

EXECUTIVE NOTE

THE EDUCATION (TREATMENT OF STUDENT LOANS ON SEQUESTRATION) (SCOTLAND) REGULATIONS 2010 SSI 2010/300

EXECUTIVE NOTE

These regulations are made under sections 73(f) and 73B(12) of the Education (Scotland) Act 1980 and are subject to the negative resolution procedure. These regulations amend the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (the “2006 Regulations”) and the Education (Student Loans) (Scotland) Regulations 2007 (the “2007 Regulations”) so as to exclude the discharge of such student loans where a debtor is sequestrated in Scotland.

POLICY PROOFING/LEGISLATIVE CONTEXT

These regulations amend regulation 12 of the 2006 Regulations so that student loans to which those regulations apply (tuition fees for Scottish domiciled students studying in another part of the UK outside Scotland) are excluded from discharge for the purposes of sequestration.

These regulations amend regulation 15 of the 2007 Regulations so that student loans to which those regulations apply (living costs) are excluded from discharge for the purposes of sequestration.

POLICY OBJECTIVE

Income contingent student loan repayments are linked directly to a borrower’s income, so the debt will only be repaid when the borrower earns more than the income repayment threshold of £15,000. Student loans are paid out of and subsidised by public funds so it is not considered appropriate to allow borrowers to reduce or limit their liability to repay their student loan debt by becoming bankrupt.

In agreement with the UK Government and other devolved administrations, the previous administration agreed to legislate to tighten a loophole in the current regulations to ensure that both mortgage style and income contingent student loans would no longer be discharged in the sequestration process. This was taken forward by the Justice Department from 1 April 2008 under the Bankruptcy and Diligence etc (Scotland) Act 2007 (*BAD Act*).

Income Contingent Repayment (ICR) loans - are repaid when the borrower is earning above the repayment threshold of £15,000. These loans are made under the Education (Scotland) Act 1980; and

Mortgage Style (MS) Loans - are repaid by the borrower in a fixed sum where the borrower earns in excess of £24,000 and has not requested a deferral. These loans are made under the Education (Student Loans) Act 1990 (*1990 Act*) these loans were introduced in 1990 and replaced by ICR loans in 1998.

The BAD Act had amended the 1990 Act so as to exclude MS loans, which were governed by this Act, from discharge on sequestration without the need for further subordinate legislation. In relation to ICR loans made under the 1980 Act, only the enabling powers have been

modified and subordinate legislation is still required to exclude these student loans from bankruptcy.

TERRITORIAL EXTENT

These regulations apply to Scotland, however the decision was made collectively with all UK Administrations to ensure that students loans are treated uniformly throughout the UK under the bankruptcy process.

The Department for Business, Innovation and Skills (BIS) took the lead on this policy for other UK Governments with the Education (Student Loans)(Repayment)(Amendment) Regulations 2010, which came into force on 6 April 2010.

CONSULTATION

No formal consultation exercise was undertaken in relation to these amending regulations.

FINANCE

Student loans are paid out of and subsidised by public funds, so it is not considered appropriate to allow borrowers to reduce or limit their liability by becoming bankrupt. Income Contingent student loan repayments are linked directly to a borrower's income, so the debt will only be repaid when the borrower earns more than the income threshold of £15,000. Accordingly, the obligation on the borrower is not too onerous that it requires to be discharged on sequestration.

These changes will ensure that during and upon discharge from sequestration, student loan borrowers will remain liable to repay their outstanding student loan and safeguard public money in line with all UK Government policy.

GUIDANCE

The exclusion of student loans from bankruptcy will be publicised in conjunction with the Accountant in Bankruptcy (AiB) to ensure that information and guidance is available to those practitioners dealing with bankruptcy. These changes will appear on the AiB website, the notes for guidance for Insolvency Practitioners and the changes will be brought up at the Debt and Insolvency Services Stakeholder Forum (DISSF).

MONITORING & REVIEW

The amendments to these regulations make the position on student loans consistent with that already in place for bankruptcy with all UK Administrations. No monitoring or reviews are planned.

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