

Explanatory Memorandum to the Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2022

This Explanatory Memorandum has been prepared by the Higher Education Division and is laid before Senedd 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.4) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language
26 January 2023

Part 1

1. Description

1.1 The Education (Student Loans) (Repayment) (Amendment) (No.4) Regulations 2022 (“the 2022 regulations”) further amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) (“the 2009 regulations”) to:

- implement a new repayment plan for English students (Plan 5);
- freeze the repayment threshold for Plan 2 student loans for a further two years, until April 2025;
- maintain the lower and higher interest rate threshold bands for Plan 2 borrowers at the current levels for a further two years, until April 2025;
- maintain the repayment threshold bands and the lower and higher interest rate threshold bands for Plan 2 borrowers who are resident overseas at the current levels for a further two years, until April 2025;
- revise the fixed instalment rates for overseas borrowers; and
- make various technical amendments to ensure clarity in the regulations.

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

2.1 The 2009 regulations were made as composite regulations by the Welsh Ministers (in relation to Wales) and the Secretary of State. They govern repayments of student loans by borrowers who have taken out income-contingent loans for courses which begin on or after September 1998. The 2009 regulations contain provisions (not devolved to the Welsh Ministers) which are made by the Secretary of State in relation to England and Wales which concern the tax system operated by Her Majesty’s Revenue and Customs (HMRC). Some other provisions are made by the Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

2.2 This composite statutory instrument is subject to the negative resolution procedure. As the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

3. Legislative background

3.1 The relevant legal powers to make these Regulations are set out in sections 22 and 42 of the Teaching and Higher Education Act 1998.

3.2 The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards to Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for

those functions under section 22(2)(a), (c), (j), and (k), (3) (e) and (f) and (5). Functions under sub-sections 22(2)(a), (c) and (k) are exercisable by Welsh Ministers concurrently with the Secretary of State in relation to Wales. The functions in sections 22(2)(j), 22(3)(e) and (f) and section 22(5) remain Secretary of State functions in relation to Wales. The functions so transferred and which became exercisable concurrently subsequently became functions of the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

4. Purpose and intended effect of the legislation

Implementation of a new student loan repayment plan type

- 4.1 The UK Government is implementing a new student loan repayment plan for English students starting courses from academic year 2023/24 onwards. This new plan is not being adopted by the Welsh Government at this time and this change in the 2022 regulations is only made for English students. The Welsh Government will continue to operate the current system for a further year.

Two-year repayment freeze of the Plan 2 repayment threshold

- 4.2 The level of earnings at which a borrower must start to repay their student loan is provided for in the 2009 regulations. Borrowers begin repayment of their student loan once their earnings are above a certain threshold (the income level above which borrowers are required to make repayments after leaving study). Plan 2 borrowers (those ordinarily resident in Wales or an EU student studying in Wales who began a non-postgraduate course on or after 1 September 2012) repay 9% of their earnings that are above the threshold.
- 4.3 The Plan 2 threshold was set at £21,000 between 6 April 2016 and 5 April 2018 and, under current policy, increased in line with average earnings each year thereafter until the 2022-23 financial year. Composite amending regulations came into force on 6 April 2022 to implement a one-year freeze to the Plan 2 repayment threshold at £27,295 a year, £2,274 a month or £524 a week for the 2022-23 financial year.
- 4.4 On 24 February, the UKG set out plans to reform the higher education sector (as a response to the Augar review). A part of these plans was to freeze the Plan 2 repayment threshold for English borrowers for a further two years, until April 2025.

- 4.5 The 2009 regulations also provide for the interest rate thresholds for Plan 2 student loans to adjust annually in-line with changes to average earnings. Plan 2 loans have variable interest rates. Interest is charged at a rate of RPI+3% until the statutory repayment due date (the end of the tax year in which the borrower completes the course or the borrower leaves the course, or, for part-time courses, the fourth anniversary of the course start date occurs) is reached. After this point, the interest rate charged varies depending on the borrower's income. The lower interest threshold – below which borrowers are charged an interest rate of RPI+0% – is aligned with the repayment threshold (currently £27,295). Interest then increases on a sliding scale to RPI+3% for borrowers earning over the higher interest threshold (currently £49,130).
- 4.6 The 2022 regulations will maintain the Plan 2 repayment threshold at its current level of £27,295 for financial years 2023-24 and 2024-25. In line with this, the post-study interest rate thresholds that apply to Plan 2 loans will also be kept at their current levels for financial years 2023-24 and 2024-25.
- 4.7 Student loan borrowers who are resident overseas are unable to repay their student loans through HMRC so repay directly to the Student Loans Company (SLC) through a repayment plan based on their expected income. The repayment threshold for these borrowers varies according to where in the world they reside. There are seven applicable threshold bands (labelled A to G) into which borrowers are assigned based on their country of residence. Countries are divided into these bands annually by the UK Government using World Bank Price Level Index data that compares their relative cost of living. The repayment threshold is used as a baseline, sitting in Band E, and the other bands are calculated as a percentage of that threshold. The same banding system is used to calculate the lower and higher interest rate thresholds for borrowers who are resident overseas.
- 4.8 In line with the changes for Welsh borrowers, the repayment threshold bands and lower and higher interest rate threshold bands for borrowers who are resident overseas will be maintained at their current levels for financial year 2022-23.

Fixed instalment rates for overseas borrowers

- 4.9 Borrowers who reside overseas while in loan repayment should confirm details of their expected earnings to SLC, as borrowers based in the UK would. SLC then calculate a repayment plan for these borrowers based on 9% (Plan 1 or 2) or 6% (Plan 3) of their earnings that are over the relevant repayment threshold. This is how most overseas borrowers repay their student loans.

- 4.10 However, there are cases in which some overseas borrowers fail to provide their expected earnings and the 2009 regulations provide for fixed instalment rates at which these borrowers repay or accrue arrears. These rates have not been increased since their introduction and there is no provision in the 2009 regulations for them to be automatically updated.
- 4.11 The fixed instalment rates are set out in the 2009 regulations and are grouped by bands, depending on the country of residence of the overseas borrower. Price level indices (PLI) data is used to determine which band a country should fit in. The PLI data provides a comparison of the cost of living in each country to the cost of living in the UK. The 2009 regulations provide that the UK has a PLI of 100 and the rates for the remaining bands are based on a percentage of the UK fixed instalment rate. All overseas borrowers who do not provide their earning information will pay the fixed instalment rate for the band that their country of residence sits in.
- 4.12 The 2022 regulations update the fixed instalment rates for Plans 2 and 3 for financial year 2023-24 and introduce an annual uprating for future years. The rates will be linked to the repayments a borrower earning twice average working age graduate earnings in England would make under the relevant loan terms and conditions.

Technical changes

- 4.13 One consequence of the further freeze to the Plan 2 threshold is that in 2023-24 financial year, for the first time, the Plan 4 (Scottish borrowers) repayment threshold will be higher than the Plan 2 threshold. As such, the 2022 regulations make an amendment to ensure payments continue to be allocated appropriately to each Plan type. This is a technical amendment and not a policy change.
- 4.14 The 2022 regulations make a technical change with regards to adjustments to the interest rate on certain student loans, as required. This is a technical amendment and not a policy change.

5. Consultation

- 5.1 There is no statutory requirement to consult on these regulations and no consultation has been undertaken. This is an area of the student finance system where there is very limited scope for Wales to take an alternative path and the limited time available to legislate in respect of Welsh loans in response to the UK Government's changes for English borrowers, did not allow for a consultation to be undertaken.

- 5.2 The regulations also introduce a new student loan repayment plan (Plan 5) for English students starting courses from academic year 2023/24 onwards. There is no impact for Welsh students as the Welsh Government will continue to operate the current system for a further year.

Part 2 – Regulatory Impact Assessment (RIA)

An RIA has been conducted for the 2022 regulations.

6. Options

Option 1: Business as usual

- 6.1 If the 2022 regulations are not made, the repayment threshold (and accompanying interest rate thresholds) would automatically increase in line with average earnings, and the fixed instalment rates for overseas borrowers would not be updated.
- 6.2 This would present practical issues in the collection of loan repayments for Welsh borrowers that could not be resolved in advance of the 2023-24 financial year. The PAYE repayment system is operated by HMRC and is currently tied to UK Government policy. There is no scope for the Welsh Government to make independent changes ahead of the next financial year, and collection will be made using the frozen thresholds. Legislation must be updated accordingly. These practical implications arise because certain functions of the repayment system are not functions of the Welsh Ministers.
- 6.3 In the case of the fixed instalment rates, these updates are necessary to avoid incentivising borrowers to fail to comply with the requirement to provide their income details to SLC, so avoiding making the repayments required by policy.

Option 2: Make the Regulations

- 6.4 Making the 2022 Regulations ensures that regulatory provision for repayment by Welsh borrowers continues uninterrupted for the 2022-23 financial year and the practical issues outlined above are avoided.

7. Costs and benefits

Option 1: Business as usual

- 7.1 Continuing with business as usual would mean a significant cost to the Welsh Government to establish an alternative repayments system for Welsh borrowers, which is impractical in the time available.
- 7.2 Benefits would be seen by borrowers. Those with incomes below the repayment threshold would continue to make no repayments towards their student loan and those with incomes above the threshold would pay less during 2023-24 and 2024-25, and every subsequent year of the loan term, than they would if the freeze were implemented.

Option 2: Make the Regulations

- 7.3 Under the 2022 regulations, Plan 2 borrowers will continue to repay 9% of their gross annual earnings above £27,295 during the 2023-24 and 2024-25 financial year. Most Plan 2 borrowers earning over the repayment threshold will repay around £90 more each year. Repayments will also be higher in every subsequent year of the loan term relative to the case where the threshold is not frozen for 2023-24. Whilst the annual increase is expected to be small, the Welsh Government is conscious of the additional burden being placed on borrowers during a cost-of-living crisis which, coupled with a freeze to tax thresholds, is forecast to lead to a fall in real household disposable income in the short-term.
- 7.4 As a result of the freeze in the repayment threshold, total PAYE repayments in the 2023-24 financial year are expected to increase by approximately £7 million. The benefits arising from these additional repayments accrue to the UK Government (via HMRC), rather than to the Welsh Government directly. However, as a result of the increased predicted repayments in every year from 2023-24 onwards, the Welsh Government will become less exposed to future student loan write-offs and so will benefit from a modest non-cash saving at the point of implementing the policy. The first year's threshold freeze will decrease the forecast expenditure in 2023-24 by approximately £24.2m, freezing the threshold for more than one year will have a similar impact in following years.
- 7.5 The freeze in the repayment threshold will have differing impacts on individual Plan 2 borrowers in the short term and long term, depending upon their future income. Borrowers with incomes below the repayment threshold will continue to make no repayments towards their student loan, however as a result of the threshold freeze there will be a larger proportion of borrowers who are required to make repayments. Over the long term, the highest-earning graduates (who go on to repay their student loan in full) will benefit from the threshold freeze, since they will pay off their loans more quickly, and with less added interest.

Conversely, those on middle incomes (who repay some but not all of their student loan) will make higher repayments in each year of their loan term.

- 7.6 Welsh Government modelling of predicted student loan repayments for Welsh borrowers suggests that for each year of threshold freeze around 2% more Plan 2 borrowers will go on to repay their loan in full.
- 7.7 Borrowers who enter repayment at an older age, or who have already been in repayment of their loan for several years, are likely to be less affected in the long term by the threshold freeze because they will have fewer years remaining before their student loan is written off.
- 7.8 The Plan 2 threshold freeze will result in little impact on the majority of students. The highest-earning graduates will benefit from the threshold freeze allowing them to pay their loan back faster. Those students with earnings equivalent to the threshold will enter repayment where they would not have otherwise. The practical considerations and additional revenue outweigh the small negative impact on borrowers.
- 7.9 There is no anticipated impact in Wales with regard to the amendments being made to the fixed instalment rates for overseas borrowers.

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 2022 regulations implement a freeze on the Plan 2 repayment threshold and interest rate thresholds for a period of two financial years. Policy for the 2024-25 financial year will be considered in due course.