

SALE OF STUDENT LOANS ACT 2008

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Sale of Student Loans Act 2008 which received Royal Assent on 21 July 2008. They have been prepared by the Department for Innovation, Universities and Skills in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. There are two main types of statutory student loan in the United Kingdom. Loans made before academic year 1998-99 are known as "mortgage-style loans". These normally require borrowers to repay their loans in 60 equal instalments once their income exceeds 85% of the national average income.
4. The majority of loans made from 1998 onwards are known as "income-contingent repayment loans". For most borrowers, repayment of these loans is made through the UK tax system. Repayments of a sum equivalent to 9% of all annual earnings over £15,000 are made until the loan is repaid. For PAYE taxpayers, deductions from salaries are made by employers, which are subsequently collected by Her Majesty's Revenue and Customs (HMRC). Self-employed taxpayers and employees with high earnings make repayments to HMRC through the tax self-assessment process. HMRC passes all relevant payments to the Secretary of State for Innovation, Universities and Skills. Borrowers can also make voluntary repayments directly to the Student Loans Company (SLC), which administers the student finance system on behalf of the Secretary of State for Innovation, Universities and Skills. All repayments ultimately return to general Government funds. They are not retained in the Department for Innovation, Universities and Skills.
5. The student loan book was valued at around £18.1 billion at the end of financial year 2006-07. This amount is expected to rise substantially over the next decade. Within the current portfolio, about £1.1 billion is debt owed from mortgage-style loans and £17 billion is from income-contingent repayment loans.

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6. The Government has sold part of the portfolio of mortgage-style student loans already under the Education (Student Loans) Act 1998. In two sales in 1998 and 1999 a total of around £2 billion worth of mortgage-style loans were sold to the private sector. At that time the combined value of these two sales represented around 40% of the total student loan book. The same Act cannot be used to enable a new sales programme because it was repealed when mortgage-style student loans were replaced by income-contingent repayment loans in 1999.

7. The Sale of Student Loans Act 2008 enables a programme of sales of student loans, as announced in paragraph 6.42 of the 2007 Budget Report (published 21st March 2007).

SUMMARY

8. The Act enables the Secretary of State for Innovation, Universities and Skills to sell some or all existing rights and obligations relating to income-contingent repayment student loans. It also contains provision for the Secretary of State to spend public money in connection with the sales. Such sales are referred to in the Act as ‘transfer arrangements’.

9. The Act will enable a programme of sales to proceed indefinitely.

10. The Act sets out the extent to which Government data held on borrowers can be shared with loan purchasers and makes provision to control this, notably by the introduction of a criminal sanction for wrongful disclosure of information.

11. The Act permits the Secretary of State to include provision in any sales contract that a loan purchaser will be compensated in specified circumstances, for example if the value of the loans changes as a result of future changes in regulations relating to student loans, or there is a breach of warranty in the sales contracts. It also permits the Secretary of State to include in the sales contract with a purchaser undertakings about the exercise of the power to make loan regulations (which include terms and conditions of student loans).

12. The Act places a legal duty on the Secretary of State to report to Parliament on each sale transaction, including on value for money, within three months of the transaction and to inform any borrower whose loan has been sold of that fact in the same time frame.

TERRITORIAL EXTENT

13. The Act extends only to England and Wales.

TERRITORIAL APPLICATION

14. The Act confers on the Welsh Ministers similar powers to sell in relation

to loans made by them as the Secretary of State has in relation to loans for which the Secretary of State is responsible¹. The obligation to report to Parliament on sales does not extend to Welsh Ministers or Welsh loan sales.

COMMENTARY

15. Section 1 permits the Secretary of State to sell to a purchaser rights and obligations relating to student loans made to borrowers domiciled in England (and those studying in England but based overseas) at the time the loan was taken out.

16. The Secretary of State's main right in relation to student loans is to receive the money from borrowers' loan repayments. The Secretary of State's obligations include ensuring that correct repayments are taken, protecting borrowers' personal data, making arrangements to allow borrowers to discuss issues, and generally acting responsibly and reasonably in relation to the granting of loans, repayments and enforcement of repayments.

17. The Secretary of State is not obliged to transfer all rights and obligations with respect to the loans in any contract with a purchaser - some may be retained. For example, the Government does not intend to grant purchasers the right to alter the repayment terms of sold debts. Such terms will continue to be governed by Regulations made pursuant to section 22 of the Teaching and Higher Education Act 1998, which are subject to Parliamentary Scrutiny. The section also allows the Secretary of State to sell part of a loan, for example the first 40% of it, if desired..

18. The section also allows the Secretary of State to include conditions in the sales contracts that require purchasers to administer the loans in a way that meets specified requirements, and to seek approval before making specified changes to the administration of the loans. This enables the Government to require, for example, that purchasers continue to administer loans through the SLC, that they continue to receive repayments from the Secretary of State which were first collected by HMRC, and that they seek the Secretary of State's approval before loans can be sold to an onward purchaser. Section 1 allows the Secretary of State to specify what the consequences will be if the purchaser does not subsequently adhere to these conditions.

19. The section also permits sales to proceed without the permission of the borrowers whose loans are being sold, and without giving them prior notice of the sale. This is a common practice in the financial sector where the ownership of debt transfers between parties. The section obliges the Secretary of State to make reasonable efforts to contact all borrowers whose loans had been sold within three months of the transaction to inform them of the fact of the sale of their loan.

¹ The Secretary of State is responsible for income-contingent repayment student loans made to English-domiciled borrowers and to those non-UK EU-domiciled borrowers studying in English Higher Education institutions.

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20. Section 2 grants the Secretary of State the flexibility to include provisions in the sales contracts that the Secretary of State thinks are appropriate, in addition to those specifically expressed in the Act.

21. The section also permits the Secretary of State to pass repayments collected by the Government to purchasers in relation to purchased loans. The difference following a sale is that repayments for unsold loans would remain with the Secretary of State whereas repayments for sold loans would pass from the Secretary of State to a purchaser in accordance with the sales contract. In this way, the Government would be acting on behalf of the purchaser in gathering repayments.

22. The Government intends to require purchasers to use HMRC and the SLC as part of the sales contract. Without this section, the collection and management of student loan repayments would need to be arranged by the purchaser, which might result in differences between the administration of sold and unsold loans, which the Government is keen to avoid.

23. This section also enables transfer arrangements to provide for the Secretary of State to use estimates when working out the value of repayments that are owed to purchasers. There is a time-lag inherent in using the tax system to gather repayments which need to be applied to borrowers' accounts. Borrowers' accounts cannot be updated by the SLC for repayments made in any given tax year until HMRC has processed employers' returns after the end of that tax year. This provision enables the Secretary of State to make estimated in-year payments to purchasers. In the event of a subsequent under or overpayment once the actual totals are known, the Secretary of State can subsequently make the necessary adjustments.

24. The section also allows for the Secretary of State to specify within the sales contract whether the purchaser or the Government will be entitled to particular payments after the transfer. For example, the contract can specify who will receive money paid by borrowers as penalties for late payment or for failure to disclose required information promptly.

25. Section 2 of the Sale of Student Loans Act also enables purchasers to be compensated by the Secretary of State in certain circumstances. Section 186 of the Education Act 2002 allows the Secretary of State to make regulations providing for the repayment, reduction or extinguishing of student loans (whether mortgage-style, income-contingent or otherwise). The Act would allow the purchaser to be compensated for this. The section also permits compensation if amendments are made to the loan regulations: for example, the value of the loans might diminish if the Government were to substantially raise the level of annual income at which borrowers are required to start repaying their debt. The section also allows compensation in other specified circumstances. This would provide for compensation in the event of a breach of any warranty or indemnity.

26. The section also enables the Secretary of State to include in the sales contract

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with a purchaser undertakings about the exercise of the power to make loan regulations (which include terms and conditions of student loans) and regulations under section 186 of the Education Act 2002. It allows the Secretary of State to promise to act in ways which are predictable for loan purchasers, by:

- a) promising not to exercise the powers in particular ways;
- b) promising to exercise the powers only in particular ways and using particular procedures; and
- c) promising to utilise particular information in or methods of calculating interest rates

Any undertakings given would be enforceable both as contractual promises and as binding public law commitments.

27. Section 2 also permits sales contracts to include provision allowing the Secretary of State to buy loans back from the purchaser in specified circumstances. This allows a contract to specify, for example, that the Government will offer to buy back loans if they fail to meet the terms of any contractual warranty agreed at the point of sale.

28. The section permits provisions to be included in sales contracts to appoint a mediator in case of disputes between the purchaser of a sold loan and the borrower. This allows the Government to ensure that borrowers who have had their loans sold to a purchaser retain an entitlement to a mediation process equivalent to that which they already have under the existing, unsold scheme.

29. “Consequential amendment” of the original loan documents is permitted by section 2(8). This subsection permits amendment to original loan documents to reflect the terms of a sale, for example by changing the name of the person to whom the borrower owes the debt. Such consequential amendments would need to be contained in the sale agreements themselves, and it should be emphasised that they do not allow a purchaser unilaterally to change the terms and conditions of a sold loan or the contract documents.

30. The section also allows the Secretary of State to spend public money in connection with the sales.

31. Section 3 gives the purchaser the right to sell the loans to another buyer after the initial sale, subject to any limits on that right specified in the terms of the original sales contract with the Secretary of State. The Act defines these as ‘further transfer arrangements’.

32. The provisions of the section relate only to the onward transfer of legal title to the loans, and do not apply to the creation or transfers of equitable rights that occur in a securitisation. The section obliges the Secretary of State to ensure that initial sale contracts contain provision for the Secretary of State to be party to any onward sale contract. It does not require the Secretary of State to use any particular legal method

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of becoming a party, but leaves that to the Secretary of State's election. The Secretary of State may automatically become a party to any onward sale by stating this in the original sale contract. By doing so the right to enforce the terms of those agreements against subsequent purchasers if necessary is retained.

33. The Government expects the sales transaction to consist of a sale and immediate securitisation. This is a process by which a special purpose company is created to issue financial instruments – bonds - which trade in the financial markets. Those bonds are backed by income received by the special purpose company from the student loan repayments. The loans themselves would be sold to the special purpose company. Once the loans are sold and securitised, the Government expect it to be a rare occurrence that the loans themselves will be sold on. Owning the loans will be one of the company's few purposes. The main market relating to sold student loans will be in the bonds issued by the owner of the loans.

34. Section 4 imposes a legal duty on the Secretary of State to report to Parliament on each sale transaction, including on value for money, within three months of the transaction. The report has to reflect any guidance given by HM Treasury on assessing value for money.

35. Section 5 modifies section 22(5) of the Teaching and Higher Education Act 1998 so as to enable certain changes to be made to loan regulations in connection with student loans that have been sold. This includes making it possible for regulations made under section 22(5)(f) of that Act to apply in the case of sold loans. Section 22(5)(f) provides that the Secretary of State may by regulations require the reimbursement by borrowers of costs or expenses set out in the regulations incurred by the Secretary of State in connection with the recovery of unpaid amounts. Section 5 of the present Act therefore enables the regulations to provide for the same reimbursement to be made to the purchaser of the loans.

36. This section also enables the Government to apply any future change in loan regulations to sold loans as well as those which are still owned by the Government. This includes loans which are taken out before such changes take effect, where the change would be retrospective. This is to ensure that all borrowers can be treated equally, for example if the repayment threshold (the level of annual income at which point borrowers are required to start making repayments) were to be altered by the Government.

37. In making or amending such loan regulations, or regulations under section 186 of the Education Act 2002, section 5(6) requires the Secretary of State to give consideration to borrowers whose loans have been sold so as to avoid detriment to any such borrower resulting solely from the fact that the loan is sold. The Secretary of State must compare borrowers with their notional selves and aim to ensure that their position is not worsened as a result of any proposed amendment to regulations, as compared to someone with the same characteristics whose loan has not been sold.

38. At present HMRC collects the majority of repayments through the tax system but the SLC also plays a role in collecting repayments from some borrowers – for example, those who move overseas and those who wish to make additional repayments. Section 6 allows the SLC or another agent to continue fulfilling these functions with respect to sold loans, as well as any future function that may be agreed.

39. Another function of section 6 is to allow for repayments, penalties and any other money relating to a sold loan to be paid to the purchaser, unless the transfer arrangements provide otherwise.

40. The Commissioners for Revenue and Customs Act 2005 sets out exceptions to the requirement that all money collected by HMRC is paid into the Consolidated Fund. At present, one of those exceptions arises when money is owed specifically to a Government Minister because it relates to financial support for students. Section 6 therefore also contains an amendment which alters the wording of the 2005 Act so that the exception is expanded to cover money that is owed to either a Government Minister or another person (i.e. a loan purchaser).

41. Section 7 relates to data about borrowers originating from HMRC that the Government must necessarily share with purchasers in order to be able to ensure the equal administration of sold loans. It sets out the purposes for which this data can be used, who may disclose this data, and to whom they may disclose this data. This section amends section 24 of the Teaching and Higher Education Act 1998 to enable the HMRC to disclose information to the Secretary of State for the purpose of passing it to loan purchasers, potential purchasers (prior to an initial or onward sale) and other parties who may have a purpose connected with the sale of loans.. The section also allows the SLC to receive HMRC information, whether on behalf of the Secretary of State or a purchaser.

42. The section extends section 24 so that the latter will allow for HMRC information about borrowers' loans which has been initially disclosed to the Secretary of State or SLC to be shared with purchasers or their agents (including auditors) for the purpose of administering or enforcing the loans. It will also allow disclosure of anonymised data to other parties who would need to see information for purposes connected with sold loans or loans that are to be sold.

43. Examples of parties that might require non-personal data in connection with sold loans and loans to be sold would include: purchasers; potential purchasers; bondholders; potential bondholders; banks providing advice on structuring; independent auditors; rating agencies; monoline insurers and other guarantors; swap providers; liquidity providers; trustees acting for Special Purpose Vehicles and other parties who had a demonstrable need for this information in the context of the sale of loans. Information disclosed can only lawfully be used for the purposes for which it was disclosed.

44. The section extends the criminal sanction for wrongful disclosure of data set

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out in section 19 of the Commissioners for Revenue and Customs Act 2005 to prohibit purchasers (including their agents and employees) and officials from Departments other than HMRC from disclosing personal HMRC information shared in relation to loans for any purposes other than those set out above.

45. Section 8 confirms that student loans are not regulated by the Consumer Credit Act 1974. At the moment, the “low interest” exemption under section 16(5)(b) of the 1974 Act is relied upon.

46. Section 9 enables Welsh Ministers to sell their rights and obligations in relation to Welsh student loans. This does not grant any new powers for Welsh Ministers to make loan regulations. As the power to make regulations under section 186 of the 2002 Act has not been extended to Welsh Ministers, section 9 makes clear that Welsh Ministers may not give undertakings under section 2 which relate to the power to make regulations under section 186. The Secretary of State would be able to give any such undertaking in relation to Welsh transfer arrangements. The duty to report to Parliament does not extend to Welsh Ministers or to Welsh loan sales.

COMMENCEMENT

47. The whole Act’s provisions come into force on the day on which it receives Royal Assent.

HANSARD REFERENCES

48. The following table sets out the dates and Hansard references for each stage of the Act’s passage through Parliament.

Stage	Date	Hansard reference
House of Commons		
Introduction	8 November 2007	Vol. 467 Col. 259
Second Reading	22 November 2007	Vol. 467 Col. 1388- 1422
Committee	4 December 2007	Hansard Sale of Student Loans Public Bill Committee
Report and Third Reading	23 January 2008	Vol. 470 Col. 1536-1590

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Commons consideration of Lords amendments	23 June 2008	Vol. 478 Col. 57-79
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House of Lords

Introduction	24 January 2008	Vol. 698 Col. 338
Second Reading	19 February 2008	Vol. 699 Col. 150- 166
Grand Committee	8 May 2008	Vol. 701 Col. GC167-206
Report	2 June 2008	Vol. 702 Col.46-60
Third Reading	10 June 2008	Vol. 702 Col. 484-489

Royal Assent	21 July 2008	House of Commons Hansard Vol. 479 Col. 553 House of Lords Hansard Vol. 703 Col. 1579
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