayment system is operated by HMRC and is currently tied to UK Government policy. There is no scope for the Welsh Government to make independent changes ahead of the next financial year. Legislation must be updated accordingly. These practical implications arise because certain functions of the repayment system are not functions of the Welsh Ministers.
- 6.5 Changes to the Plan 1 fixed instalment rate is necessary to avoid incentivising borrowers to fail to comply with the requirement to provide their income details to SLC, so avoiding making the repayments required by policy.

#### *Option 2: Make the Regulations*

- 6.1 Making the 2023 Regulations ensures that regulatory provision for repayment by Welsh borrowers continues uninterrupted for the 2024-25 financial year and the practical issues outlined above are avoided.

### **7. Costs and benefits**

#### *Option 1: Business as usual*

- 7.1 Continuing with business as usual would mean diverging from UK Government repayment policy which is tied to the PAYE repayment system operated by HMRC. To diverge would require the Welsh Government to establish an alternative repayments system for Welsh borrowers, which is impractical in the time available and would be a significant cost to implement.

#### *Option 2: Make the Regulations*

- 7.2 Changes to the loan T&Cs for Plan 1 will affect those Welsh borrowers (approximately 150,000) who have a student loan under Plan 1, however it will only impact upon a small percentage of these Welsh borrowers who reside overseas and who do not provide SLC information about their expected income (only 0.4% of borrowers across all plan types are overseas borrowers).
- 7.3 The adjusted Plan 1 monthly fixed instalment rates for FY2024-25 are not yet available. These will be determined once the PLI calculations to fit countries into

the relevant bandings and the thresholds for each band are known (expected early 2024).

- 7.4 No Welsh borrower can be disadvantaged by the change; an overseas borrower who, based on their actual income, would pay less than the fixed instalment rate can choose to do so by providing their income details to SLC and is therefore put in the same financial position as a borrower resident in the UK.

## **8. Competition Assessment**

- 8.1 The making of the 2023 Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

## **9. Post-Implementation Assessment**

- 9.1 The regulations governing the repayment system are continually subject to detailed review both by policy officials and delivery partners in their practical implementation of the regulations. Policy for the 2025-26 financial year will be considered in due course.