

Explanatory Memorandum to the Education (Student Loans) (Repayment) (Amendment) (No. 3) Regulations 2022

This Explanatory Memorandum has been prepared by the Higher Education Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister for Education and Welsh Language's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Education (Student Loans) (Repayment) (Amendment) (No. 3) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language
9 November 2022

Part 1

1. Description

- 1.1 The Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470), as amended (“the 2009 Regulations”), provide the basis for the repayment of student loans made by the Welsh Ministers. The 2009 Regulations include provision for interest to be charged on student loans.
- 1.2 The Education (Student Loans) (Repayment) (Amendment) (No.3) Regulations 2022 (“the 2022 Regulations”) will set a flat interest rate for Plan 2 and Plan 3 student loans at 6.5% for a period of three months from 1 December 2022.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 The repayment of student loans is a complex legal area due to the nature of the devolution settlement and the division of functions between the Welsh Ministers and the Secretary of State for Education. Repayment of loans is provided for in the 2009 Regulations which are made on a composite basis by the Secretary of State and, in respect of those functions transferred to them, by the Welsh Ministers. The Welsh Ministers legislate in relation to Wales in respect of those functions transferred to them and the Secretary of State in relation to England and, insofar as the Secretary of State retains functions, Wales. The 2022 Regulations relate to the setting of interest rates/manner of repayment which is a function transferred to the Welsh Ministers.
- 2.2 The 2022 Regulations are composite regulations. As this instrument will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for it to be made or laid bilingually. Therefore, the 2022 Regulations are made in English only.

3. Legislative background

- 3.1 Sections 22 and 42 of the Teaching and Higher Education Act 1998 enable the Welsh Ministers to make regulations relating to the provision of financial support to students ordinarily resident in Wales who are enrolled on designated courses of higher education, including provision for the repayment of loans.
- 3.2 The 2009 Regulations provide the basis for the repayment of student loans made by the Welsh Ministers and include provision for interest to be charged on student loans. The enabling powers for the 2022 Regulations are sections 22(2)(g), (3)(a), (4)(a) and 42(6) of the Teaching and Higher Education Act 1998.

- 3.3 The Welsh Ministers and Secretary of State are required by section 22(4)(a) of the Teaching and Higher Education Act 1998 to ensure that the student loan interest rate is either below the prevailing market rate ('PMR'), or equal to the PMR with better terms and conditions.
- 3.4 Section 44 of the Higher Education Act 2004 ('the 2004 Act') provided for the transfer to the National Assembly for Wales of the functions of the Secretary of State in relation to Wales under section 22(2)(g), (3)(a) and (4)(a) of the 1998 Act.
- 3.5 The functions of the Secretary of State under section 42(6) of the 1998 Act were transferred to the National Assembly for Wales, so far as exercisable in relation to Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).
- 3.6 The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
- 3.7 Each year, a number of functions of the Welsh Ministers in regulations made under section 22 of the 1998 Act are delegated to the Student Loans Company under section 23 of the 1998 Act.
- 3.8 The 2022 Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

- 4.1 The Welsh Ministers and the Secretary of State are required by section 22(4)(a) of the Teaching and Higher Education Act 1998 to ensure that the interest rate charged on certain student loans is either below the PMR, or equal to the PMR with better terms and conditions.
- 4.2 Student loans become due for repayment from the beginning of the tax year after the borrower leaves study. For borrowers undertaking undergraduate courses which began on or after 1 August 2012 ('Plan 2' borrowers), and borrowers undertaking postgraduate Master's courses starting on or after 1 August 2017 or doctoral courses starting on or after 1 August 2018 ('Plan 3' borrowers), they are income contingent. Borrowers pay back a fixed proportion of their income above a threshold amount.
- 4.3 Interest is charged on Plan 2 and Plan 3 loans and is linked to inflation via the Retail Prices Index (RPI). The RPI value used in setting interest rates is the annual percentage increase in the retail prices all items index in the twelve months to the March immediately before the start of the academic year for which rates are to be set. RPI increased from 1.5% in March 2021 to 9% in March 2022. The interest rate charged on Plan 2 loans 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. Without

intervention, loan interest rates would therefore increase to between 9% and 12% for Plan 2 borrowers. Plan 3 borrowers would see the interest rate rise from 4.5% to 12% – these loans have an interest rate of RPI + 3% throughout the loan term.

- 4.4 Interest rates are set for a time period of an academic year (i.e. 1 September – 31 August). A new interest rate comes into operation on 1 September each year. These interest rates are subject to a capping mechanism, in line with the provision that rates must not exceed rates the PMR. Welsh Ministers have previously implemented a series of temporary interest rate caps via the Education (Student Loans) (Repayment) (Amendment) (No.2, 3 and 4) Regulations 2021 (S.I. 2021/677, S.I. 2021/1005 and S.I. 2021/1378 respectively) and the Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/889).
- 4.5 The PMR is not defined in primary legislation. The Welsh Government 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 effective interest rates for existing and new unsecured personal loans.
- 4.6 The 2022 Regulations introduce a flat rate student loan interest rate of 6.5% for a three-month period from 1 December 2022. This rate will apply to all Plan 2 and Plan 3 borrowers as the PMR is lower than each of the rates which would otherwise apply. All borrowers will see a reduction in the rate of interest applied to their loan balance compared to the uncapped position. Those ordinarily on the higher variable rates on a Plan 2 loan will see a greater reduction than those on the lower rates.
- 4.7 After expiry of the Regulations on 28 February 2023, the interest rate on Plan 2 and Plan 3 loans will return to the rate specified in the 2009 Regulations, unless they remain above the PMR, in which case further regulations will be required.

5. Consultation

- 5.1 No consultation has been undertaken.

Part 2 – Regulatory Impact Assessment

An assessment has been conducted for the 2022 Regulations.

6. Options

Option 1: Business as usual

- 6.1 Without intervention, interest rates on some loans would reach 12%, exceeding rates prevailing on the market. If the 2022 Regulations are not made, Welsh Ministers would be in breach of their duty to ensure that the student loan interest rate is either below the PMR, or equal to the PMR with better terms and conditions.

Option 2: Make the Regulations

- 6.2 Making the 2022 Regulations ensures that the interest rate charged on loans complies with the Teaching and Higher Education Act 1998.

7. Costs and benefits

Option 1: Business as usual

- 7.1 There would be no additional costs or particular benefits in continuing with business as usual.
- 7.2 Leaving the existing regulations in place would mean Welsh Ministers will be in breach of their duty to ensure that the student loan interest rate is either below the PMR, or equal to the PMR with better terms and conditions.

Option 2: Make the Regulations

- 7.3 Making the 2022 Regulations would ensure that there is no breach of Welsh Ministers' duty in relation to the student loan interest rate (section 22(4)(a) of the Teaching and Higher Education Act 1998).
- 7.4 By making the 2022 Regulations, loans will be subject to a 6.5% interest rate for the three-month period from 1 December 2022.
- 7.5 The changes to student loan interest rates associated with making the 2022 Regulations will have a cost impact on the Welsh Government. The Resource Accounting and Budgeting (RAB) charge is the estimated cost to Government of borrowing to support the student finance system. It is based on predicted future loan write-offs and interest subsidies at net present value. A temporary reduction in student loan interest rates will lead to relatively less interest being

accrued on some borrowers' student loan accounts, and so some borrowers will repay a smaller amount. Predicted repayments will fall overall, and thus the RAB charge, which the Welsh Government must fund, will rise. However, the majority of student loan borrowers are predicted to repay less than the principal of their loan before the loan is written off. Any reduction in the interest rate would have no impact on the predicted repayments of this majority; therefore the impact on the overall RAB charge is expected to be relatively small.

- 7.6 For illustrative purposes the current model assumes a reduction in the interest rate for September-November, December-February and March-May. This suggests an impact of around £7 million less on the amount of non-cash provision required for the 2022-23 financial year.
- 7.7 The arrangements under the 2022 Regulations will also have implications for Welsh student loan borrowers. These will be positive, as affected borrowers will see a reduction in the interest charged as a result of the change. However, it will only be those who fully repay their loan who see an impact in terms of the repayments made against the loan.

8. Competition Assessment

- 8.1 The making of the 2022 Regulations has no impact on the competitiveness of businesses, charities or the voluntary sector.

9. Post-Implementation Assessment

- 9.1 The PMR is monitored monthly.