



# Sale of Student Loans Act 2008

## CHAPTER 10

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# Sale of Student Loans Act 2008

## 2008 CHAPTER 10

An Act to enable the sale of rights to repayments of student loans; and for connected purposes. [21st July 2008]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### 1 Sale of student loans

- (1) The Secretary of State may enter into arrangements (“transfer arrangements”) under which rights of the Secretary of State in respect of student loans are transferred to another person (“the loan purchaser”).
- (2) In subsection (1) “student loans” means loans made by the Secretary of State in accordance with regulations under section 22 of the Teaching and Higher Education Act 1998 (c. 30) (“loan regulations”).
- (3) Transfer arrangements may relate to—
  - (a) specified loans or a specified class of loan;
  - (b) some or all of the Secretary of State's rights.
- (4) Transfer arrangements may include provision—
  - (a) transferring to the loan purchaser an obligation of the Secretary of State in connection with a loan;
  - (b) transferring to the loan purchaser the benefit of an obligation or undertaking of the borrower in respect of a loan (whether deriving from loan regulations or from arrangements agreed between the borrower and the Secretary of State in respect of the loan (“loan arrangements”));
  - (c) for warranties or indemnities or other obligations of the Secretary of State;
  - (d) enabling the Secretary of State to require a loan purchaser to make specified arrangements in connection with the administration of loans

- (whether by appointing a specified agent for specified purposes, or otherwise);
- (e) prohibiting the loan purchaser from making specified arrangements without the Secretary of State's consent;
  - (f) specifying consequences of the breach of a provision of the transfer arrangements.
- (5) Transfer arrangements shall have effect (and, in particular, a provision transferring rights or obligations is sufficient to effect the transfer).
  - (6) Transfer arrangements may be made –
    - (a) without the borrower's consent;
    - (b) without notice to the borrower.
  - (7) The Secretary of State shall take reasonable steps to notify the borrower within three months of transfer arrangements taking effect.
  - (8) A loan in respect of which transfer arrangements are made may be referred to as a "transferred loan".

## 2 Sales: supplemental

- (1) Transfer arrangements may include any provision that the Secretary of State thinks appropriate (in addition to provision specifically permitted by this section or section 1).
- (2) Transfer arrangements may include provision –
  - (a) for repayments and other sums to be paid by the Secretary of State to the loan purchaser (having been collected by or on behalf of the Secretary of State),
  - (b) for those payments to be made by reference to estimates, and
  - (c) for repayments to or deductions by the Secretary of State in case of overpayment.
- (3) Transfer arrangements may include provision as to who is entitled to interest, penalties or charges imposed or incurred after the transfer.
- (4) Transfer arrangements may include provision for the Secretary of State to pay compensation to the loan purchaser –
  - (a) to reflect regulations under section 186 of the Education Act 2002 (c. 32) (reduction of balances, &c.),
  - (b) in connection with amendments of loan regulations, or
  - (c) in other specified circumstances.
- (5) Transfer arrangements may include undertakings by the Secretary of State about the power to make loan regulations; in particular –
  - (a) the Secretary of State may undertake to exercise the power so as to achieve a specified result,
  - (b) the Secretary of State may undertake not to exercise the power so as to achieve a specified result,
  - (c) the Secretary of State may undertake to follow, or not to follow, a specified procedure in connection with the power,
  - (d) the Secretary of State may give undertakings about the indices, information or other matters to be used or considered for the purposes of section 22(4)(a)(i) of the Teaching and Higher Education Act 1998

- (c. 30) (interest rate to maintain real-terms value of outstanding amounts), and
- (e) a loan purchaser may enforce an undertaking by way of legal proceedings in public law, private law or both.
- (6) In subsection (5) the reference to loan regulations includes a reference to regulations under section 186 of the Education Act 2002 (c. 32).
- (7) Transfer arrangements may include provision for repurchase in specified circumstances.
- (8) Transfer arrangements may provide for the appointment of a person to consider disputes between the loan purchaser and the borrower in respect of a transferred loan.
- (9) Transfer arrangements may make consequential amendment of a document forming part of, or issued in connection with, loan arrangements.
- (10) The Secretary of State may incur expenditure in connection with transfer arrangements.

### **3 Onward sales**

- (1) Rights transferred by transfer arrangements may be further transferred by arrangements between the loan purchaser and another person (“further transfer arrangements”).
- (2) In this Act (including this section) a reference to transfer arrangements includes a reference to further transfer arrangements.
- (3) In the application of this Act to further transfer arrangements –
- (a) a reference to a loan purchaser is a reference to the transferee under the further transfer arrangements (“the further transferee”), and
  - (b) in section 1(3)(b), (4)(a) and (c) and (7) a reference to the Secretary of State is a reference to the transferor under the further transfer arrangements.
- (4) Subsection (1) is subject to any provision of transfer arrangements prohibiting, restricting or controlling further transfer.
- (5) Further transfer arrangements may include provision –
- (a) transferring to the further transferee an obligation of the loan purchaser in connection with a loan;
  - (b) transferring to the further transferee the benefit of an obligation or undertaking of the borrower in respect of a loan (however deriving);
  - (c) transferring to the further transferee the benefit of warranties or indemnities or other obligations of the Secretary of State under transfer arrangements.
- (6) Transfer arrangements may –
- (a) prohibit the making of further transfer arrangements without the Secretary of State’s consent;
  - (b) require further transfer arrangements to be effected by way of novation or other arrangements to which the Secretary of State is a party;
  - (c) include provision by virtue of which the Secretary of State is automatically a party to further transfer arrangements (and may enforce any of their terms).

- (7) In entering into transfer arrangements the Secretary of State shall ensure (whether by reliance on subsection (6)(b) or (c) or otherwise) that the Secretary of State will be party to any further transfer arrangements.
- (8) The Secretary of State may enter into arrangements, under or in accordance with transfer arrangements, in connection with further transfer.
- (9) References in this section to the further transfer of transferred rights do not include references to arrangements under which –
  - (a) transferred rights become held on trust,
  - (b) other equitable interests are created or transferred in relation to transferred rights, or
  - (c) securities are granted in respect of transferred rights.

#### **4 Report**

- (1) After entering into transfer arrangements the Secretary of State shall lay before Parliament a report about the arrangements.
- (2) The report must include information about the extent to which the arrangements give good value; and for that purpose the report must reflect any guidance given by the Treasury about assessing value for money (including guidance to the accounting officer of the Secretary of State's department).
- (3) The report must be laid during the period of 3 months beginning with the date on which the Secretary of State enters into the transfer arrangements.
- (4) This section does not apply to further transfer arrangements (despite section 3(2)).

#### **5 Loan regulations**

- (1) A reference in loan regulations to the Secretary of State as lender includes a reference to a loan purchaser.
- (2) Regulations by virtue of section 22(5)(a)(iii) of the Teaching and Higher Education Act 1998 (c. 30) (loan regulations: repayment) may make provision for the transmission of amounts –
  - (a) by a specified person (or body) other than a borrower's employer,
  - (b) to a loan purchaser, and
  - (c) in accordance with directions given by the Secretary of State.
- (3) Regulations by virtue of section 22(5)(f) of that Act (loan regulations: repayment) may enable the Secretary of State to require the reimbursement of costs or expenses incurred by a loan purchaser.
- (4) Amendments of loan regulations may have effect in respect of transferred loans.
- (5) Subsection (4) includes amendments which have effect in respect of loans made before the amendments are made.
- (6) But in amending loan regulations the Secretary of State shall aim to ensure that no borrower whose loan is transferred is in a worse position, as the result of the amendment, than would have been the case had the loan not been transferred.

- (7) Subsection (6) also applies to making or amending regulations under section 186 of the Education Act 2002 (c. 32).

## 6 Repayment

- (1) Loan regulations, loan arrangements or transfer arrangements may include provision about repayment of loans to a loan purchaser.
- (2) In particular, regulations or arrangements may provide for –
- (a) collection by a person acting on behalf of a loan purchaser;
  - (b) collection by Her Majesty's Commissioners for Revenue and Customs.
- (3) A provision of loan regulations or loan arrangements which requires money to be paid to the Secretary of State or into the Consolidated Fund (whether as repayment, interest, charge or penalty) shall be treated in relation to a transferred loan as requiring payment to the loan purchaser (whether directly, through the Secretary of State or through another agent).
- (4) Subsection (3) is subject to any provision included in transfer arrangements by virtue of section 2.
- (5) In section 44(2)(e) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (payment into Consolidated Fund: exceptions) after "Minister of the Crown" insert "or other person".

## 7 Information

- (1) Section 24 of the Teaching and Higher Education Act 1998 (c. 30) (supply of information by HMRC) shall have effect with the following modifications.
- (2) Modification 1 is that the permitted purposes for disclosure (under section 24(2)) include purposes in connection with loans that have been or may be transferred (including onward disclosure by virtue of subsection (4)).
- (3) Modification 2 is that section 24(2)(b) permits disclosure to a person or body who acts on behalf of the Secretary of State under the delegation of functions provisions, whether the person or body requires the information in that capacity or in the capacity of agent of a loan purchaser.
- (4) Modification 3 is that the class of permitted onwards disclosure (under section 24(3)) includes –
- (a) in the case of information which does not relate to a person whose identity is specified in the disclosure or can be deduced from it, disclosure for purposes in connection with loans that have been or may be transferred, and
  - (b) in any case, disclosure to an actual loan purchaser (or its agent) for purposes in connection with a transferred loan.
- (5) The reference in subsection (4)(b) to an agent includes an auditor.
- (6) At the end of section 24 of the 1998 Act add –
- “(7) Where the Commissioners for Her Majesty's Revenue and Customs provide information to a person under this Act, section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) shall apply to the disclosure of the information by the

person as it applies to the disclosure of information in contravention of a provision of that Act.

- (8) But section 19 shall not apply to disclosure—
- (a) in accordance with this section,
  - (b) in accordance with another enactment, or
  - (c) in circumstances specified in section 18(2)(c), (d), (e) or (h) of that Act.
- (9) In subsection (7)—
- (a) information provided to a person (P) shall be treated as being provided both to P and to any person on whose behalf P acts or by whom P is employed,
  - (b) information provided to a person (P) and disclosed by P to another person (P2) in accordance with this section shall be treated as being provided also to P2 (and to any person on whose behalf P2 acts or by whom P2 is employed), and
  - (c) the reference to disclosure by the person to whom information was provided (P) includes a reference to disclosure by any person acting on behalf of, or employed by, P (or a person to whom it is treated as being provided by virtue of paragraph (a) or (b)).
- (10) In the application of section 18(2)(c) and (d) of that Act by virtue of subsection (8)(c) above a reference to functions of the Revenue and Customs shall be taken as a reference to functions of the person making the disclosure in connection with student loans.
- (11) In the application of section 19 of that Act by virtue of subsection (7) above “revenue and customs information” means information provided by the Commissioners (but subject to the express exclusion in section 19(2)).”

## 8 Consumer credit

- (1) The Consumer Credit Act 1974 (c. 39) does not regulate loans made in accordance with regulations under section 22 of the Teaching and Higher Education Act 1998 (c. 30).
- (2) This section shall be treated as always having had effect.

## 9 Wales

- (1) The Welsh Ministers may enter into arrangements under which rights of theirs in respect of student loans are transferred to another person.
- (2) In subsection (1) “student loans” means loans made by the Welsh Ministers in accordance with regulations under section 22 of the Teaching and Higher Education Act 1998.
- (3) The provisions of this Act apply in relation to arrangements made under subsection (1) (“Welsh transfer arrangements”) as to arrangements made under section 1(1).
- (4) In connection with Welsh transfer arrangements references to the Secretary of State are to be read as references to the Welsh Ministers, except in—

- (a) section 2(4)(a),
  - (b) section 2(5) in so far as it has effect by virtue of section 2(6), and
  - (c) section 5(2) and (3).
- (5) Nothing in this Act confers a power on the Welsh Ministers to make regulations under a provision which does not otherwise confer power on them; in particular, the provision permitted to be made by virtue of sections 5(2) and (3) and 6(2)(b) is to be made by the Secretary of State in connection with Welsh transfer arrangements.
- (6) Section 4 does not apply to Welsh transfer arrangements.

## 10 Index of definitions

This section lists expressions defined in this Act.

<i>Expression</i>	<i>Defining provision</i>
Further transfer arrangements	Section 3(1)
Loan arrangements	Section 1(4)
Loan purchaser	Section 1(1)
Loan regulations	Section 1(2)
Student loans	Sections 1(2) and 9(2)
Transfer arrangements	Section 1(1)
Transferred loan	Section 1(8)
Welsh transfer arrangements	Section 9(3)

## 11 Money

Expenditure of the Secretary of State in consequence of this Act shall be paid out of money provided by Parliament.

## 12 Short title

This Act may be referred to as the Sale of Student Loans Act 2008.

## 13 Extent

This Act extends to England and Wales only.

## 14 Commencement

This Act comes into force on the day on which it receives Royal Assent.