EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT) (NO. 3) REGULATIONS 2021

2021 No. 1005

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education (“the Department”) 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 Senedd Cymru.

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 (“ICR”) student loans. The purpose of this instrument is to set a maximum interest rate for Post-2012 ICR student loans and Postgraduate degree ICR student loans, in line with the Prevailing Market Rate (“PMR”), for a period of three months.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales because it concerns the repayment terms of loans made to borrowers ordinarily resident in England and Wales.

4.2 The territorial application of this instrument is England and Wales only.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 This instrument amends the 2009 Regulations made under section 22 of the Teaching and Higher Education Act 1998 (“THEA 1998”), which govern the repayment of ICR student loans.

6.2 This instrument sets a maximum amount the interest rate for Post-2012 ICR student loans and Postgraduate degree ICR student loans can reach in line with the PMR, for a period of three months to ensure that the interest rate applied to student loans remains compliant with the requirements set out in section 22(4)(a) of THEA 1998.

6.3 At the end of the three-month period, interest rates will revert to the rate specified in the 2009 Regulations, unless they remain above the PMR, in which case a new instrument will be laid before Parliament to introduce a maximum rate.

7. Policy background

What is being done and why?

How the student loan system works

7.1 ICR student loans were introduced in 1998. One of the main features of these loans is that they are income contingent. The relevant UK administration sets an income threshold for repayment, below which borrowers are not required to make repayments on their loan. Borrowers earning above this repayment threshold are required to make repayments of a set percentage of their income that falls above the threshold. The threshold is adjusted annually. There are currently three different ICR loan types in operation, referred to as 'Plans'.

7.2 These changes do not affect Pre-2012 undergraduate (known as Plan 1) loans. Interest rates for these loans are governed by the 2009 Regulations, which provide that Plan 1 loans have an interest rate of RPI or the Bank Base Rate + 1%, whichever is the lower. The interest rate used for these loans is still significantly below the PMR.

7.3 This change applies to Post-2012 undergraduate (also known as Plan 2) loans and Advanced Learner Loans, which are loans for certain Further Education qualifications at education levels 3 to 6. The 2009 Regulations provide that for these loans different interest rates apply depending on the borrower's circumstances. While borrowers are still in study, interest is charged at RPI + 3%. Student loans become due for repayment from the beginning of the tax year after the borrower leaves study. From this point, the interest rate varies depending on income, starting at RPI for those earning £27,295 or less and rising gradually to a maximum of RPI + 3% for those earning more than £49,130. The RPI figure used in setting this interest rate is the annual percentage increase between the retail prices all items index published by the Office of National Statistics ("ONS") for the two Marches immediately before the commencement of the academic year.

7.4 This change also applies to Postgraduate Master's (also known as Plan 3) loans, which are loans introduced for Master's students in England in the 2016/17 academic year and for Doctoral students in the 2018/19 academic year. These loans have an interest rate of RPI + 3% throughout the loan term. The RPI figure used in setting this interest rate is the annual percentage increase between the retail prices all items index published by the ONS for the two Marches immediately before the commencement of the academic year.

7.5 Interest rates are set for a time period of an academic year ("AY") (i.e., 1 September – 31 August). This means that every year a new interest rate comes into operation on 1 September.

Link between student loan interest rates and PMR

7.6 Section 22(4)(a) of THEA 1998 requires that student loan interest rates be either below the PMR or no higher than the PMR if the loan offers better terms and conditions than those in the prevailing market.

7.7 The PMR is not defined in primary legislation. The Department, therefore, 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 ("BoE") effective interest rates for existing and new unsecured personal loans.

7.8 ICR student loans have much more favourable terms than commercial loans, with repayments calculated in line with earnings, rather than the amount borrowed. Borrowers earning below the repayment threshold make no repayments. Furthermore, any outstanding balance, including accrued interest, is written off at the end of the loan term with no detriment to the borrower. A loan will also be written off if the borrower dies or becomes permanently unfit for work and in receipt of a disability related benefit. The Department is not aware of any commercial loans that offer such favourable terms to borrowers, and therefore the interest rate for ICR student loans can be equal to the PMR without breaching primary legislation.

Recent changes in the PMR

7.9 The PMR has generally been declining over recent months. Consequently, on 9 June 2021, The Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2021 (S.I. 2021/677) introduced a time-limited cap on the maximum Plan 2 and the Plan 3 interest rates for July-September 2021, as it was considered that the PMR would otherwise be below the student loan interest rate. The PMR has remained below the maximum Plan 2 and Plan 3 student loan interest rates for a further three consecutive months. This instrument extends the implementation of a maximum student loan interest rate for the above loans for a period of three months. The maximum amount reduces student loan interest rates where they would otherwise exceed the PMR. Interest rates that are still below the PMR will be unaffected by these changes.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Department does not consider that consolidation of the 2009 Regulations is necessary at this time but will keep the position under review.

10. Consultation outcome

10.1 None. A consultation was not deemed necessary as this instrument is being implemented to uphold requirements set out in the parent Act, THEA 1998.

11. Guidance

11.1 Information and guidance relating to the interest rate applied to Post-2012 ICR student loans and Postgraduate degree ICR student loans are on gov.uk, including details of past and present interest rates. An announcement confirming the changes to the interest rates for impacted loans will be made by the Student Loans Company. This announcement will be most useful for borrowers who currently hold either a Post-2012 ICR student loan or a Postgraduate degree ICR student loan, although will also be available for students intending to apply for either loan. The announcement will be available on gov.uk.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the change in interest rate introduced by this instrument does not impact businesses. The change will be implemented and administered by the Student Loans Company. Updated guidance will be made available to student loan borrowers via by the Student Loans Company, and employers will be notified via HMRC. However, no additional burden on employers is expected as a result of this change.

12.4 The Department has considered the amendments with reference to the Public Sector Equality Duty and has concluded that there is not likely to be an impact on the need to eliminate discrimination, advance equality of opportunity or foster good relations between persons who share a relevant protected characteristic and those who do not. The maximum interest rate will benefit all postgraduate loan borrowers and higher earning undergraduate and advanced learner loan borrowers. It will also directly benefit undergraduate and advanced learner loan borrowers still in study. Borrowers on the highest interest rates will see a reduction in the interest added to their loan balance as a direct effect of the maximum interest rate. However, not all of these borrowers will go on to repay their loan in full, as any outstanding balance, including interest, is written off at the end of the loan term with no detriment to the borrower.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is limited as the legislation will only apply for a set period of three months. At the end of the three-month period, the maximum interest rate will automatically terminate, and the interest rates applied to Post-2012 ICR student loans and Postgraduate degree ICR student loans will revert to the standard method used to calculate the interest rate applicable, as set out in the 2009 Regulations. The Government is committed to regular monitoring of the PMR and will act accordingly to set a maximum amount for the Post-2012 ICR student loan interest rate and the Postgraduate degree ICR student loan interest rate should further need arise.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Pippa Jones at the Department for Education Email: pippa.JONES@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Williams, Deputy Director for Student Funding Policy, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Michelle Donelan at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.