

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT)
REGULATIONS 2010

2010 No. 661

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty. It will also be laid before the National Assembly for Wales, under Standing Order 29 as these are Composite Regulations also made by the Welsh Ministers

This memorandum contains information for the Joint Committee on Statutory Instruments and for the National Assembly for Wales.

2. **Purpose of the Instrument**

2.1 The Instrument amends the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470). The amendments serve to ensure that the student loan repayment system remains aligned with Her Majesty's Revenue and Customs (HMRC) Self Assessment and Pay As You Earn (PAYE) processes which are used to collect student loans. They also make provision for student loans to be excluded from Individual Voluntary Arrangements (IVAs).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 This Instrument amends the Education (Student Loans) (Repayment) Regulations 2009. Those regulations govern the repayment of income contingent student loans paid to students and are made under section 22 of the Teaching and Higher Education Act 1998 (c.30).

4.2 The amendments being made to the Education (Student Loans) (Repayment) Regulations 2009 reflect changes in the HMRC Self Assessment and PAYE processes, including new penalties to be applied to late payments by employers to HMRC and provisions involving loss relief for trading and property losses in computing income.

4.3 Section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) amended section 22 of the Teaching and Higher Education Act 1998 to provide for regulations to be made which exclude student loans from IVAs. This Instrument exercises those powers for the first time.

5. Territorial Extent and Application

5.1 This Instrument extends to all of the United Kingdom in so far as it imposes any obligation or confers any power on HMRC, an employer or a borrower in relation to repayments under Parts 3 or 4 of the Education (Student Loans) (Repayment) Regulations 2009.

5.2 Paragraphs (a) and (b) of regulation 8 extend to England and Wales only. Paragraphs (c) and (d) of that regulation extend to Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 The Education (Student Loans) (Repayment) Regulations 2009 provide the principal terms and conditions of income contingent loans taken out by students and are incorporated by reference into the loan contract.

7.2 As any repayment of student loan is primarily collected through the UK tax system, the Regulations need to remain aligned with changes being made to that system. This amending Instrument reflects changes to the Self Assessment and PAYE system.

7.3 Student loan borrowers begin to make repayments once their income is above £15,000 per annum (or equivalent weekly or monthly amount). The Instrument also makes changes reflecting provisions in the Income Tax Act 2007 allowing for loss relief for trading and property losses in computing income.

7.4 Schedule 56 of the Finance Act 2009 introduced new penalties for failing to make payments of tax or other duties to HMRC on time. The new penalties are being implemented gradually by HMRC and are being introduced to late payments of PAYE tax and National Insurance Contributions (NIC) by employers, in relation to late payments in tax years commencing on or after 6 April 2010. Changes being introduced by regulations 5, 6 and 7 of this Instrument mirror those being introduced for late payment of PAYE and NIC by employers.

7.5 This Instrument also amends regulations in the Education (Student Loans) (Repayment) Regulations 2009 which make reference to regulations 202 and 203 of the Income Tax (PAYE) Regulations 2003 (S.I. 2008/782) (PAYE Regulations). These amendments reflect amendments being made to the PAYE Regulations.

7.6 The provisions of Part 5A of the Taxes Management Act 1970 are being applied to determinations made under regulation 62 of the Education (Student Loans) (Repayment) Regulations 2009. This is to ensure that the due date for paying amounts determined under regulation 62 is clear.

7.7 Student loans have been excluded from a borrower's bankruptcy debts since 2004, so that during and upon discharge from bankruptcy the borrower remains liable to repay his student loan. IVAs were created by the Insolvency Act 1986. An IVA enables a debtor to avoid bankruptcy by coming to an agreement with creditors to pay off a percentage of his or her debts over a given period.

7.8 The provision to exclude student loans from IVAs will ensure consistency of treatment of student loans in respect of IVAs and bankruptcy. Student loans are paid out of and subsidised by public funds, so it is not considered appropriate to allow borrowers to reduce or limit their liability to repay by entering into IVAs. Student loan repayments are linked directly to a borrower's income, so the debt will only be repaid when the borrower earns more than the income threshold.

7.9 In addition to the amendments outlined above a correction is made to regulation 46 of the Education (Student Loans) (Repayment) Regulations 2009 by removing an inaccurate reference to "paragraph (3)".

8. Consultation outcome

8.1 No formal consultation exercise was undertaken in relation to these amending regulations as they bring into effect provisions relating to primary legislation upon which appropriate consultation has taken place.

9. Guidance

9.1 The new penalties that will be chargeable for late payment of PAYE tax, NICs and student loan amounts that are paid to HMRC as a single monthly payment are being publicised by HMRC. The effect of these Regulations has been explained to the HMRC Employer Student Loan sub-group, which HMRC uses to consult with employers, representative bodies and payroll software providers on matters related to the collection of student loan repayments.

9.2 The exclusion of student loans from IVAs will be publicised in conjunction with the Insolvency Service to ensure that information and guidance is available to those practitioners dealing with IVAs.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil for the majority of employers who continue to make accurate and timely payments to HMRC, and so will not be subject to the new regime. Although it is expected that the penalties will extend to a wider population than the Mandatory Electronic Payment Surcharge for employers, which it replaces, there is no expectation of any increase in the overall total penalties paid. The impact on business, charities or voluntary bodies is nil for all other changes in this Instrument.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this Instrument.

10.4 An Impact Assessment on late payment penalties was published by HMRC on 14 April 2009 and can be found at <http://www.hmrc.gov.uk/budget2009/interest-penalties-2410.htm>.

11. Regulating small business

11.1 The legislation relating to tax changes applies to small business. Small business will benefit from having a single aligned set of rules in relation to the payment obligations it must meet with HMRC rather than the broad range of penalty regimes that currently apply.

11.2 HMRC sought the views on the impact on small business during its consultation. The structure of the new penalty regime took into account consultation responses and meetings with a range of bodies, including the Federation of Small Business, Forum of Private Business, the Low Income Tax Reform Group and Payroll Alliance. Separate consultation about including student loans in the new late payment penalties for employers took place at meetings with the HMRC Employer Student Subgroup, which includes representation from the Federation of Small Business, the Low Income Tax Reform Group and Payroll Alliance. The new penalties were discussed both before and after the new penalty regime was enacted.

11.3 To exempt small businesses with less than twenty employees would deny them the benefits of simplification that results from aligning the penalty regimes across all of the taxes and duties administered by HMRC. The very small number of small businesses who may need further advice on their payment obligations can access this advice through the HMRC website or by seeking advice from HMRC contact centres.

12. Monitoring & review

12.1 The changes in this Instrument reflect taxation changes, and make the position on student loans and IVAs consistent with that already in place for bankruptcy. No monitoring or reviews are planned.

13. Contact

Karen Duncan at the Department for Business Innovation & Skills; Tel: 01325 391092 or email: karen.duncan@bis.gsi.gov.uk can answer any queries regarding the Instrument for England and UK-wide provisions.

Chris Jones at the Department for Children, Education and Lifelong Learning and Skills; Tel: 02920 826215 or email: jonesca@wales.gsi.gov.uk can answer any queries regarding the Instrument for Wales.