

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT)
REGULATIONS 2014

2014 No. 651

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.

This memorandum contains information for the Joint Committee on Statutory Instruments. These are composite regulations with Welsh Ministers and these regulations will also be laid before the National Assembly for Wales.

- 2. Purpose of the instrument**

- 2.1 These regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (the 2009 Regulations). They will introduce an additional power for the Student Loans Company to request financial information from borrowers who are in the UK and not matched with employment records to prove that they are not in a position to repay their student loan.

- 2.2 The repayment threshold for UK and overseas repayment thresholds is currently set out up to and including April 2015. In order to provide certainty beyond this date for borrowers and potential purchasers of the pre-2012 Income Contingent student loans book, it is necessary to set the threshold to increase annually by the Retail Price Index (RPI) for each subsequent year and for the lifetime of the loan book.

- 2.3 They will also make further changes to align with HMRC legislation to enable employers to report student loan deductions to HMRC under RTI, including mirroring the “on or before” reporting easement; to introduce in-year interest and harmonisation of rates and to link to HMRC’s penalties for inaccuracies by employers.

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

- 3.1 None

- 4. Legislative Context**

- 4.1 This Instrument further amends the Education (Student Loans) (Repayment) Regulations 2009, which govern the repayment of Income Contingent student loans and are made under section 22 of the Teaching and Higher Education Act 1998, by amending the repayment threshold for pre-2012 student loans to continue

to increase the threshold annually by RPI beyond 2015 and for the lifetime of the loan book.

- 4.2 The Income Tax (Pay As You Earn) Regulations (S.I. 2003/2682) (the 2003 Regulations) govern the operation of the Pay As You Earn (PAYE) system under which income tax is deducted at source from employee's pay. Under the 2003 Regulations, as amended from 6 April 2012, employers reporting PAYE in real time are required to report payments to employees and the deduction of tax to HMRC each time a payment is made. This is done using a return, which must contain certain information about the employee's pay and tax. These returns are also used to report changes in employment. HMRC piloted RTI during the 2012-13 tax year. The 2003 Regulations were amended with effect from 6 April 2012 to facilitate its introduction. Further amendments were introduced to reflect changes to employers' obligations under RTI from 6 April 2013, at which date the vast majority of employers were required to report payments on or before making them. Most employers are finding reporting in real time easier than expected, however HMRC recognises that a small proportion of employers and their agents still need more time to adapt. HMRC is putting in place a two year relaxation to the reporting requirements for existing micro employers. It will allow micro employers, whom at the 5 April 2014 have already been issued with an employer's PAYE reference and who continue to have 9 or fewer employees at 6 April 2014 and 6 April 2015, to make a return of all relevant payments to their employees in a tax month on or before making the last payment in that tax month.
- 4.3 The Regulations link in to penalties as provided for in Schedule 24 Finance Act 2007. This will allow HMRC to charge a penalty, in the circumstances set out in Schedule 24, when employers submit an inaccurate return leading to an understatement of liability to make student loan repayments.

5. Territorial Extent and Application

- 5.1 This instrument has the same territorial extent and application as the provisions it amends in the 2009 Regulations. The 2009 Regulations extend to England and Wales but they also extend to all of the United Kingdom in so far 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.

6. European Convention on Human Rights

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 Repayment Regulations, as amended, will make provision to allow SLC to request financial information from borrowers who are not matched with an employment by HMRC to provide evidence to prove whether or not they are receiving any income so that SLC can judge whether or not they should be making repayments.
- 7.2 The Government intends to sell tranches of pre-2012 Income Contingent loans in the future. Borrowers and potential purchasers will need a degree of certainty on the expected level of future repayments so the pre-2012 repayment threshold has been set at an annual increase of RPI.
- 7.3 Loan repayments are collected via the taxation system, so we must mirror any changes which HMRC introduce which impact on these collections. These include further provisions on Real Time Information.

Composite regulations

These are composite regulations with Wales.

8. Consultation outcome

- 8.1 No formal consultation was undertaken on these regulations in relation to request for financial information for those not in employment as this is a minor change.
- 8.2 No formal consultation was undertaken in relation to the repayment threshold as the amendment effectively provides for the continuation of the recent practice of annual increases by RPI.
- 8.3 No formal consultation exercise was undertaken in relation to the mirroring of taxation changes as they bring into effect for the collection of student loans tax provisions on which HMRC has previously widely consulted. Details of lapsed and current consultations can be found on the HMRC website: <http://www.hmrc.gov.uk/consultations/>, and for relevant draft legislation: <http://www.hmrc.gov.uk/drafts/improving-payerti.htm>

9. Guidance

- 9.1 Where borrowers are requested to provide financial information, this will be clearly set out in correspondence from SLC.
- 9.2 The increases in repayment thresholds will be clearly stated in any information on future sales of pre-2012 student loans.
- 9.3 The taxation changes will be publicised by HMRC. The effect of the Regulations were explained to the HMRC Student Loans Consultation Group, which HMRC uses to consult with employers, representative bodies and payroll software

providers on matters related to the collection of student loan repayments. Extensive guidance on RTI is published on HMRC's website.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is nil for non-taxation policy changes. For the taxation changes, there should be no impact on compliant employers or civil society organisations as penalties only affect those who fail to comply with their legal obligations.
- 10.2 Under the Equality Act 2010, the Department, as a public authority, is legally obliged to give due regard to equality issues when making policy decisions. We did an Equality Impact Assessment in 2012 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32396/12-818-education-student-loans-repayment-equality-impact-assessment.pdf . For our policy changes this year, we have not carried out a further assessment but have considered each of our regulations by reference to our Public Sector Equality Duty and this is set out in Annex A.
- 10.3 All employers, apart from a small number of micro employers, are required to report certain information to HMRC in real time (RTI).
- 10.4 The impact of RTI on the public sector is the same as for any other employer.
- 10.5 Tax Information and Impact Notes covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. and <http://www.hmrc.gov.uk/budget2013/tiin-4762.pdf>

11. Regulating small business

- 11.1 The taxation amendments apply to small business.
- 11.2 RTI aims to reduce administrative burdens for all employers, including small employers. The aim is to achieve this by integrating employee payment and reporting to HMRC into a single payroll process. The Regulations keep student loan collection processes in line with the rest of the PAYE system. The changes concern how repayments are reported to HMRC, with no changes to how student loan repayments are collected.

12. Monitoring & review

- 12.1 The impact of the repayment threshold on repayments will continue to be monitored as part of wider modelling and analysis of the pre-2012 ICR student loan book.

12.2 The majority of employers have been using RTI from October 2013. HRMC have been monitoring its use, working with employers and amendments will be made where necessary.

13. Contact

Karen Duncan at the Department for Business Innovation and 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. Wales have produced their own Explanatory Memorandum.

Update to Equality Impact Assessment 2012

Under the Equality Act 2010, the Department, as a public authority, is legally obliged to give due regard to equality issues when making policy decisions. They carried out an Equality Impact assessment which was published in May 2012

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32396/12-818-education-student-loans-repayment-equality-impact-assessment.pdf)

Since then, we have continued to consider the policy changes by reference to our Public Sector Equality Duty, when considering new policy, being aware that vulnerable borrowers (those with protected characteristics) should not generally be disadvantaged by these policies.

In the case of the group who are required to provide an additional piece of information to SLC, vulnerable borrowers will have the same ready access to documentation which confirms their financial position as other borrowers, so will have no more difficulty in supplying information to their employer than other borrowers.

The Shareholder Executive have examined the fixing of repayment thresholds for pre-2012 student loans, and do not consider this amendment to alter the conclusions of the previous Equality Impact Assessment, but have produced a short addendum to the original assessment to confirm this, which is shown below:

- **Pre-2012 ICR Loan Repayment Threshold - Addendum to Equality Impact Assessment - March 2014**

It is intended that the regulations governing the threshold for repayments of pre-2012 Income Contingent Repayment (ICR) student loans be amended to continue with annual RPI increases beyond April 2015 - the date when the existing regulations expire.

The potential for this to alter the conclusions of the previously completed Equality Impact Assessment has been considered. As the amendment will lead to the continuation of the current practice of annual RPI increases in the repayment threshold for the lifetime of pre-2012 ICR loans our judgement is that there should be no change to the previous assessment of impact on those with protected characteristics. Further to this, the continuation of annual RPI increases in perpetuity will maintain the threshold at a stable level in real terms, ensuring that borrowers continue to only enter repayment at a point at which they are more able to afford to do so. Also, by providing a framework for threshold increases beyond April 2015 there is a reduction in the level of uncertainty for borrowers on the trajectory of the threshold over the lifetime of the loan book.

The HMRC changes will not directly impact individuals; the changes are designed to encourage employers to make timely, accurate returns.

We continue to monitor the effect of the Regulations on Muslim students and carried out a survey with the help of Aston University in December 2012. We were keen to understand if the new arrangements were causing concern to certain religious groups or whether the fact that student loans are non-commercial and have preferential terms means they are ethical for these groups to take out. The main objective of the research was to determine whether the increase in fees and interest rates on student loans would have a negative impact on the number of Muslim students attending university from 2012 onwards. The research gauged attitudes towards student loans and the funding of Higher Education and the impact of these attitudes on Higher Education attendance. The conclusion of the report was that the new student funding arrangements do not seem to be putting Muslim students off attending Higher Education any more than anyone else, however, the changes to the Student Loan system does mean less Muslim students feel they have access to a Student Loan as a source of funding. Building on that report, we plan to issue a consultation document soon on the BIS website on a Shariah-compliant alternative finance product for Higher Education funding.