

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT) (No. 2)
REGULATIONS 2008

2008 No. 2715

1. This explanatory memorandum has been prepared by the Department for Innovation, Universities and Skills and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

- 2.1 This Statutory Instrument makes technical changes to the student loans repayment regulations (the Education (Student Loans) (Repayment) Regulations 2000 (SI 2000/944)) ('the Principal Regulations') to take account of the possibility that loans may be sold to private sector bodies and to provide for the transmission of repayments and other sums to such bodies.

- 2.2 It also makes provision for a simplification of process relating to Her Majesty's Revenue and Customs (HMRC) as collector of loan repayments, enabling it to collect any outstanding amounts of student loan repayments due from an employer as part of a single undifferentiated sum, alongside outstanding tax, national insurance or payments under the Construction Industry Scheme Regulations.

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

- 3.1 The attention of the Joint Committee is drawn to the amendment made by regulation 15 which corrects a drafting error contained in paragraph 1 of the schedule to the Education (Student Loans) (Repayment) (Amendment) Regulations 2001 (SI 2001/971). Paragraph 1 purported to amend the definition of 'the 1998 Act' when in fact no such phrase was defined. Regulation 15 rectifies this error and makes the provision intended by the 2001 Amendment Regulations.

4. **Legislative Background**

- 4.1 The Sale of Student Loans Act 2008 enables the sale of income-contingent repayment student loans to the private sector. It also expands the scope of section 22 of the Teaching and Higher Education Act 1998 both to allow Regulations under that section to make provision for making payments to the purchaser of loans and for any loans sold to continue to be governed by such Regulations. These Regulations make the expanded provision permitted by the 2008 Act and provide for the practicalities of what will happen after a sale or sales. They will ensure that the existing collection methods for student loans continue to apply to sold loans as well as those retained in the public sector.

4.2 As the Principal Regulations themselves are not made pursuant to the Sale of Student Loans Act 2008, but pursuant to the Teaching and Higher Education Act 1998, it was considered necessary to introduce into those Regulations the definitions of various terms contained in the 2008 Act which would not otherwise be necessary.

4.3 The 2000 Regulations have previously been amended by:

- the Education (Student Loans) (Repayment) (Amendment) Regulations 2001 (S.I. 2001/971)
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2002 (S.I. 2002/2087),
- the Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2002 (S.I.2002/2859),
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2004 (S.I. 2004/1175),
- the Education (Student Loans) (Repayment) (Amendment)(No 2) Regulations 2004 (S.I. 2004/2752),
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2005 (S.I. 2005/2690),
- the Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745),
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2006 (S.I. 2006/2009),
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2007 (S.I. 2007/1683)
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2008 (S.I. 2008/546)

4.4 Amendments introducing the concept of collecting a ‘combined amount’ by HMRC have already been made in the Statutory Instruments governing the other elements of the ‘combined amount’: for income tax (the Income Tax (Pay As You Earn) Amendment) Regulations 2008 (SI 2008/782)), national insurance ((the Social Security (Contributions) (Amendment No. 3) Regulations 2008 (SI 2008/636) and the construction industry (Income Tax (Construction Industry Scheme) (Amendment) Regulations 2008 (SI 2008/740)).

5. Territorial Extent and Application

5.1 This instrument applies only to England in relation to the changes introduced by the Sale of Student Loans Act 2008.

5.2 It extends to the whole of the UK in relation to the changes to the system of recovery of student loans from employers,.

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

7.1 The Sale of Student Loans Act 2008 enables the Government to make sales from the student loan book. The policy intention, announced at Budget 2007, is to manage a large and growing publicly-held debt asset as effectively as possible and to obtain good value for money for the tax payer. The Government has stated its commitment that the transfer of any loans to the private sector should not adversely affect the borrower and that one's experience of the repayment system should not vary according to whether one's loan is owned publicly or privately. To that end, purchasers will be required to use the repayment collection system that Government uses, via employers, HMRC and the Student Loans Company.

7.2 The primary amendments to the repayment regulations being made in this Statutory Instrument are two-fold: firstly, they consist of technical amendments aimed at ensuring that the legislative framework for the repayment collection system acknowledges the possibility of sold loans and private sector debt owners and enables the flow of repayments and repayment-related information connected with sold loans between employers, HMRC, the Department for Innovation, Universities and Skills and debt owners as appropriate.

7.3 Secondly, HMRC has concluded that requiring employers to provide an itemised breakdown with their monthly remittances of tax, which may also include Construction Industry Scheme deductions, repayments of student loans, and National Insurance contributions, is an unnecessary burden. Sums remitted during the current tax year are only reconciled to the constituent components of tax, contributions etc. at the end of the year on receipt of employers' annual returns. Until then, only the total sum due is important. These regulations complete the suite of changes to connected provisions and allow HMRC to recover sums due from employers regardless of which category such repayments fall into and without having to specify the composition of such sums.

7.4 One minor change is also made to the Principal Regulations, which is neither consequent on the Sale of Student Loans Act nor resulting from the 'combined amount' changes. Regulation 14 introduces a new regulation 67 into the Principal Regulations, the effect of which is to allow the Secretary of State to recover against loans granted to borrowers in England who reside overseas the costs associated with administering and enforcing those loans, if borrowers fail to keep the Secretary of State informed of their details, or fail to make proper payment. Previously the Secretary of State would only have had power to recover such costs if he took formal legal action against a borrower either here or in the jurisdiction in which the borrower resides. As it is clearly preferable that the Secretary of State neither be obliged to sue borrowers nor be out of pocket as a result of the failure of a borrower to comply with

their obligations, this new regulation fills a gap left by the existing provision. As the Secretary of State (and any loan purchaser in due course) already have such powers in respect of borrowers who are not overseas (in Regulations 13D of the Principal Regulations), Regulation 14 is addressing an anomaly in treatment.

Consultation and Guidance

- 7.5 No formal consultation on the Regulations was undertaken, and no guidance is to be issued as these changes are not intended to have any material impact on borrowers or business. Their effect is, largely, consequential or technical. For information, we have set out the effect of the Regulations to the Employer Student Loan Sub-group, which is convened by HMRC to inform and consult employers, representative bodies and payroll software providers on matters related to the collection of student loan repayments. The Sub-group was informed that the Regulations relating to the sale of student loans would have no impact on them at all and that the Regulations relating to the single sum monthly remittances were putting into student loan legislation the provisions that had already been made in tax and National Insurance legislation. It welcomed the update and raised no issues.

Consolidation

- 7.6 The Department has given careful consideration to whether it should have used the opportunity of these amendments to consolidate the Regulations given the age of the Principal Regulations and the number of amending Regulations since then. The Department is aware, however, that further changes are likely to be requested by HMRC stemming from the Finance Act 2008. In those circumstances, it appears preferable to wait and to consider consolidation again in the spring of 2009 when those changes are likely to be implemented. For the same reason it was considered preferable not to introduce the concept of HMRC across the Regulations but to confine it to those regulations amended by this Instrument. There is no longer any power to refer in amendments to concepts such as the Board, which no longer exist. All references will be updated in any consolidated Instrument.

8. Impact

- 8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. The impact on the public sector is minimal.

9. Contact

Karen Duncan at the Department for Innovation, Universities and Skills (Tel: 01325 391092 or e-mail: karen.duncan@dius.gsi.gov.uk), who can answer any queries regarding the instrument.