

Sale of Student Loans Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Innovation, Universities and Skills, are published separately as Bill 6 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary John Denham has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Sale of Student Loans Bill are compatible with the Convention rights.

Sale of Student Loans Bill

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Enable the sale of rights to repayments of student loans; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Sale of student loans

- (1) The Secretary of State may enter into arrangements (“transfer arrangements”) under which rights of the Secretary of State in respect of student loans are transferred to another person (“the loan purchaser”).
- (2) In subsection (1) “student loans” means loans made by the Secretary of State in accordance with regulations under section 22 of the Teaching and Higher Education Act 1998 (c. 30) (“loan regulations”). 5
- (3) Transfer arrangements may relate to—
 - (a) specified loans or a specified class of loan;
 - (b) some or all of the Secretary of State’s rights. 10
- (4) Transfer arrangements may include provision—
 - (a) transferring to the loan purchaser an obligation of the Secretary of State in connection with a loan;
 - (b) transferring to the loan purchaser the benefit of an obligation or undertaking of the borrower in respect of a loan (whether deriving from loan regulations or from arrangements agreed between the borrower and the Secretary of State in respect of the loan (“loan arrangements”)); 15
 - (c) for warranties or indemnities or other obligations of the Secretary of State; 20
 - (d) enabling the Secretary of State to require a loan purchaser to make specified arrangements in connection with the administration of loans (whether by appointing a specified agent for specified purposes, or otherwise);

- (e) prohibiting the loan purchaser from making specified arrangements without the Secretary of State's consent;
- (f) specifying consequences of the breach of a provision of the transfer arrangements.
- (5) Transfer arrangements may be made – 5
- (a) without the borrower's consent;
- (b) without notice to the borrower.
- (6) A loan in respect of which transfer arrangements are made may be referred to as a "transferred loan".
- 2 Sales: supplemental 10**
- (1) Transfer arrangements may include any provision that the Secretary of State thinks appropriate (in addition to provision specifically permitted by this section or section 1).
- (2) Transfer arrangements may include provision – 15
- (a) for repayments and other sums to be paid by the Secretary of State to the loan purchaser (having been collected by or on behalf of the Secretary of State),
- (b) for those payments to be made by reference to estimates, and
- (c) for repayments to or deductions by the Secretary of State in case of overpayment. 20
- (3) Transfer arrangements may include provision as to who is entitled to interest, penalties or charges imposed or incurred after the transfer.
- (4) *Transfer arrangements may include provision for the Secretary of State to pay compensation to the loan purchaser –*
- (a) *to reflect regulations under section 186 of the Education Act 2002 (c. 32) (reduction of balances, &c.),* 25
- (b) *in connection with amendments of loan regulations, or*
- (c) *in other specified circumstances.*
- (5) Transfer arrangements may include provision for repurchase in specified circumstances. 30
- (6) Transfer arrangements may provide for the appointment of a person to consider disputes between the loan purchaser and the borrower in respect of a transferred loan.
- (7) Transfer arrangements may make consequential amendment of a document forming part of, or issued in connection with, loan arrangements. 35
- (8) *The Secretary of State may incur expenditure in connection with transfer arrangements.*
- 3 Onward sales**
- (1) Rights transferred by transfer arrangements may be further transferred by arrangements between the loan purchaser and another person ("further transfer arrangements"). 40
- (2) In this Act (including this section) a reference to transfer arrangements includes a reference to further transfer arrangements.

- (3) In the application of this Act to further transfer arrangements –
- (a) a reference to a loan purchaser is a reference to the transferee under the further transfer arrangements (“the further transferee”), and
 - (b) in section 1(3)(b) and (4)(a) and (c) a reference to the Secretary of State is a reference to the transferor under the further transfer arrangements. 5
- (4) Subsection (1) is subject to any provision of transfer arrangements prohibiting, restricting or controlling further transfer.
- (5) Further transfer arrangements may include provision –
- (a) transferring to the further transferee an obligation of the loan purchaser in connection with a loan; 10
 - (b) transferring to the further transferee the benefit of an obligation or undertaking of the borrower in respect of a loan (however deriving);
 - (c) transferring to the further transferee the benefit of warranties or indemnities or other obligations of the Secretary of State under transfer arrangements. 15
- (6) Transfer arrangements may –
- (a) prohibit the making of further transfer arrangements without the Secretary of State’s consent;
 - (b) require further transfer arrangements to be effected by way of novation or other arrangements to which the Secretary of State is a party; 20
 - (c) include provision by virtue of which the Secretary of State is automatically a party to further transfer arrangements (and may enforce any of their terms).
- (7) The Secretary of State may enter into arrangements, under or in accordance with transfer arrangements, in connection with further transfer. 25
- 4 Loan regulations**
- (1) A reference in loan regulations to the Secretary of State as lender includes a reference to a loan purchaser.
- (2) Regulations by virtue of section 22(5)(a)(iii) of the Teaching and Higher Education Act 1998 (c. 30) (loan regulations: repayment) may make provision for the transmission of amounts – 30
- (a) by a specified person (or body) other than a borrower’s employer,
 - (b) to a loan purchaser, and
 - (c) in accordance with directions given by the Secretary of State.
- (3) Regulations by virtue of section 22(5)(f) of that Act (loan regulations: repayment) may enable the Secretary of State to require the reimbursement of costs or expenses incurred by a loan purchaser. 35
- (4) Amendments of loan regulations may have effect in respect of transferred loans.
- (5) Subsection (4) includes amendments which have effect in respect of loans made before the amendments are made. 40
- 5 Repayment**
- (1) Loan regulations, loan arrangements or transfer arrangements may include provision about repayment of loans to a loan purchaser.

- (2) In particular, regulations or arrangements may provide for –
- (a) collection by a person acting on behalf of a loan purchaser;
 - (b) collection by Her Majesty’s Commissioners for Revenue and Customs.
- (3) A provision of loan regulations or loan arrangements which requires money to be paid to the Secretary of State or into the Consolidated Fund (whether as repayment, interest, charge or penalty) shall be treated in relation to a transferred loan as requiring payment to the loan purchaser (whether directly, through the Secretary of State or through another agent). 5
- (4) Subsection (3) is subject to any provision included in transfer arrangements by virtue of section 2(2). 10
- (5) In section 44(2)(e) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (payment into Consolidated Fund: exceptions) after “Minister of the Crown” insert “or other person”.

6 Information

- (1) In relation to transferred loans, section 24 of the Teaching and Higher Education Act 1998 (c. 30) (supply of information by HMRC) shall have effect with the following modifications. 15
- (2) Modification 1 is that the permitted purposes for disclosure (under section 24(2)) include purposes in connection with transferred loans (including onward disclosure to actual or potential loan purchasers or their agents). 20
- (3) Modification 2 is that section 24(2)(b) permits disclosure to a person or body who acts on behalf of the Secretary of State under the delegation of functions provisions, whether the person or body requires the information in that capacity or in the capacity of agent of a loan purchaser.
- (4) Modification 3 is that the class of permitted onwards disclosure (under section 24(3)) includes – 25
- (a) in the case of information which does not relate to a person whose identity is specified in the disclosure or can be deduced from it, disclosure to a potential loan purchaser (or its agent) for purposes of considering whether to enter into transfer arrangements, and 30
 - (b) in any case, disclosure to an actual loan purchaser (or its agent) for purposes in connection with a transferred loan.
- (5) At the end of section 24 of the 1998 Act add –
- “(7) Where the Commissioners for Her Majesty’s Revenue and Customs provide information to a person under this Act, section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) shall apply to the disclosure of the information by the person as it applies to the disclosure of information in contravention of a provision of that Act. 35
- (8) But section 19 shall not apply to disclosure – 40
- (a) in accordance with this section,
 - (b) in accordance with another enactment, or
 - (c) in circumstances specified in section 18(2)(c), (d), (e) or (h) of that Act.
- (9) In subsection (7) – 45

- (a) information provided to a person (P) shall be treated as being provided both to P and to any person on whose behalf P acts or by whom P is employed,
- (b) information provided to a person (P) and disclosed by P to another person (P2) in accordance with this section shall be treated as being provided also to P2 (and to any person on whose behalf P2 acts or by whom P2 is employed), and 5
- (c) the reference to disclosure by the person to whom information was provided (P) includes a reference to disclosure by any person acting on behalf of, or employed by, P (or a person to whom it is treated as being provided by virtue of paragraph (a) or (b)). 10
- (10) In the application of section 18(2)(c) and (d) of that Act by virtue of subsection (8)(c) above a reference to functions of the Revenue and Customs shall be taken as a reference to functions of the person making the disclosure in connection with student loans. 15
- (11) In the application of section 19 of that Act by virtue of subsection (7) above “revenue and customs information” means information provided by the Commissioners (but subject to the express exclusion in section 19(2)).” 20
- 7 Consumer credit**
- (1) The Consumer Credit Act 1974 (c. 39) does not regulate loans made in accordance with regulations under section 22 of the Teaching and Higher Education Act 1998 (c. 30).
- (2) This section shall be treated as always having had effect. 25
- 8 Wales**
- (1) The Welsh Ministers may enter into arrangements under which rights of theirs in respect of student loans are transferred to another person.
- (2) In subsection (1) “student loans” means loans made by the Welsh Ministers in accordance with regulations under section 22 of the Teaching and Higher Education Act 1998. 30
- (3) The provisions of this Act apply in relation to arrangements made under subsection (1) (“Welsh transfer arrangements”) as to arrangements made under section 1(1).
- (4) In connection with Welsh transfer arrangements references to the Secretary of State are to be read as references to the Welsh Ministers, except in – 35
- (a) section 2(4)(a), and
- (b) section 4(2) and (3).
- (5) Nothing in this Act confers a power on the Welsh Ministers to make regulations under a provision which does not otherwise confer power on them; in particular, the provision permitted to be made by virtue of sections 4(2) and (3) and 5(2)(b) is to be made by the Secretary of State in connection with Welsh transfer arrangements. 40

9 Index of definitions

This section lists expressions defined in this Act.

<i>Expression</i>	<i>Defining provision</i>	
Further transfer arrangements	Section 3(1)	
Loan arrangements	Section 1(4)	5
Loan purchaser	Section 1(1)	
Loan regulations	Section 1(2)	
Student loans	Sections 1(2) and 8(2)	
Transfer arrangements	Section 1(1)	
Transferred loan	Section 1(6)	10
Welsh transfer arrangements	Section 8(3)	

10 Money

Expenditure of the Secretary of State in consequence of this Act shall be paid out of money provided by Parliament.

11 Short title

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This Act may be referred to as the Sale of Student Loans Act 2008.

12 Extent

This Act extends to England and Wales only.

13 Commencement

This Act comes into force on the day on which it receives Royal Assent.

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Sale of Student Loans Bill

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To enable the sale of rights to repayments of student loans; and for connected purposes.

*Presented by Secretary John Denham
supported by
The Prime Minister,
Mr Chancellor of the Exchequer,
Secretary Ed Balls, Andy Burnham,
Jane Kennedy, Huw Irranca-Davies,
Ian Pearson and Bill Rammell.*

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