

SALE OF STUDENT LOANS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Sale of Student Loans Bill as introduced in the House of Commons on 8th November 2007. They have been prepared by the Department for Innovation, Universities and Skills in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. There are two main types of statutory student loan in the United Kingdom. Loans made before academic year 1998-99 are known as “mortgage-style loans”. These normally require borrowers to repay their loans in 60 equal instalments once their income exceeds 85% of the national average income.
4. The majority of loans made from 1998 onwards are known as “income-contingent repayment loans”. For most borrowers, repayment of these loans is made through the UK tax system. Repayments of a sum equivalent to 9% of all annual earnings over £15,000 are made until the loan is repaid. For PAYE taxpayers, deductions from salaries are made by employers, which are subsequently collected by Her Majesty’s Revenue and Customs (HMRC). Self-employed taxpayers and employees with high earnings make repayments to HMRC through the tax self-assessment process. HMRC passes all relevant payments to the Secretary of State for Innovation, Universities and Skills. Borrowers can also make voluntary repayments directly to the Student Loans Company (SLC), which administers the student finance system on behalf of the Secretary of State for Innovation, Universities and Skills.

5. The student loan book was valued at around £18.1 billion at the end of financial year 2006-07. This amount is expected to rise substantially over the next decade. Within the current portfolio, about £1.1 billion is debt owed from mortgage-style loans and £17 billion is from income-contingent repayment loans.
6. The Government has sold part of the portfolio of mortgage-style student loans already under the Education (Student Loans) Act 1998. In two sales in 1998 and 1999 a total of around £2 billion worth of mortgage-style loans were sold to the private sector. At that time the combined value of these two sales represented around 40% of the total student loan book. The same Act cannot be used to enable a new sales programme because it was repealed when mortgage-style student loans were replaced by income-contingent repayment loans in 1999.
7. The Sale of Student Loans Bill was included in the Government's Draft Legislative Programme (published 11th July 2007). It enables a programme of sales of student loans, as announced in paragraph 6.42 of the 2007 Budget Report (published 21st March 2007).

SUMMARY

8. The Bill enables the Secretary of State for Innovation, Universities and Skills to sell some or all of his rights and obligations relating to income-contingent repayment student loans. It also contains provision for the Secretary of State to spend public money in connection with the sales.
9. The Bill will enable a programme of sales to proceed indefinitely.
10. The Bill sets out the extent to which Government data held on borrowers can be shared with loan purchasers and makes provision to control this, notably by the introduction of a criminal sanction for wrongful disclosure of information.
11. The Bill permits the Secretary of State to include provision in any sales contract that a loan purchaser will be compensated in specified circumstances, for example if the value of the loans changes as a result of future changes in regulations relating to student loans, or there is a breach of warranty in the sales contracts.

TERRITORIAL EXTENT

12. The Bill extends only to England and Wales.

TERRITORIAL APPLICATION

13. The Bill confers on the Welsh Ministers similar powers to sell in relation to loans made by them as the Secretary of State has in relation to loans made by him.

COMMENTARY

14. Clause 1 permits the Secretary of State to sell to a purchaser his rights and obligations relating to student loans made to borrowers domiciled in England (and those studying in England but based overseas) at the time the loan was taken out.
15. The Secretary of State's main right in relation to student loans is to receive the money from borrowers' loan repayments. His obligations include ensuring that correct repayments are taken, protecting borrowers' personal data, making arrangements to allow borrowers to discuss issues, and generally acting responsibly and reasonably in relation to the granting of loans, repayments and enforcement of repayments.
16. The Secretary of State is not obliged to transfer all of his rights and obligations with respect to the loans in any contract with a purchaser – he may retain some of them if he wishes. For example, the Government does not intend to grant purchasers the right to alter the repayment terms of sold debts. The clause also allows the Secretary of State to sell part of a loan, for example the first 40% of it, if he wishes.
17. The clause also allows the Secretary of State to include conditions in the sales contracts that require purchasers to administer the loans in a way that meets his requirements, and to seek his approval before making specified changes to the administration of the loans. This enables the Government to require, for example, that purchasers continue to administer loans through the SLC, that they continue to receive repayments from the Secretary of State which were first collected by HMRC, and that they seek the Secretary of State's approval before loans can be sold to an onward purchaser. The clause allows the Secretary of State to specify what the consequences will be if the purchaser does not subsequently adhere to these conditions.
18. The clause also permits sales to proceed without the permission of the borrowers whose loans are being sold, and without giving them prior notice of the sale. This is a common practice in the financial sector where the ownership of debt transfers between parties. The Government intends to write to borrowers whose loans have been sold soon after the sale has been completed to inform them of the new owner of their debt.

19. Clause 2 grants the Secretary of State the flexibility to include provisions in the sales contracts that he thinks are appropriate, in addition to those specifically expressed in the Bill.
20. The clause also permits the Secretary of State to pass repayments collected by the Government to purchasers in relation to purchased loans. The difference following a sale is that repayments for unsold loans would remain with the Secretary of State whereas repayments for sold loans would pass from the Secretary of State to a purchaser in accordance with the sales contract. In this way, the Government would be acting on behalf of the purchaser in gathering repayments.
21. The Government intends to require purchasers to use HMRC and the SLC as part of the sales contract. Without this clause, the collection and management of student loan repayments would need to be arranged by the purchaser, which might result in differences between the administration of sold and unsold loans, which the Government is keen to avoid.
22. This clause also enables transfer arrangements to provide for the Secretary of State to use estimates when working out the value of repayments that he owes to purchasers. There is a time-lag inherent in using the tax system to gather repayments which need to be applied to borrowers' accounts. Borrowers' accounts cannot be updated by the SLC for repayments made in any given tax year until HMRC has processed employers' returns after the end of that tax year. This provision enables the Secretary of State to make estimated in-year payments to purchasers. In the event of a subsequent under or overpayment once the actual totals are known, the Secretary of State can subsequently make the necessary adjustments.
23. The clause also allows for the Secretary of State to specify within the sales contract whether the purchaser or the Government will be entitled to particular payments after the transfer. For example, the contract can specify who will receive money paid by borrowers as penalties for late payment or for failure to disclose required information promptly.
24. Clause 2 of the Sale of Student Loans Bill enables purchasers to be compensated by the Secretary of State in certain circumstances. Section 186 of the Education Act 2002 allows the Secretary of State to make regulations providing for the repayment, reduction or extinguishing of student loans (whether mortgage-style, income-contingent or otherwise). The Bill would allow the purchaser to be compensated for this. The clause also permits compensation if amendments are made to the loan regulations: for example, the value of the loans might diminish if the Government were to substantially raise the level of annual income at which borrowers are required to start repaying their debt. The clause also allows compensation in other specified circumstances. This would provide for compensation in the event of a breach of any warranty or indemnity.

25. Clause 2 also permits sales contracts to include provision allowing the Secretary of State to buy loans back from the purchaser in specified circumstances. This allows a contract to specify, for example, that the Government will offer to buy back loans if they fail to meet the terms of any contractual warranty agreed at the point of sale.
26. The clause permits provisions to be included in sales contracts to appoint a mediator in case of disputes between the purchaser of a sold loan and the borrower. This allows the Government to ensure that borrowers who have had their loans sold to a purchaser retain an entitlement to a mediation process equivalent to that which they already have under the existing, unsold scheme.
27. “Consequential amendment” of the original loan documents is permitted by clause 2(7). This subsection permits amendment to original loan documents to reflect the terms of a sale, for example by changing the name of the person to whom the borrower owes the debt. Such consequential amendments would need to be contained in the sale agreements themselves, and it should be emphasised that they do not allow a purchaser unilaterally to change the terms and conditions of a sold loan or the contract documents.
28. The clause also allows the Secretary of State to spend public money in connection with the sales.
29. Clause 3 gives the purchaser the right to sell the loans to another buyer after the initial sale, subject to any limits on that right specified in the terms of the original sales contract with the Secretary of State.
30. Among the possible limits on the purchaser specified in the sales contract may be a condition that the Secretary of State must agree to any further sale or be a party to such a sale. The Secretary of State may also include provision to make himself automatically a party to any onward sales contracts, even though he may not have entered into them or be a signatory to them. By doing so he will retain the right to enforce the terms of those agreements against subsequent purchasers if necessary.
31. Clause 4 modifies section 22(5) of the Teaching and Higher Education Act 1998 so as to enable certain changes to be made to loan regulations in connection with student loans that have been sold.
32. This clause also enables the Government to apply any future change in loan regulations to sold loans as well as those which are still owned by the Government. This includes loans which are taken out before such changes take effect, where the change would be retrospective. This is to ensure that all borrowers can be treated equally, for example if the repayment threshold (the level of annual income at which point borrowers are required to start making repayments) were to be altered by the Government.

33. At present HMRC collects the majority of repayments through the tax system but the SLC also plays a role in collecting repayments from some borrowers – for example, those who move overseas and those who wish to make additional repayments. Clause 5 allows the SLC or another agent to continue fulfilling these functions with respect to sold loans, as well as any future function that may be agreed.
34. Another function of clause 5 is to allow for repayments, penalties and any other money relating to a sold loan to be paid to the purchaser, unless the transfer arrangements provide otherwise.
35. The Commissioners for Revenue and Customs Act 2005 sets out exceptions to the requirement that all money collected by HMRC is paid into the Consolidated Fund. At present, one of those exceptions arises when money is owed specifically to a Government Minister because it relates to financial support for students. Clause 5 therefore also contains an amendment which alters the wording of the 2005 Act so that the exception is expanded to cover money that is owed to either a Government Minister or another person (i.e. a purchaser).
36. Clause 6 relates to data about borrowers originating from HMRC that the Government must necessarily share with purchasers in order to be able to ensure the efficient and equal administration of sold loans. It sets out the purposes for which this data can be used, who may disclose this data, and to whom they may disclose this data. This clause amends section 24 of the Teaching and Higher Education Act 1998 to enable the Secretary of State to disclose information received from HMRC to loan purchasers and their agents, and potential purchasers (prior to an initial or onward sale), and their agents, in connection with sold loans. The clause also allows the SLC to receive HMRC information, whether on behalf of the Secretary of State or a purchaser.
37. The clause extends section 24 so that the latter will provide that HMRC information about borrowers' loans which has been initially disclosed to the Secretary of State or SLC can be shared with purchasers for the purpose of administering or enforcing the loans, and with potential purchasers for the purpose of considering whether to make a purchase. In the latter case, information may only be shared if the identities of borrowers are concealed and cannot be deduced from the data which is shared, i.e. the information is anonymised.
38. The clause extends the criminal sanction for wrongful disclosure of data set out in section 19 of the Commissioners for Revenue and Customs Act 2005 to prohibit purchasers (including their agents and employees) and officials from Departments other than HMRC from disclosing HMRC information shared in relation to loans for any purposes other than those set out above.

39. Clause 7 confirms that student loans are not regulated by the Consumer Credit Act 1974. At the moment, the “low interest” exemption under section 16(5)(b) of the 1974 Act is relied upon.
40. Clause 8 enables Welsh Ministers to sell their rights and obligations in relation to Welsh student loans. This does not grant any new powers for Welsh Ministers to make loan regulations.

EFFECT OF THE BILL ON PUBLIC SECTOR MANPOWER

41. There are no public service manpower commitments arising from the Bill which would give rise to additional requirements. It is estimated that the overall effect of the Bill on public sector manpower will be negligible. The capacity of HMRC and the SLC to carry out their current functions is unaffected by the Bill.

SUMMARY OF THE IMPACT ASSESSMENT

42. No aspect of this Bill will create a material impact on borrowers, higher education institutions or employers. An initial assessment concluded that the only changes enabled by the Bill relate to the ownership of public assets. As a result, there is no full Impact Assessment for this Bill.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

43. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the European Convention on Human Rights (ECHR), as defined by section 1 of that Act.
44. Having considered the possible implications, the Secretary of State for Innovation, Universities and Skills believes that the Sale of Student Loans Bill will be fully compatible with Convention Rights. There are some areas where it would be helpful to provide further comments for clarification, as follows.
45. Article 1 to the First Protocol in the Convention Rights (set out at part II of Schedule 1 to the Human Rights Act 1998) concerns the right to the enjoyment of possessions. In the case of the Sale of Student Loans Bill, the relevant possessions are the contractual rights of the purchaser and borrower. Clause 1(5) allows for the sale of a borrower’s loan to take place without his/her consent or prior knowledge. Since this change of ownership will make no material difference to the borrower or his contractual rights, clause 1(5) complies with the ECHR.

46. Article 1 to the First Protocol also concerns the right to freedom from interference with possessions. In the case of the Sale of Student Loans Bill, this relates to the Government's right to amend loan regulations relating to sold loans without the consent of the purchaser. Purchasers will be aware of these rights when making the purchase, and the sales agreement may include provision for the purchaser to be compensated in specified circumstances. The Government believes it is therefore unlikely that the purchaser's rights in this area would be engaged, and if engaged there may be provision for compensation in any case.
47. In relation to the provisions at clause 7 of the Bill, these are not intended to affect borrowers' substantive rights at all and the Government does not believe that they do. If, and to the extent that it is possible that there may be any interference with the borrowers' rights in relation to the loans, this is justified and proportionate. Student loans terms and conditions are controlled by Parliament through loan regulations. The protections of the consumer credit regime are not intended to apply in addition to this because these are not commercial loans.
48. Article 6 of the ECHR concerns the right to a fair trial. In the case of the Sale of Student Loans Bill, this relates to the provision for the appointment of a mediator in the event of a dispute between the borrower and the purchaser. The borrower's legal rights will remain unaffected and he will not be obliged to submit to mediation. Any obligation on the part of the purchaser to submit to the mediation process will be freely entered into as part of the sales contract. The Government therefore believes that Article 6 rights are not engaged.
49. Article 8 of the ECHR relates to the right to respect for private and family life. In the case of the Sale of Student Loans Bill, this relates to provisions for sharing data with loan purchasers. Safeguards for the information disclosed are contained in existing legislation and the criminal sanction created by this Bill. The Government therefore believes that the Bill is compatible with Article 8 of the ECHR.

COMMENCEMENT

50. The Bill's provisions will come into effect immediately after Royal Assent.

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These notes refer to the Sale of Student Loans Bill as introduced in the House of Commons on 8th November 2007 [Bill 6]

Ordered, by The House of Commons, to be Printed, 8th November 2007.

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LONDON: THE STATIONERY OFFICE

Printed in the United Kingdom by
The Stationery Office Limited

£x.00