

**EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT)
REGULATIONS 2013**

2013 No. 607

1. This explanatory memorandum has been prepared by the Department for Business Innovation and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments. These are composite regulations with Welsh Ministers and these regulations will also be laid before the National Assembly for Wales.

2. **Purpose of the instrument**

- 2.1 These regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (the 2009 Regulations). They will introduce additional measures associated with the Higher Education (HE) Reform programme for borrowers with income contingent loans. The repayment regulations as amended will, for the first time, expressly cover 24+ Advanced Learning Loan repayments. These loan repayments will be collected in exactly the same way as HE loan repayments.

- 2.2 They will also make further changes for Real Time Information (RTI) to amend, in certain circumstances, the requirement to make a return on or before the date on which payment is made, to make amendments for paper filers and to make provision for the situation where an employer fails to make a return on or before making a payment. There are also other changes, including a new penalty regime for dishonest tax agents and modification of the reporting arrangements for certain benefits and expenses.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 This Instrument introduces changes resulting from the White Paper to the repayment system for new borrowers entering higher education for the first time from September 2012 and also some changes for borrowers under the current repayment system. The Higher Education White Paper set out the long term strategy for Higher Education Reforms - <http://www.hepi.ac.uk/455-1987/Higher-Education--Students-at-the-Heart-of-the-System.-An-Analysis-of-the-Higher-Education-White-Paper-.html>

- 4.2 Plans to introduce the 24+ Advanced Learning loans were first announced following the 2010 Comprehensive Spending Review and, following consultation, were confirmed in New Challenges, New Chances: Further Education and Skills System Reform Plan. This is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31429/11-1380-further-education-skills-system-reform-plan.pdf . The Further Education Loans Regulations 2012 were then laid before Parliament on 12 July 2012 and came into force from 1 September 2012. These are available at: <http://www.legislation.gov.uk/uksi/2012/1818/note/made>
- 4.3 This Instrument further amends the Education (Student Loans)(Repayment) Regulations 2009, which govern the repayment of Income Contingent student loans and are made under section 22 of the Teaching and Higher Education Act 1998. The Higher Education White Paper set out a vision for radical reform of English Higher Education.
- 4.4 The Income Tax (Pay As You Earn) Regulations (S.I. 2003/2682) (the 2003 Regulations) govern the operation of the Pay As You Earn (PAYE) system under which income tax is deducted at source from employee's pay. Certain other deductions are also made under this system. Under RTI, employers are required to report payments to employees and the deduction of tax to HMRC each time a payment is made.
- 4.5 The Finance Act 2012 introduced legislation outlining a new mechanism to address dishonest tax agents which will allow HMRC to issue a tax agent with a conduct notice if it has determined that they have engaged in dishonest conduct. The new rules, which are set out in Section 223 and Schedule 38 of the Finance Act 2012, are intended to be applied from 1 April 2013 and will be brought into effect in HMRC by an Appointed Day Order

5. Territorial Extent and Application

- 5.1 This instrument has the same territorial extent and application as the provisions it amends in the 2009 Regulations. The 2009 Regulations extend to England and Wales but they also extend to all of the United Kingdom in so far as they impose any obligation or confer any power on HMRC, an employer or a borrower in relation to repayment under Parts 3 or 4 of those Regulations.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

The Repayment Regulations, as amended, will for the first time, expressly cover 24+ Advanced Learning Loan repayments. These loan repayments will be collected in exactly the same way as HE loan repayments.

- 7.1 **Variable Interest Rates at the end of the loan term:** The income contingent interest rate, where borrowers wish to settle their account in full or repay the remaining balance by direct debit at the end of their loan term, will be the rate which was applicable during the previous tax year, unless borrowers are residing overseas or want to repay their loan in the first year of repayment. The Student Loans Company (SLC) will, if requested by the borrower, re-calculate the interest rate after the end of the tax year when actual income details for the year in question is known.
- 7.2 **Borrowers moving overseas – interest rate:** During the tax year in which a borrower moves overseas, for the part of the tax year spent in the UK, the actual income for the period spent in the UK will determine the applicable interest rate. For the period of the overseas repayment schedule, the predicted income will determine the rate of interest. However, that schedule may take 2-3 months to set up. These regulations allow that SLC will apply a rate of RPI for this period of time.
- 7.3 **Small credit balances:** Where a borrower has both pre- and post-2012 loans and the pre-2012 loan is over-repaid, the SLC will contact the borrower to offer a refund, and where no contact is received within 60 days the credit balance will be credited to the post-2012 loan balance. The amending regulations permit SLC to automatically credit the outstanding post-2012 loan balance without asking the borrower's permission if the over-repaid credit is £5 or less.
- 7.4 **Threshold on change of jobs after 2016:** When a borrower changes jobs after April 2016, he or she will be required to supply evidence to their employer of their correct threshold. Where this is not supplied, employers will apply the lower threshold as a default, until such time HMRC advises the employer that the higher threshold applies. The amending regulations allow that where this results in an over-repayment because the borrower has not supplied the correct evidence to their employer, that this is not refunded to the borrower, but instead it serves to reduce the loan balance.
- 7.5 **Access to HE Diploma Loans:** The regulations include a new loan cancellation provisions which means that where a borrower has achieved an Access to HE Diploma, and subsequently completes an HE course, the loan balance of the Access course will be cancelled.

- 7.6 HMRC** requirements which must be mirrored in our regulations because loan repayments are collected via the tax system. These include provisions for employers failing to make a return to HMRC and employers who may have difficulty in meeting the requirement to file their returns by means of electronic communications. They also set out specific circumstances in which an employer may not be able to fulfil the requirement to send in a return on or before they make a payment to an employee. HMRC has made provision for such circumstances, allowing an additional 7 days for a return to be filed. There is also a new penalty regime for dishonest tax agents, and modification to the reporting arrangements for certain benefits and expenses. HMRC will not be charging late filing penalties during the year 2013-14 in order to give employers an opportunity to become used to returning information in Real Time.

Composite regulations

These are composite regulations with Wales.

8. Consultation outcome

- 8.1 No formal consultation was undertaken on these regulations in relation to the HE provisions because it was done in the Government's White Paper – Higher Education - Students at the Heart of the System and the public had the opportunity to respond to that.
- 8.2 Consultation on the introduction of 24+ Advanced Learning Loans was undertaken as part of the preparation for the New Challenges, New Chances FE System Reform Plan. A summary of consultation responses can be found at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32334/11-1384-new-challenges-new-chances-summary-responses-to-consultation.pdf
- 8.3 No formal consultation exercise was undertaken in relation to the mirroring of taxation changes as they bring into effect for the collection of student loans tax provisions on which HMRC has previously widely consulted. Details of lapsed and current consultations can be found on the HMRC website:
<http://www.hmrc.gov.uk/consultations/>, and for relevant draft legislation:
<http://www.hmrc.gov.uk/drafts/improving-payerti.htm>

9. Guidance

- 9.1 Guidance will be available on SLC's website in the form of on-line booklets and on Gov.UK. Information is also available on the BIS website. For 24+ loans, guidance for learners will be available via the National Careers Service website <https://nationalcareersservice.direct.gov.uk/Pages/Home.aspx> with links to Gov.UK for advice on applications and repayment.

- 9.2 The taxation changes will be publicised by HMRC. The effect of the Regulations were explained to the HMRC Student Loans Consultation Group, which HMRC uses to consult with employers, representative bodies and payroll software providers on matters related to the collection of student loan repayments. Extensive guidance on RTI is published on HMRC's website.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is nil for policy changes.
- 10.2 Under the Equality Act 2010, the Department, as a public authority, is legally obliged to give due regard to equality issues when making policy decisions. We did an Equality Impact Assessment in 2012 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32396/12-818-education-student-loans-repayment-equality-impact-assessment.pdf . For our policy changes this year, we have considered each of our regulations by reference to our Public Sector Equality Duty. Vulnerable borrowers (those with protected characteristics) will not generally be disadvantaged by these amendments. We have also considered the effect of the Regulations on Muslim students, both in terms of their acceptance of university placements and of student loans and will continue to keep this under review. . This work is set out at Annex A, and an update to the previous Equality Impact Assessment
- 10.3 All employers, including charities or voluntary bodies will be required to report certain information to HMRC in real time (RTI).
- 10.4 The impact of RTI on the public sector is the same as for any other employer.
- 10.5 Tax Information and Impact Notes covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

11. Regulating small business

- 11.1 The taxation amendments apply to small business.
- 11.2 RTI aims to reduce administrative burdens for all employers, including small employers. The aim is to achieve this by integrating employee payment and reporting to HMRC into a single payroll process. The Regulations keep student loan collection processes in line with the rest of the PAYE system. The changes concern how repayments are reported to HMRC, with no changes to how student loan repayments are collected.

12. Monitoring & review

- 12.1 Many changes in this instrument will only be implemented from April 2016. The Department is working closely with both HMRC and the SLC in setting up the process and appropriate measures will be put in place.
- 12.2 All employers will be expected to use RTI from October 2013, and HRMC are monitoring the progress of the pilots and amendments will be made where necessary.

13. Contact

Kathryn Symms at the Department for Business Innovation and Skills; Tel 01325 391187 or email kathryn.symms@bis.gsi.gov.uk can answer any queries regarding the instrument for England and UK wide provisions. Wales have produced their own Explanatory Memorandum.

Update to Equality Impact Assessment 2012

Under the Equality Act 2010, the Department, as a public authority, is legally obliged to give due regard to equality issues when making policy decisions. The equality Impact assessment published last year

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32396/12-818-education-student-loans-repayment-equality-impact-assessment.pdf) said that there was some concern that the changes to Higher Education funding might have a negative impact on the number of Muslims students entering university, as some Muslims and members of other faiths, might be unwilling to incur debt and take out a loan with interest attached.

The real rate of interest might deter some Muslim students from taking advantage of the scheme because real interest rates may be considered riba (forbidden) by Muslim who take a strict interpretation of the Shariah law. The concept of “necessity” – acknowledged by some Fiqh (Islamic jurisprudence) allows Muslims to do certain things if they are living in a non-Muslim country which would otherwise be haraam (forbidden). However, there are five major Muslim schools of thought with a broad spectrum of belief and they do not agree what constitutes necessity.

Since we last published the Equality Impact Assessment, we have continued to consider the effect of the Regulations on Muslim students, both in terms of their acceptance of university placements and of student loans and will continue to do so.

We are continuing to investigate whether there is an Alternative Finance model that could be used to enable students opposed to interest to borrow money for their higher education. We are currently in discussions with Shariah experts, Islamic banks, HMRC and HMT to explore the options and have identified several potential models; however in addition to what would be acceptable to the majority of the Muslim population from a Shariah perspective, tax and legislative issues mean that an alternative will take time to develop.

We are keen to understand if the new arrangements are causing concern to certain religious groups or whether the fact that student loans are non-commercial and have preferential terms mean that they are acceptable for these groups to take out. We are therefore conducting a survey looking at whether Muslims are deterred from going to university given the increase in both fees and interest rates. We have completed a pilot and initial findings from that are that the majority of current first year Muslim students studying at the pilot University had taken out a loan despite the interest attached to the loan, however, some had not taken out a loan because of their religious beliefs. Many Muslim students stated that a loan was the only way of funding their studies and therefore they had taken a loan out. Reasons for not wanting to go on to Higher Education were not distinctive to Muslim students and included wanting to take alternative routes such as apprenticeships or not being interested in Higher Education.