# EXPLANATORY MEMORANDUM TO

# THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT) (NO. 2) REGULATIONS 2023

## 2023 No. 898

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education ("the Department") 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) ("2009 Regulations"), which govern the repayment of income-contingent repayment ("ICR") student loans.

2.2 The purpose of this instrument is to set a maximum interest rate for plan 2, plan 3 and plan 5 ICR student loans, in line with the latest Prevailing Market Rate ("PMR"), for a period of three months, from 1 September 2023 to 30 November 2023, to ensure legislative obligations are met.

## 3. Matters of special interest to Parliament

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

3.1 In its Forty-Second Report of Session 2022-23, the Committee reported the Education (Student Finance) (Miscellaneous Amendments) Regulations 2023 (S.I. 2023/521) for defective drafting and the Department undertook to specify in future which powers are exercised by the Secretary of State in relation to England and which by the Welsh Ministers in relation to Wales. The preamble to this instrument accordingly adopts that approach.

## 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 England and Wales.

4.2 The application of this instrument (that is where the instrument produces a practical effect) is England and Wales because the instrument concerns the repayment terms in respect 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.

## 5. European Convention on Human Rights

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

## 6. Legislative Context

6.1 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, 3 and 4) Regulations 2021 (S.I. 2021/677, 1005 and 1378), Education (Student Loans) (Repayment) (Amendment) (No.2 and 3) Regulations 2022 (S.I. 2022/889 and 1151), Education (Student Loans) (Repayment) (Amendment) Regulations 2023 (S.I. 2023/129) and Education (Student Finance) (Miscellaneous Amendments) Regulations 2023 (S.I. 2023/521).

6.2 This instrument follows the same approach as the instruments laid in 2022 and 2023, which in turn differed slightly from those laid in 2021, in that it sets a maximum interest rate for plan 2, 3 and 5 ICR student loans in line with the latest available published PMR (June 2023) at the time of making the regulations, for a period of three months from 1 September 2023 to 30 November 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 2021 instruments set maximum interest rates for three-month periods based on actual PMR outturn, i.e., they implemented the reduction with a lag only once the actual PMR was known for the whole of the relevant period.

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 further statutory instrument will be laid before Parliament to introduce a new maximum rate.

## 7. Policy background

***What is being done and why?***

<u>How the student loan system works.</u>

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, at or 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 four different ICR loan types in operation in England, referred to as 'plans'.

7.2 These changes do 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 for the two Marches immediately before the commencement of the academic year to which the interest rate applies) 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 This change applies to post-2012 undergraduate loans and Advanced Learner Loans, which are loans for certain Further Education qualifications at education levels 3 to 6. These loans are 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 This change 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 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 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, and again to 13.5% in March 2023. 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 and 16.5% in AY 2023/24. This is in contrast to market interest rates which have remained relatively low and which the Office for Budget Responsibility forecast to be between 8-9% in AY 2023/24.

7.11 The Department has monitored the actual PMR throughout AY 22/23, setting maximum interest rates in time-limited regulations in line with the latest available published PMR data at the time of making the SI, 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), Education (Student Loans) (Repayment) (Amendment) Regulations 2023 (S.I. 2023/129) and Education (Student Finance) (Miscellaneous Amendments) Regulations 2023 (S.I. 2023/521).

7.12 This instrument sets a flat rate student loan interest rate for plan 2, 3 and 5 student loans at an amended rate of 7.3% for a period of three months from 1 September 2023 to 30 November 2023. The rate of 7.3% is calculated as the 12-month average PMR to June 2023, which is the latest published PMR data at the point of making these regulations.

7.13 The Department will continue to monitor the actual PMR outturn throughout the three-month period. Should this turn out to be lower than the June PMR, further adjustments to the maximum student loan interest rate will be implemented as per the lagged approach used in the 2021 legislation.

7.14 As the rate of 7.3% is lower than the rate of RPI of 13.5% from March 2023 (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 with plan 2, 3 or 5 loans 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, or those with a plan 3 loan will see the greatest reduction.

## 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.

## 9. Consolidation

9.1 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.

## 11. Guidance

11.1 Information and guidance relating to the interest rate applied to plan 2, 3 and 5 ICR student loans are on gov.uk[1], including details of past and present interest rates. An announcement confirming the actual interest rates for impacted loans (aligned with the 12-month average PMR to June 2023) will be made by the Student Loans

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[1] https://www.gov.uk/repaying-your-student-loan/what-you-pay

Company shortly after this instrument is laid. This announcement will be most useful for borrowers who currently hold either a plan 2, 3 or 5 ICR student loan, although it will also be available for students intending to apply for a student loan. The announcement will be available on gov.uk, under the SLC News and Communications section[2].

## 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 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 Student Loans Company. Updated guidance will be made available to student loan borrowers via by the Student Loans Company. No additional burden on employers is expected as a result of this change.

12.4 The Department has considered the amendments with reference to the Public Sector Equality Duty in section 149 of the Equality Act 2010, and has concluded that there is not likely to be an impact on the need to eliminate discrimination, harassment, victimisation or any other conduct that is prohibited by or under the Act, or the need to advance equality of opportunity or foster good relations between persons who share a relevant protected characteristic and persons who do not. 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.

## 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 of this legislation is limited as the legislation will only apply for a set period of three months.

14.2 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 student loans will revert to the standard method used to calculate the interest rate applicable, as set out in the 2009 Regulations.

14.3 The government is committed to regular monitoring of the PMR and will act accordingly to set a maximum plan 2, 3 and 5 interest rate should further need arise.

## 15. Contact

15.1 Pippa Jones at the Department for Education email: pippa.jones@education.gov.uk can be contacted with any queries regarding the statutory instrument.

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[2] https://www.gov.uk/education/student-loans-bursaries-and-sponsorship#news_and_communications

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 MBE, Parliamentary Under Secretary of State for the School System and Student Finance at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.