

## EXPLANATORY MEMORANDUM TO

### THE REPAYMENT OF STUDENT LOANS AND POSTGRADUATE MASTER'S DEGREE LOANS (AMENDMENT) REGULATIONS 2017

2017 No. 831

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education (DfE) and is laid before Parliament by Command of Her Majesty.
- 1.2 These are composite regulations with the Welsh Ministers and these regulations will also be laid before the National Assembly for Wales.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (“the 2009 Regulations”), which govern the repayment of income contingent repayment student loans. The two principal changes are to enact provisions for the repayment of loans provided pursuant to the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017 (S.I. 2017/523), and to integrate the provisions for the repayment of loans provided pursuant to the Education (Postgraduate Master’s Degree Loans) Regulations 2016 (S.I. 2016/606) that are currently set out in those Regulations. The instrument also makes some minor technical changes which are outlined in part 7 of this memorandum.

#### 3. Matters of special interest to Parliament

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

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 This instrument amends the 2009 Regulations made under section 22 of the Teaching and Higher Education Act 1998, which govern the repayment of income contingent repayment student loans.
- 4.2 This instrument enacts provisions for the repayment of loans provided pursuant to the Education (Postgraduate Master’s Degree Loans) (Wales) Regulations 2017.
- 4.3 This instrument removes provisions in the Education (Postgraduate Master’s Degree Loans) Regulations 2016 relating to the repayment of those loans, and imports the substance of those provisions into the 2009 Regulations.

## **5. Extent and Territorial Application**

- 5.1 The instrument extends to England and Wales because it sets out the repayment terms in respect of loans made to borrowers ordinarily resident in England and Wales. However, the administrative work of collecting student loan repayments is managed on a UK-wide basis by the Student Loans Company (SLC), working in partnership with Her Majesty's Revenue and Customs (HMRC). This instrument thus extends to all of the UK insofar as the 2009 Regulations 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, or on any other person in relation to the retention or production of information or records. In addition to this, Regulation 80(3) ("Effect of borrower insolvency on student loans") extends to Northern Ireland.
- 5.2 The territorial application of this instrument is primarily England and Wales only.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### *What is being done and why*

- 7.1 There are two main types of student loan. Mortgage-style student loans were made available from academic year 1990/91, and repayment of these loans is by way of fixed monthly instalments. Borrowers are able to defer repayment of these fixed monthly instalments if their income is below a certain threshold.
- 7.2 In 1998, mortgage-style loans were replaced by income contingent repayment loans. For income contingent repayment loans, the Government sets an income threshold for repayment below which borrowers are not required to make any repayments on their loans. Borrowers earning above this repayment threshold are required to make repayments of a set percentage of the portion of their income that falls above this threshold.
- 7.3 This instrument enacts provisions for the repayment of income contingent repayment loans provided to students ordinarily resident in Wales pursuant to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017 for the purpose of studying on postgraduate master's degree courses beginning on or after 1 August 2017. Incorporating provisions for the repayment of these loans into the 2009 Regulations is essential to ensure that repayments can be collected for this loan product.
- 7.4 The repayment provisions in relation to loans provided under the Education (Postgraduate Master's Degree Loans) Regulations 2016 ("the 2016 Regulations"), for students ordinarily resident in England, were previously contained within that set of regulations. However, this instrument removes the repayment provisions from the 2016 Regulations and integrates them into the 2009 Regulations. Integrating these provisions into the 2009 Regulations will ensure that the repayment provisions for student loans are contained within a single instrument and will help to ensure consistency going forwards.
- 7.5 This instrument also makes a number of minor technical changes, which are outlined below.

- 7.6 The 2009 Regulations include a provision which addresses a situation where a borrower has more than one loan account and makes a repayment which results in one loan account that has been repaid in full being over-repaid by £5 or less (this is known as a trivial balance figure). Where this occurs, SLC is able to apply this amount to the borrower's other loan account(s) without having to write to the borrower to offer the borrower either a refund or the option of applying the excess repayment to another loan account (which is the normal process where the excess repayment is more than the trivial balance figure). This instrument increases the trivial balance figure from £5 to £10.
- 7.7 The 2009 Regulations feature a special arrangement for repayment by eligible teachers who qualify under the Education (Teacher Student Loans) (Repayment etc.) Regulations 2003 (S.I. 2003/1917) whereby borrowers who have a mortgage-style loan and also an income contingent repayment loan for a PGCE course can defer repayment of the income contingent repayment loan, but only if they notify SLC that they are repaying their mortgage-style loan. Interest will continue to accrue on the income contingent repayment loan while it is in deferral, but the 2009 Regulations have not previously specified an interest rate for post-2012 income contingent repayment student loan borrowers in such a deferral period. This instrument amends the 2009 Regulations to specify that for the period where these borrowers are repaying their mortgage-style loan and have deferred their post-2012 income contingent repayment loan, interest will accrue on their post-2012 income contingent repayment loan at the rate of RPI only.
- 7.8 Under the 2009 Regulations the repayment thresholds for borrowers living overseas are calculated annually based on World Bank data to ensure that student loan repayments will remain income contingent wherever in the world the borrower lives. Before this instrument came into force, the 2009 Regulations allowed the Authority to determine that the applicable threshold or fixed instalment for a borrower was to be that for a country other than the borrower's present country of residence. However, the methodology for this calculation has been updated since these Regulations were put in place, with the result that the Authority will only need to determine the applicable threshold where there is no World Bank information about a country. This instrument amends the 2009 Regulations to reflect this.

### ***Consolidation***

- 7.9 DfE does not consider that consolidation of the 2009 Regulations is necessary at this time, but will keep the position under review.

## **8. Consultation outcome**

- 8.1 No formal consultation was undertaken on this instrument.

## **9. Guidance**

- 9.1 SLC provides extensive guidance to borrowers on the operation of the student loans repayments system through its website.
- 9.2 HMRC provides guidance to employers on matters relating to the collection of student loan repayments from employees.

## **10. Impact**

- 10.1 There is minimal impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is that the Welsh Government will be able to collect repayments on loans provided pursuant to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017 through SLC and HMRC.
- 10.3 An Impact Assessment has not been prepared for this instrument. DfE has considered the amendments with reference to the Public Sector Equality Duty and has concluded that there is little or no potential for the amendments associated with the Education (Postgraduate Master's Degree Loans) Regulations 2016 and the technical amendments to have a positive or negative impact on people with protected characteristics.

## **11. Regulating small business**

- 11.1 Small businesses will be required to deduct student loan repayments for employees who are repaying loans provided pursuant to the Education (Postgraduate Master's Degree Loans) (Wales) Regulations 2017. Small businesses already deduct student loan repayments for employees with other student loan products, so the additional impact is expected to be minimal. Any additional guidance needed on collecting these repayments will be provided by HMRC.

## **12. Monitoring & review**

- 12.1 DfE, SLC and HMRC will continue to monitor the collection of student loan repayments as part of their ongoing work in this area.

## **13. Contact**

- 13.1 Katherine Bayliss at DfE - telephone: 0161 600 1352 or email: [katherine.bayliss@education.gov.uk](mailto:katherine.bayliss@education.gov.uk) - can answer any queries regarding the instrument.