EXPLANATORY MEMORANDUM TO

THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT) REGULATIONS 2011

2011 No. 784

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 further amends the Education (Student Loans) (Repayment) Regulations 2009 (SI 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 to give notice of the uprating of the £15,000 threshold and equivalent overseas threshold from April 2012 which will allow the administrative arrangements to be put in place during the summer of 2011.

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

3.1 None

4. Legislative Context

4.1 This Instrument further 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 processes, including revised penalties for late filing and new late payment penalties for Self Assessment (SA) customers which are due to come into effect from 6 April 2011 and new interest provisions which will apply from 31 October 2011.

4.3 On 8 December 2010, the Secretary of State announced that the £15,000 repayment threshold would increase in line with inflation from April 2012, so that

intention is made clear in this Instrument for students who will be in repayment before and after this date.

5. Territorial Extent and Application

5.1 This instrument has the same territorial extent and application as the provisions it amends in the Education (Student Loans) (Repayment) Regulations 2009. Those Regulations extend to England and Wales but they also extend 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.

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 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 system.

7.3 Schedules 55 and 56 of the Finance Act (FA) 2009 introduced new penalties for failing to file returns and make payments of tax or other duties to HMRC on time and are being implemented in stages by HMRC. This Instrument makes changes to replace two sections of the Taxes Management Act (TMA) 1970; Section 93 penalties for failure to make returns for income tax, and Section 59C for surcharges on unpaid income tax for tax periods 2010-11 onwards.

7.4 This Instrument also sets out new penalty provision for failing to make payments of income tax on time for tax years 2010-11 or any subsequent year.

7.5 The current interest provisions at Regulation 39 for late payment of income tax and the surcharges for late payment of income tax at Regulation 36 will only remain in force until midnight on 30 October 2011. With effect from 31 October, references to Section 178 of the FA 1989 are replaced by references to Sections 101 to 103 of the FA 2009. Interest on late payment of income tax and late payment of the new penalty provisions under Regulation 36 will attract interest under Section 103 of FA 2009, in

accordance with the changes being made to Regulation 39 to reflect changes being made to HMRC income tax provisions.

7.6 Student loan borrowers begin to make repayments once their income is above £15,000 per annum (or equivalent weekly or monthly amount). The current threshold has been set at £15,000 since 2005. From April 2012, this figure will be uprated by inflation.

7.7 In addition a correction is made in regulation 16 by removing the word “be”.

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 policy principle and legislation underlying the new penalty and interest regimes were subject to extensive public consultation, and were broadly welcomed. The new late filing and payment penalties and new interest provisions 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 uprating of the £15,000 repayment threshold has been widely publicised and will be in advice and guidance booklets relating to student finance, including the online booklet – a guide to Terms and Conditions.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil for the majority of individuals who continue to make accurate and timely payments to HMRC, and so will not be subject to the new regime. 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 the uprating of the repayment threshold.

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 income tax, changes to the existing penalties for failing to make returns for income tax and the new interest charges for late payment of the new late payment penalties took place at meetings with HMRC Employer Student Loans Subgroup. This includes representation from the Federation of Small Business, the Low Income Tax Reform Group and the accountancy profession.

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 uprates the existing repayment thresholds. 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.