EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT) (NO. 3) REGULATIONS 2023

2023 No. 1184

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 His 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 statutory instrument amends the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (“2009 Regulations”), which govern the repayment of income-contingent repayment (“ICR”) student loans.

2.2 The purpose of this instrument is to introduce long-term provision to allow student loan interest rates to be capped automatically each month, for the duration of that month, if required, in line with a comparable prevailing market rate (“PMR”), without the need to lay time-limited regulations once a quarter. This ensures legislative obligations are met.

2.3 This instrument also amends the 2009 Regulations to update fixed instalment repayment rates for overseas borrowers with plan 1 student loans.

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 (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The application of this instrument (that is where the instrument produces a practical effect) is England and Wales because the instrument concerns the repayment terms in respect of student loans made to borrowers ordinarily resident in England and Wales. However, the collection of student loan repayments is managed on a UK-wide basis by the Student Loans Company (“SLC”), working in partnership with His Majesty’s Revenue and Customs (“HMRC”). The 2009 Regulations thus extend and apply to all of the UK insofar 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, or on any other person in relation to the retention or production of information or records.

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, in a similar manner to the Education (Student Loans) (Repayment) (Amendment) (No.2, 3 and 4) Regulations 2021 (S.I. 2021/677, 1005 and 1378), Education (Student Loans) (Repayment) (Amendment) (No.2 and 3) Regulations 2022 (S.I. 2022/889 and 1151), Education (Student Loans) (Repayment) (Amendment) Regulations 2023 (S.I. 2023/129), Education (Student Finance) (Miscellaneous Amendments) Regulations 2023 (S.I. 2023/521) and The Education (Student Loans) (Repayment) (Amendment) (No. 2) 2023 (S.I. 2023/898).

6.2 This instrument follows the same principles as those listed above, in that it sets a maximum interest rate for plan 2, 3 and 5 ICR student loans in line with the latest available published comparable PMR. However, it differs in that it introduces a permanent mechanism within the 2009 Regulations that will allow plan 2, 3 and 5 ICR student loan interest rates to be capped automatically each month, for the duration of that month, if required, in line with a comparable PMR, without the need to lay time-limited regulations once a quarter. This ensures 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 Further, it amends the overseas fixed instalment repayment rate for plan 1 student loans, which have not increased since their introduction in 2000.

7. Policy background

What is being done and why?

<u>How the student loan interest rates works.</u>

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, at or 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. There are currently four different ICR loan types in operation in England, referred to as 'plans'.

7.2 These changes do not affect interest rates on 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 Retail Prices Index ("RPI") by which we mean the annual percentage increase between the retail prices all items index published by the Office of National Statistics for the two Marches immediately before the commencement of the academic year to which the interest rate applies) 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 loans and Advanced Learner Loans, which are loans for certain Further Education qualifications at education levels 3 to 6 (known as ‘plan 2’ loans). 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.

7.4 This change also applies to postgraduate loans, which are loans introduced for Master’s students in England in Academic Year (“AY”) 2016/17 and for Doctoral students in the AY 2018/19 (known as ‘plan 3’ loans) and have an interest rate of RPI + 3% throughout the loan term.

7.5 Finally, the temporary interest rate cap applies to plan 5 loans, which are loans introduced for undergraduate study for students in England from 1 August 2023. They replace plan 2 loans for students starting new courses. Plan 5 loans have an interest rate of RPI throughout the loan term.

7.6 Interest rates are set for a time period of an 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

7.7 Section 22(4)(a) of THEA 1998 requires that in relation to a student who begins a course on or after 1 September 2012, student loan interest rates be either lower than the PMR, or no higher than the PMR where the other terms on which the loans are provided are more favourable to borrowers than those prevailing on the market.

7.8 The PMR is not defined in primary legislation. The Department considers that there are no commercially available loans which are truly comparable to student loans to calculate an exact PMR. ICR student loans have much more favourable terms than commercial loans, with regular repayments calculated in line with earnings, rather than the amount borrowed or interest rates. Borrowers earning on or 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.

7.9 In the absence of a definition for PMR, and a lack of directly comparable products to student loans, the most appropriate practical measure of the PMR is the interest rate of the most closely comparable types of commercial personal loans, as published in official data sources. These are the Bank of England effective interest rates for existing and new unsecured personal loans. The Department considers that this will result in a reasonable proxy to ensure that student loan interest rates will always comply with primary legislation.

7.10 The Department is not aware of any commercial loans that offer such favourable terms to borrowers, and, therefore, considers that the interest rate for ICR student loans can be equal to the PMR without breaching primary legislation.

Recent changes in RPI

7.11 RPI increased significantly from 1.5% in March 2021 to 9% in March 2022, and again to 13.5% in March 2023. Without intervention, the maximum student loan interest rates (RPI+3%) would have increased from 4.5% in AY 2021/22 to 12% in AY

2022/23 and 16.5% in AY 2023/24. This is in contrast to market interest rates which have remained relatively low and which the Office for Budget Responsibility forecast to be between 8-9% in AY 2023/24.

7.12 The Department has monitored a comparable PMR through AY 22/23 and AY 23/24 to date, setting maximum interest rates in time-limited regulations in line with the latest available published comparable PMR data at the time of making them, based on a rolling 12-month average (to smooth out economic shocks). This was implemented through the Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2022 (S.I. 2022/889) and extended by the Education (Student Loans) (Repayment) (Amendment) (No.3) Regulations 2022 (S.I. 2022/1151), Education (Student Loans) (Repayment) (Amendment) Regulations 2023 (S.I. 2023/129), Education (Student Finance) (Miscellaneous Amendments) Regulations 2023 (S.I. 2023/521) and The Education (Student Loans) (Repayment) (Amendment (No. 2) 2023 (S.I. 2023/898).

7.13 This instrument introduces a permanent provision within regulations that will allow student loan interest rates to be capped automatically each month, for the duration of that month, if required, in line with a comparable PMR from three months prior, without the need to lay time-limited regulations once a quarter.

Fixed instalment rates for overseas borrowers

7.14 Where a student loan borrower lives overseas, they are required to submit details of their expected income for the forthcoming year to the SLC. The SLC then calculates a repayment plan for the borrower based on 9% of their expected earnings over the relevant repayment threshold for their country of residence. Where an overseas borrower fails to submit their income details to the SLC, they instead repay - or accrue arrears - at a set fixed instalment rate. Currently the 2009 Regulations provide fixed overseas instalments for plan 1 loans of £246 per month, which are adjusted according to the price level index of borrowers' countries of residence. These amounts have not been increased since their introduction in 2000, and the 2009 Regulations do not provide for their automatic uprating. Consequently, there is now a perverse incentive for high-earning borrowers overseas not to submit their earnings information to the SLC, as doing so could increase their monthly repayments.

7.15 This instrument therefore updates overseas fixed instalments for plan 1 loans so that they are based on a country-adjusted equivalent of the repayments a borrower earning twice the median working age graduate salary in England would make under the relevant loan terms.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

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 and to close a loophole allowing some overseas borrowers to repay their loan below the rate at which UK borrowers are required to repay.

11. Guidance

11.1 Information and guidance relating to the interest rate applied to plan 2, 3 and 5 ICR student loans are on gov.uk[1], including details of past and present interest rates. This information will be most useful for borrowers who currently hold either a plan 2, 3 or 5 ICR student loan, although it will also be available for students intending to apply for a student loan.

11.2 Extensive guidance on the operation of the student loan repayments system is also provided on GOV.UK. This includes: how student loan repayments work; how borrowers can find out what they owe; and how borrowers can contact the SLC, update their personal details and make voluntary repayments. HMRC provides guidance to employers[2] on the collection of student loan repayments from employees, and the SLC publishes technical guidance for practitioners[3].

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 A full Impact Assessment has not been prepared for this instrument because the changes introduced by this instrument do not impact businesses. The changes will be implemented and administered by the SLC. Updated guidance will be made available to student loan borrowers via by the SLC. No additional burden on employers is expected as a result of this change.

Interest rates

12.4 The Department has considered the amendments with reference to the Public Sector Equality Duty in section 149 of the Equality Act 2010, and has concluded that there is not likely to be an adverse impact on the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act, or the need to advance equality of opportunity or foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The lower maximum interest rate will benefit all plan 2 (including Advanced Learner Loans), 3 and 5 borrowers both in study and out of study. Borrowers will see a reduction in the interest added to their loan balance as a direct effect of the lower 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.

Fixed instalment rates for overseas borrowers

12.5 Borrowers affected by this change will be those who are repaying (or accruing arrears) at the overseas fixed instalment rate because of their failure to provide the SLC with details of their income, which is a requirement of the 2009 Regulations. The updated overseas fixed instalment rates will increase repayments for any Plan 1

[1] https://www.gov.uk/repaying-your-student-loan/what-you-pay
[2] Student loan and postgraduate loan repayment guidance for employers - GOV.UK (www.gov.uk)
[3] Student Finance England for Practitioners (slc.co.uk)

borrower who continues to withhold their income details. However, all borrowers are able to avoid the fixed instalment rates by providing the SLC with details of their income. On doing so they will be moved into a position of repaying 9% of their expected annual income over the relevant repayment threshold for their country of residence.

12.6 Table 1 shows, for comparison, what a UK-based borrower would be earning in financial year (“FY”) 2024-25 to repay an amount equivalent to the old and new overseas fixed instalment repayment rates.

Table 1: UK borrower earnings in FY2024-25 that would result in repayments equivalent to the existing and new overseas fixed instalment rates.

	Current annual salary that a UK based borrower would be required to earn to reach repayment levels equivalent to fixed instalment rates without the changes made by this instrument	**Current annual salary that a UK based borrower would be required to earn to reach repayment levels equivalent to fixed instalment rates with the changes made by this instrument**
Plan 1	£57,790	£77,000

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

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 statutory instrument.

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

15.3 Baroness Barran MBE, Parliamentary Under Secretary of State for the School System and Student Finance at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.