EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT FINANCE) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

2023 No. 521

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

1.2 These are composite Regulations with the Welsh Ministers and these Regulations will also be laid before Senedd Cymru.

1.3 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This statutory instrument amends the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) ("the 2009 Regulations"), which govern the repayment of income-contingent repayment ("ICR") student loans. The purpose is to set a maximum interest rate for plan 2, plan 3 and plan 5 student loans, in line with the latest Prevailing Market Rate ("PMR"), for a period of three months, from 1 June 2023 to 31 August 2023, to ensure legislative obligations are met.

2.2 This instrument corrects drafting errors in the Education (Student Loans) (Repayment) (Amendment) (No. 4) Regulations 2022 (S.I. 2022/1335) and in the Education (Student Fees, Awards and Support) (Amendment) Regulations 2023 (S.I. 2023/74). The procedure for free issue will be applied and these Regulations will be issued free of charge to all known recipients of the Education (Student Loans) (Repayment) (Amendment) (No. 4) Regulations 2022 (the "Repayment Regulations") and of the Education (Student Fees, Awards and Support) (Amendment) Regulations 2023 (the "HE Student Finance Regulations").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The HE Student Finance Regulations were made on 24 January 2023 and laid before Parliament on 26 January 2023. The Joint Committee on Statutory Instruments (JSCI) drew the attention of both Houses to errors in regulations 139 and 140 within their Thirtieth Report of session 2022-23. This instrument corrects those errors, along with others identified within the HE Student Finance Regulations.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is mixed. Regulations 1 and 3 extend to England and Wales, Scotland and Northern Ireland, the amendments made in regulation 2 have the same extent as the provision amended and regulations 4, 5, 6 and 7 extend to England and Wales only.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is also mixed. Regulations 2 and 3 apply primarily in England and Wales because the amendments concern the repayment terms of student loans made to borrowers ordinarily resident in England and Wales. However, the collection of student loan repayments is managed on a UK-wide basis by the Student Loans Company (SLC), working in partnership with His Majesty's Revenue and Customs (HMRC). The 2009 Regulations thus extend and apply to all of the UK insofar 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, or on any other person in relation to the retention or production of information or records.

4.3 Regulations 4, 5 and 7 apply in relation to England only. Regulation 6 applies to English Higher Education providers.

5. European Convention on Human Rights

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

6. Legislative Context

Purpose 1

6.1 Regulation 2(2) of this instrument amends the 2009 Regulations made under section 22 of the Teaching and Higher Education Act 1998 ("THEA 1998"), which govern the repayment of ICR student loans, in a similar manner to the Education (Student Loans) (Repayment) (Amendment) (No.2 and 3) Regulations 2022 (S.I. 2022/889 and S.I. 2022/1151) and the Education (Student Loans) (Repayment) (Amendment) Regulations 2023 (S.I. 2023/129).

6.2 This instrument follows the same approach as the instruments mentioned above, in that it sets a maximum interest rate for plan 2 and plan 3 student loans in line with the latest available published PMR (March 2023) at the time of making the Regulations, for a period of three months from 1 June 2023, to ensure that the interest rate applied to student loans remains compliant with the requirements set out in section 22(4)(a) of THEA 1998. The reduced maximum rate will also apply to plan 5 loans, which are being introduced for the first time for English-funded borrowers commencing courses on or after 1 August 2023.

6.3 At the end of the three-month period, interest rates will revert to the rate specified in the 2009 Regulations, unless they remain above the PMR, in which case a new statutory instrument will be laid before Parliament to introduce a new maximum rate.

Purpose 2

6.4 The Repayment Regulations made amendments to the 2009 Regulations, in particular to introduce plan 5 loans for English-funded undergraduate borrowers in the 2023/24 academic year, but also to: (1) improve the clarity of the regulations in several areas; (2) enable the correct repayment threshold to apply to borrowers with both plan 2 student loans and Scottish (plan 4) student loans, when the Scottish loan repayment threshold exceeds the plan 2 loan threshold for the first time in April 2023; and (3) update fixed instalment repayment rates for overseas borrowers with plan 2 and/or a plan 3 student loan.

6.5 These Regulations correct drafting deficits in the Repayment Regulations. The issues were identified and are being corrected promptly and these Regulations are issued free of charge to all known recipients of the Repayment Regulations.

6.6 The specific corrections made by these Regulations are as follows:

6.7 The extent provision in regulation 3 of the Repayment Regulations is amended, to reduce the extent of certain provisions from UK to England and Wales.

6.8 References to "postgraduate degree loan" which should have been removed in consequence of drafting changes made within the rest of the Repayment Regulations are omitted.

6.9 Regulation 58 of the Repayment Regulations inserts regulation 74A into the 2009 Regulations. A separate formula should have been included for the calculation of the plan 3 fixed instalment rate, including a multiplier of 0.06, in alignment with how plan 3 student loan repayments are calculated for UK based borrowers. This amending SI corrects this deficit.

Purpose 3

6.10 The HE Student Finance Regulations make amendments to the legislation governing funding for further education students and funding for higher education undergraduate and postgraduate students in England. This SI makes a minor amendment to the Education (Student Support) Regulations 2011, corrects technical errors in the same SI made through the HE Student Finance Regulations, corrects a technical error in the Higher Education (Fee Limit Condition) (England) Regulations 2017 made through the HE Student Finance Regulations, and corrects two technical errors in the HE Student Finance Regulations themselves.

6.11 The specific amendments made by this SI are as follows:

6.12 This amending SI removes a duplicate 'and' from the definition of a "person granted leave under the Afghan Citizens Resettlement Scheme" in Regulation 2(1) of the Education (Student Support) Regulations 2011 and makes a number of minor changes to capitalisation in the definitions of a "person granted leave under the Ukraine Extension Scheme" and "person granted leave under the Ukraine Family Scheme" in the same regulation.

6.13 Regulation 2(1ZA)(e)(ii) of the Education (Student Support) Regulations 2011 refers to Diploma in Education and Training (DET) courses that begin 'before 1st September 2024'. This date should be 1 August 2024, which is the start of the 2024/25 academic year. This amending SI corrects the error.

6.14 In regulation 2A(7)(a) of the Education (Student Support) Regulations 2011, the cross-reference to regulation 139(7) is incorrect. This amending SI replaces that cross-reference with the correct cross-reference to regulation 161(4).

6.15 Regulation 2A(7)(c) of the Education (Student Support) Regulations 2011 refers to the term "part-time course" in error. This amending SI replaces references to "part-time course" where they occur with "postgraduate course".

6.16 Regulation 9(2)(a) of the Education (Student Support) Regulations 2011 refers to an 'in-year qualifying event' but omits course designation as one of the events occurring after the start of the academic year. This amending SI corrects that error by adding a reference to a 'course designation event' to Regulation 9(2)(a).

6.17 This amending SI inserts the heading ‘Quarters in respect of which grant for travel is payable’ in regulation 49 of the Education (Student Support) Regulations 2011.

6.18 Regulation 85(1) of the Education (Student Support) Regulations 2011 incorrectly omits the text “such quarters in respect of”. This amending SI corrects the error.

6.19 Regulation 157C(6)(a) of the Education (Student Support) Regulations 2011 currently refers to ‘one of the events listed in paragraph (2) of regulation 138A’. This reference is incorrect. This amending SI replaces this reference with ‘an event falling within regulation 138A’.

6.20 Regulation 4(7) of the Higher Education (Fee Limit Condition) (England) Regulations 2017 refers to a ‘prescribed category’ of person. It should refer to a ‘protected category’ This amending SI corrects the error.

6.21 In regulation 139(3) of the HE Student Finance Regulations, in the definition of “existing SSR Afghan scheme student”, paragraph (b) refers to ‘P’s status’. It should refer to ‘the student’s status’. This amending SI corrects the error.

6.22 In regulation 140(3) of the HE Student Finance Regulations, in the definition of “existing EUI Afghan scheme student”, paragraph (b) refers to ‘P’s status’. It should refer to ‘the student’s status’. This amending SI corrects the error.

7. Policy background

What is being done and why?

Purpose 1

How the student loan system works.

7.1 ICR student loans were introduced in 1998. One of the main features of these loans is that they are income contingent. The relevant UK administration sets an income threshold for repayment, below which borrowers are not required to make repayments on their loan. Borrowers earning above this repayment threshold are required to make repayments of a set percentage of their income that falls above the threshold. There are currently three different ICR loan types in operation in England, referred to as ‘plans’, with a further plan type (plan 5) being introduced for English-funded students commencing undergraduate courses on or after 1 August 2023.

7.2 The temporary interest rate cap does not affect pre-2012 undergraduate (known as plan 1) loans. Interest rates for these loans are governed by the 2009 Regulations, which provide that plan 1 loans have an interest rate of Retail Prices Index (RPI – by which we mean the annual percentage increase between the retail prices all items index published by the Office of National Statistics (“ONS”) for the two Marches immediately before the commencement of the academic year) or the Bank Base Rate + 1%, whichever is the lower. The interest rate used for these loans is still significantly below the PMR.

7.3 The temporary interest rate cap applies to post-2012 undergraduate loans and Advanced Learner Loans, which are loans in connection with certain Further Education qualifications at education levels 3 to 6. These loans are also known as ‘plan 2’ loans. The 2009 Regulations provide that for these loans different interest rates apply depending on the borrower’s circumstances. While borrowers are still in study, interest is charged at RPI + 3%. Student loans become due for repayment from the beginning of the tax year after the borrower leaves study. From this point, the interest rate 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.

7.4 The temporary interest rate cap also applies to postgraduate loans, which are loans introduced for Master's students in England in Academic Year ("AY") 2016/17 and for Doctoral students in the AY 2018/19. These loans are also known as 'plan 3' loans, and have an interest rate of RPI + 3% throughout the loan term.

7.5 Finally, the temporary interest rate cap applies to plan 5 loans, which are loans introduced for undergraduate study for students in England from 1 August 2023. They are replacing plan 2 loans for students starting new courses. Plan 5 loans have an interest rate of RPI throughout the loan term.

7.6 Interest rates are set for a time period of an AY (i.e., 1 September – 31 August). This means that every year a new interest rate comes into operation on 1 September.

Link between student loan interest rates and PMR

7.7 Section 22(4)(a) of THEA 1998 requires that in relation to a student who begins a course on or after 1 September 2012, student loan interest rates be either lower than the PMR or no higher than the PMR where the other terms on which the loans are provided are more favourable to borrowers than those prevailing on the market.

7.8 The PMR is not defined in primary legislation. The Department, therefore, considers that the most appropriate practical measure of the PMR is the interest rate of the most comparable types of commercial personal loans, as published in official data sources. These are the Bank of England ("BoE") effective interest rates for existing and new unsecured personal loans.

7.9 ICR student loans have much more favourable terms than commercial loans, with regular repayments calculated in line with earnings, rather than the amount borrowed or interest rates. Borrowers earning below the repayment threshold make no repayments. Furthermore, any outstanding balance, including accrued interest, is written off at the end of the loan term with no detriment to the borrower. A loan will also be written off if the borrower dies or becomes permanently unfit for work and in receipt of a disability related benefit. The Department for Education is not aware of any commercial loans that offer such favourable terms to borrowers, and, therefore, the interest rate for ICR student loans can be equal to the PMR without breaching primary legislation.

Recent changes in RPI

7.10 RPI increased significantly from 1.5% in March 2021 to 9% in March 2022. Without intervention, the maximum student loan interest rates (RPI+3%) would have increased from 4.5% in AY 2021/22 to 12% in AY 2022/23. This is in contrast to market interest rates which have remained relatively low and which the Office for Budget Responsibility forecast to stay relatively stable at, on average, 7.3% in AY 2022/23.

7.11 The Department for Education announced[1] on 13 June 2022 that a maximum interest rate of 7.3% would apply for AY 22/23, based on the average forecast PMR for the AY, but that the Department would continue to monitor the actual PMR and would use the latest available published PMR data to set the actual student loan interest rate

[1] Written Ministerial Statement HCWS94 13 June 2022 – https://questions-statements.parliament.uk/written-statements/detail/2022-06-13/hcws94

in regulations (up to a maximum of the announced rate of 7.3%), based on a rolling 12-month average (to smooth out economic shocks). This was implemented through The Education (Student Loans) (Repayment) (Amendment) (No.2) Regulations 2022 (S.I. 2022/889) and extended by The Education (Student Loans) (Repayment) (Amendment) (No.3) (Regulations) 2022 (S.I. 2022/1151) and The Education (Student Loans) (Repayment) (Amendment) Regulations 2023 (S.I. 2023/129).

7.12 This instrument sets a flat rate student loan interest rate for plan 2, 3 and 5 student loans but at an amended rate of 7.1% for a period of three months from June 2023. The rate of 7.1% is calculated as the 12-month average PMR to March 2023, which is the latest published PMR data at the point of making these Regulations.

7.13 The Department for Education will continue to monitor the actual PMR outturn throughout the three-month period. Should this turn out to be lower than the forecast PMR, further adjustments to the maximum student loan interest rate will be implemented.

7.14 As the rate of 7.1% is lower than the rate of RPI of 9% from March 2022 (which, absent intervention, would ordinarily be the minimum student loan interest rate), this is the rate that will apply to all borrowers, irrespective of income. Therefore, all borrowers will see a reduction in the rate of interest applied to their loan balance. However, those ordinarily on the higher variable rates on a plan 2 loan will see the greatest reduction.

Purpose 2

7.15 The policy background to the changes made to the Repayment Regulations is set out in the explanatory memorandum to that instrument.

Purpose 3

7.16 The policy background to the changes made to the HE Student Finance Regulations is set out in the explanatory memorandum to that instrument.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 The Department for Education is currently considering the feasibility of consolidating the Education (Student Support) Regulations 2011 for the academic year starting in August 2024. The Department does not consider that consolidation of the 2009 Regulations is necessary at this time but will keep the position under review.

10. Consultation outcome

10.1 None. A consultation was not deemed necessary as this instrument is being implemented to uphold requirements set out in the parent Act, THEA 1998 and to correct drafting errors in S.I. 2022/1335 and to make one amendment to and correct minor errors in S.I. 2023/74.

11. Guidance

11.1 Information and guidance relating to the interest rate applied to plan 2, 3 and 5 student loans are on gov.uk[2], including details of past and present interest rates. A Written Ministerial Statement was published[3] on 13 June 2022 to confirm that the maximum interest rate to apply in AY 2022/23 for post-2012 ICR student loan and postgraduate degree ICR student loans would be 7.3%, based on the forecast average rate for AY 22/23.

11.2 An announcement confirming the actual interest rates for impacted loans (aligned with the 12-month average PMR to March 2023) will be made by the Student Loans Company (SLC) shortly after this instrument is laid. This announcement will be most useful for borrowers who currently hold either a plan 2, 3 or 5 loan, although will also be available for students intending to apply for a future loan. The announcement will be available on gov.uk, under the SLC News and Communications section[4].

11.3 Information setting out the changes to financial support for students in the 2023/24 academic year are being made available to universities, colleges and other higher education stakeholders on Student Finance England's (SFE) practitioners' website by Spring 2023. Further information on changes to financial support for students in 2023/24 will be published for students on GOV.UK and SFE websites before 1 August 2023.

11.4 Guidance materials are being produced by SFE for students intending to apply for financial support for the 2023/24 academic year.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for purpose 1 of this instrument because the change in interest rate introduced by this instrument does not impact businesses. The change will be implemented and administered by the SLC. Updated guidance will be made available to student loan borrowers via by the SLC. However, no additional burden on employers is expected as a result of this change. Full Impact Assessments have also not been prepared for purposes 2 and 3 of this instrument as these cover technical changes to make a minor amendment and correct errors.

12.4 The Department for Education has considered the amendments with reference to the Public Sector Equality Duty and has concluded that there is not likely to be an impact on the need to eliminate discrimination etc, or to advance equality of opportunity or foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The lower maximum interest rate will benefit all plan 2 (including Advanced Learner Loans), 3 and 5 borrowers both in study and out of study. Borrowers will see a reduction in the interest added to their loan balance as a direct effect of the lower maximum interest rate. However, not all of these borrowers will go on to repay their loan in full, as any outstanding balance, including interest, is written off at the end of the loan term with no detriment to the borrower.

[2] https://www.gov.uk/repaying-your-student-loan/what-you-pay
[3] https://questions-statements.parliament.uk/written-statements/detail/2022-06-13/hcws94
[4] https://www.gov.uk/education/student-loans-bursaries-and-sponsorship#news_and_communications

12.5 The impact on borrowers of the changes made in the Repayment Regulations are set out in the explanatory memorandum to that instrument.

12.6 The impact on borrowers of the changes made in the HE Student Finance Regulations are set out in the explanatory memorandum to that instrument.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring for purpose 1 of this legislation is limited as the legislation will only apply for a set period of three months. At the end of the three-month period, the maximum interest rate will automatically terminate, and the interest rates applied to plan 2, 3 and 5 loans will revert to the standard method used to calculate the interest rate applicable, as set out in the 2009 Regulations. The government is committed to regular monitoring of the PMR and will act accordingly to set a maximum amount for the plan 2, 3 and 5 interest rate should further need arise.

14.2 We will also be monitoring the number of students who receive fee loans and grants and loans for living costs. This information is published in the SLC's Statistical First Releases.

15. Contact

15.1 Pippa Jones (repayments) telephone: 0114 2742533 or email: Pippa.Jones@education.gov.uk and Mark Williams (student support) telephone: 07391 018340 or email: mark.williams@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Williams, Deputy Director for Student Funding Policy, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Barran, Minister for the School System and Student Finance at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.