

# Sale of Students Loans Act 2008

## 2008 CHAPTER 10

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

[21st July 2008]

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:–

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### Introductory Note:

Student loans are loans made to students under section 22 of the Teaching and Higher Education Act 1998. Despite their statutory basis, they work like ordinary commercial loans and the income stream consisting of interest payments and capital repayments can be bought and sold like any other commercial asset.

The Government announced the intention to sell its rights under student loans, so as to raise money now in exchange for rights to a future income stream – a perfectly normal kind of commercial arrangement.

But for three principal reasons the Government required legislation to enable it to enter into a programme of sales. First, because there are certain changes to the law that are certainly necessary to enable sales to work effectively (such as the information provisions of section 8). Secondly, because commercial operators will not feel able to enter into contracts with the Government to buy loans unless completely satisfied that the Government has the power to make the sales - so that whereas one might sometimes rely on inherent or implied prerogative power, commercial certainty in this case requires express provision (such as section 1). Thirdly, because Parliamentary and practical political considerations require express provision for various kinds of Government expenditure (see General Note: Baldwin Convention) and there will be costs associated with these arrangements, and require statutory arrangements such as those for reports to Parliament under section 4.

The Government's Explanatory Notes (see General Note: Explanatory Notes) introduce the Act as follows—

“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.

“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.

The Sale of Student Loans Act 2008 enables a programme of sales of student loans, as announced in paragraph 6.42 of the 2007 Budget Report (published 21st March 2007).”

**Pepper v Hart Note** (see General Note: Pepper v Hart):

Introducing the Second Reading of the Bill for this Act in the house of Commons on 22nd November 2007 the Minister for Lifelong Learning, Further and Higher Education (Bill Rammell) said as follows:

“The 1998 legislation, which enabled the previous sales, has been repealed, and so cannot be amended to enable sales of income-contingent loans. We are therefore introducing this Sale of Student Loans Bill, which will allow sales to take place while protecting the interests of all borrowers regardless of whether their loan is sold or retained. I give borrowers this reassurance: purchasers of loans will not be able to charge a different rate of interest; they will not be able to change the income threshold for repayments; and they will not be able to use a borrower’s personal details for any purpose beyond that which is required for management of the loans.”

**Pepper v Hart Note** (see General Note: Pepper v Hart):

On the Report Stage of the Bill for this Act in the House of Commons on 23rd January 2008 the Minister for Lifelong Learning, Further and Higher Education (Bill Rammell) said as follows:

“Let me be explicitly clear: ... there will be no different treatment of borrowers and debtors, whether their debt is owned by the Government or by the private sector. It is, of course, open to any future Government to change the terms and conditions; but they would have to do that equally for the loans that were owned by the Government as for those owned by the private sector, so there is no issue of unequal treatment.”

**Pepper v Hart Note** (see General Note: Pepper v Hart):

On the Report Stage of the Bill for this Act in the House of Commons on 23rd January 2008 the Minister for Lifelong Learning, Further and Higher Education (Bill Rammell) said as follows:

“The current drafting will also enable us to cater for any future overall change in the administration of the student loans system. Although no such change is envisaged, we must bear it in mind that the Bill will enable a long-term programme. I am happy to emphasise again for the record that it is the Government’s firm intention for the SLC to continue in its current role for all loans.”



## 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” ).
  - (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.
  - (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” ));
    - (c) for warranties or indemnities or other obligations of the Secretary of State;
    - (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 shall have effect (and, in particular, a provision transferring rights or obligations is sufficient to effect the transfer).
  - (6) Transfer arrangements may be made—
    - (a) without the borrower's consent;
    - (b) without notice to the borrower.
  - (7) The Secretary of State shall take reasonable steps to notify the borrower within three months of transfer arrangements taking effect.
  - (8) A loan in respect of which transfer arrangements are made may be referred to as a “transferred loan” .
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## **Section 1**

This section gives the Secretary of State express statutory power to sell off rights to student loan interest and repayments.

### **Subsection (1):**

"Arrangements" - a deliberately wide word including, but not limited to, contracts. See *Office of Fair Trading v Lloyds TSB* [2004] EWHC 2600 (Comm) and other cases cited in *Stroud's Judicial Dictionary*.

See General Note: Secretary of State.

### **Subsection (2):**

Section 22 of the Teaching and Higher Education Act 1998 - "New arrangements for giving financial support to students. (1) Regulations shall make provision authorising or requiring the Secretary of State to make grants or loans, for any prescribed purposes, to eligible students in connection with their undertaking— (a) higher education courses, or (b) further education courses, which are designated for the purposes of this section by or under the regulations.

### **Subsection (3)(a):**

This formula would enable the sale of loans in respect of a list of individually named students, or in respect of class identified by reference to quantum, timing or any other factor that is reasonably defensible (under the rules of administrative law).

### **Subsection (3)(b):**

So it would be possible, for example, to sell the right to repayments of capital but retain the right to payments of interest. That might be commercially appropriate if, for example, a prospective purchaser were satisfied as to the reliability of or security for capital repayments but not interest payments. The Government's Explanatory Notes (see General Note: Explanatory Notes) say "For example, the Government does not intend to grant purchasers the right to alter the repayment terms of sold debts. Such terms will continue to be governed by Regulations made pursuant to section 22 of the Teaching and Higher Education Act 1998, which are subject to Parliamentary Scrutiny."

### **Subsection (4)(a):**

The Government's Explanatory Notes say- "The Secretary of State's 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."

### **Subsection (4)(b):**

The parenthetical words recognise that student loans are something of a hybrid beast, deriving partly from statute (section 22 of the 1998 Act) and partly from the private law agreement into which the student and the Government enter when a loan is granted.

**Subsection (4)(d) and (e):**

The Government's Explanatory Notes say- "This enables the Government to require, for example, that purchasers continue to administer loans through the Student Loans Company, 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."

**Subsection (4)(f):**

The Government's Explanatory Notes are silent on the question of what consequences might be specified for breach of a transfer condition. It would presumably be lawful for the transfer to be made void or voidable in the event of breach, so that, for example, a purported onward sale by the original transferee would be ineffective if the Secretary of State had not consented. Whether a commercial purchaser would be content to enter into a sale containing provision for voidability for breach of condition is, of course, questionable.

**Subsections (5) and (6):**

These subsections are necessary to put it beyond doubt that a contract between the Secretary of State and a commercial purchaser is sufficient to transfer rights and obligations under a contract between the Secretary of State and a student: on ordinary legal principles, without statutory intervention, a contract between A and B cannot be affected by another contract between B and C.

**Subsection (7):**

This is a separate statutory duty, but subsection (6) prevents breach of this subsection from effecting the validity of the sale of the Secretary of State's rights under the loan. No express provision for enforcement of this duty is specified. Under the rules of administrative law a student who had not been notified could seek judicial review of the Secretary of State's failure to notify him or her, but it is unlikely that much in the way of remedy would be forthcoming (mostly because it is difficult to imagine how the student could show that he or she had suffered quantifiable loss as a result of the sale of the loan).

## 2 Sales: supplemental

- (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—
  - (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.
- (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.),
  - (b) in connection with amendments of loan regulations, or
  - (c) in other specified circumstances.
- (5) Transfer arrangements may include undertakings by the Secretary of State about the power to make loan regulations; in particular—
  - (a) the Secretary of State may undertake to exercise the power so as to achieve a specified result,
  - (b) the Secretary of State may undertake not to exercise the power so as to achieve a specified result,
  - (c) the Secretary of State may undertake to follow, or not to follow, a specified procedure in connection with the power,
  - (d) the Secretary of State may give undertakings about the indices, information or other matters to be used or considered for the purposes of section 22(4)(a)(i) of the Teaching and Higher Education Act 1998 (c. 30) (interest rate to maintain real-terms value of outstanding amounts), and
  - (e) a loan purchaser may enforce an undertaking by way of legal proceedings in public law, private law or both.
- (6) In subsection (5) the reference to loan regulations includes a reference to regulations under section 186 of the Education Act 2002 (c. 32).
- (7) Transfer arrangements may include provision for repurchase in specified circumstances.
- (8) 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.

(9) Transfer arrangements may make consequential amendment of a document forming part of, or issued in connection with, loan arrangements.

(10) The Secretary of State may incur expenditure in connection with transfer arrangements.

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## Section 2

This section makes supplemental provision of a technical kind about sales of loans effected under section 1.

### **Pepper v Hart Note** (see General Note: Pepper v Hart):

Introducing the Second Reading of the Bill for this Act in the house of Commons on 22nd November 2007 the Minister for Lifelong Learning, Further and Higher Education (Bill Rammell) said as follows:

“Clause 2 gives the Secretary of State flexibility to include provisions in sales contracts to ensure that borrowers’ interests are fully protected. That means that borrowers of sold loans will be entitled to the same process of mediation to which all borrowers currently have access, further underlining the Government’s commitment to ensure that all borrowers are treated equally. The next two clauses extend that principle.”

### **Subsection (1):**

Transfer arrangements - see section 1(1).

The very breadth of this power makes it unreliable for anything very surprising or draconian - see Craies on Legislation, Chapter 12.2.

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say—

“The section 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.

The Government intends to require purchasers to use HMRC and the SLC as part of the sales contract. Without this section, 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.”

### **Subsection (2):**

Loan purchaser - see section 1(1).

### **Subsection (3)(a):**

Regulations under section 186 of the Education Act 2002. The Government's Explanatory Notes (see General Note: Explanatory Notes) for section 186 summarise its effect and intended use as follows: "This section gives the powers to set in place arrangements to pay off the student loans of any person who meets eligibility requirements to be specified in regulations. It provides the basis for the Government to implement plans to pay off, over time, loans (including any interest accrued) for new teachers in shortage subjects in schools maintained by LEAs, non-maintained special schools, CTCs, CCTAs, Academies, colleges in the FE sector, non-FE sector specialist colleges in receipt of funding from either the LSC or the NCETW, and Higher Education institutions that offer FE courses.

The section provides a power for the Secretary of State to reduce or pay off any outstanding student loans which a person who is eligible under the proposed scheme may have. The section gives the power to write off or repay any loans made to English or Welsh domiciled students under the Education (Student Loans) Act 1990 (mortgage style loans) or the THEA (income-contingent loans). It also gives the power to repay loans received under any other arrangements, including loans entered into outside England and Wales."

**Subsection (5):**

Loan regulations - see section 1(2), and note the extension effected by subsection (6).

**Subsection (5)(d):**

Section 22(4)(a)(i) of the Teaching and Higher Education Act 1998 - "(4) In relation to loans under this section—(a) the rates prescribed by regulations made in pursuance of subsection (3)(a)—(i) shall be no higher than those which the Secretary of State is satisfied are required to maintain the value in real terms of the outstanding amounts of such loans."

**Subsection (6):**

Section 186 of the Education Act 2002 - see the note to subsection (3)(a) above.

**Subsection (7):**

Provision for repurchase - which could be an option or a duty.

**Subsection (8):**

A kind of arbitration provision: presumably, the provision could make the arbitrator's opinion binding, or it would be nugatory in practice.

**Subsection (9):**

A document ... - the most obvious document being the contract that the student signs when he or she takes out the loan. The most likely consequential amendment would be simply to substitute the name of the loan purchaser for references to the Secretary of State. Anything much more surprising or controversial would probably be beyond the scope of the power.

**Subsection (10):**

A Baldwin provision - see General Note: Baldwin Convention.

### 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”).
- (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), (4)(a) and (c) and (7) a reference to the Secretary of State is a reference to the transferor under the further transfer arrangements.
- (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;
  - (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.
- (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;
  - (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) In entering into transfer arrangements the Secretary of State shall ensure (whether by reliance on subsection (6)(b) or (c) or otherwise) that the Secretary of State will be party to any further transfer arrangements.
- (8) The Secretary of State may enter into arrangements, under or in accordance with transfer arrangements, in connection with further transfer. (9) References in this section to the further transfer of transferred rights do not include references to arrangements under which–
- (a) transferred rights become held on trust,
  - (b) other equitable interests are created or transferred in relation to transferred rights, or
  - (c) securities are granted in respect of transferred rights.

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### Section 3

This section allows people who buy loans from the Secretary of State to sell them on to other people.

#### **Pepper v Hart Note** (see General Note: Pepper v Hart):

On the Report Stage of the Bill for this Act in the House of Commons on 23rd January 2008 the Minister for Lifelong Learning, Further and Higher Education (Bill Rammell) said as follows:

“Clause 3 makes such onward sales possible and provides for the repayment system functions to get the appropriate repayments to the current owner of the loans. It also provides very important protections so that the Government can ensure that borrowers experience no difference in treatment following a sale. Clause 3(6) provides three options for methods by which the Secretary of State can be a party to onward sales, ensuring that the Government have the flexibility, which is important, to provide protection for borrowers in future sales contracts. The Bill enables a long-term programme of sales, so we need to ensure that it gives us the options that we may require to achieve our aim of protecting borrowers, as transactions and contractual arrangements are likely to evolve over time.

As I explained in Committee, clause 3(6)(a) is an option that we may want to use in future contracts. It would require the Secretary of State’s explicit consent for any onward sale of transferred loans. That option is rightly included in the Bill, in case future legal circumstances make such a provision appropriate. At the moment, however, we cannot include such a provision in sales contracts, because, under the current classification rules, the Government would not achieve a full transfer of ownership if the Secretary of State retained control over the loans in that way. Resources would therefore not be released for sustainable investment on the Government’s priorities, negating one of the central purposes of the sales programme. Clause 3(6)(b) and (c) ... provide two legal ways of achieving the same end: to ensure that the Secretary of State can enforce the terms of the original contract against future purchasers. That might include provisions that, for example, purchasers must continue to administer loans though the Student Loans Company, or that borrowers continue to have access to a mediator in the event of dispute. Clause 3(6)(b) would achieve that end through contractual novation, which effectively means substituting the subsequent purchaser for the original purchaser in the contract with the Secretary of State. Clause 3(6)(c) would allow the Secretary of State automatically to be a party to any subsequent sales contract, so that he would be able to enforce its terms. It is important that we retain both those options so that we can use whichever is most appropriate at the time of a sale, bearing in mind the long-term nature of the intended sales process. I do not want to restrict our hand at this stage if, in the longer term, that would compromise the Secretary of State’s interests and those of the borrower.”

**Subsection (1):**

Transfer arrangements - see section 1(1).

Loan purchaser - see section 1(1).

**Subsection (6)(b):**

Novation - "where the promisee in a contract agrees to accept another person the person to be bound in lieu of the original promisor" (Jowitt's Dictionary of English Law).

**Note:**

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"The provisions of the section relate only to the onward transfer of legal title to the loans, and do not apply to the creation or transfers of equitable rights that occur in a securitisation. The section obliges the Secretary of State to ensure that initial sale contracts contain provision for the Secretary of State to be party to any onward sale contract. It does not require the Secretary of State to use any particular legal method of becoming a party, but leaves that to the Secretary of State's election. The Secretary of State may automatically become a party to any onward sale by stating this in the original sale contract. By doing so the right to enforce the terms of those agreements against subsequent purchasers if necessary is retained.

The Government expects the sales transaction to consist of a sale and immediate securitisation. This is a process by which a special purpose company is created to issue financial instruments - bonds - which trade in the financial markets. Those bonds are backed by income received by the special purpose company from the student loan repayments. The loans themselves would be sold to the special purpose company. Once the loans are sold and securitised, the Government expect it to be a rare occurrence that the loans themselves will be sold on. Owning the loans will be one of the company's few purposes. The main market relating to sold student loans will be in the bonds issued by the owner of the loans."

## 4 Report

- (1) After entering into transfer arrangements the Secretary of State shall lay before Parliament a report about the arrangements.
  - (2) The report must include information about the extent to which the arrangements give good value; and for that purpose the report must reflect any guidance given by the Treasury about assessing value for money (including guidance to the accounting officer of the Secretary of State's department).
  - (3) The report must be laid during the period of 3 months beginning with the date on which the Secretary of State enters into the transfer arrangements.
  - (4) This section does not apply to further transfer arrangements (despite section 3(2)).
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### Section 4

This section obliges the Secretary of State to report to Parliament about any sale of student loans.

#### **Subsection (1):**

Transfer arrangements - see section 1.

See General Note: Secretary of State.

See General Note: Laying Before Parliament.

#### **Subsection (2):**

See General Note: The Treasury.

The accounting officer - Every Government Department has an accounting officer, appointed in accordance with section 5(6) of the Government Resources and Accounts Act 2000. The accounting officer must be an official of the Department. He or she is responsible for the preparation of the Department's accounts. The accounting officer is generally the most senior official of a Department, or one of the most senior.

## 5 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—
    - (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.
  - (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.
  - (6) But in amending loan regulations the Secretary of State shall aim to ensure that no borrower whose loan is transferred is in a worse position, as the result of the amendment, than would have been the case had the loan not been transferred.
  - (7) Subsection (6) also applies to making or amending regulations under section 186 of the Education Act 2002 (c. 32).
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### Section 5

This section ensures that laws about "the lender" apply to people who buy student loans from the Secretary of State in the same way as they apply, before the sale, to the Secretary of State.

#### **Pepper v Hart Note** (see General Note: Pepper v Hart):

Introducing the Second Reading of the Bill for this Act in the House of Commons on 22nd November 2007 the Minister for Lifelong Learning, Further and Higher Education (Bill Rammell) said as follows:

“Clause 5 allows the Government to insist that the Student Loans Company continue to fulfil its current functions and remain the institution that will contact borrowers about their loans. That is important.”

#### **Subsection (1):**

Loan regulations - see section 1(2).

Section 22(5)(a)(iii) of the Teaching and Higher Education Act 1998 - section 22(5)(a) allows repayments to be deducted from earnings.

**Pepper v Hart Note** (see General Note: Pepper v Hart):

On the Report Stage of the Bill for this Act in the House of Commons on 23rd January 2008 the Minister for Lifelong Learning, Further and Higher Education (Bill Rammell) said as follows:

“As I stated unequivocally throughout the Bill’s passage, purchasers of loans will not be able to change the repayment terms. As is the case today, terms and conditions for all loans will be governed by the regulations scrutinised by the House. That is the explicit effect in statute, if the Bill is passed, of clause 4(1). The regulations that govern the terms and conditions on the repayment of student loans are made under section 22 of the Teaching and Higher Education Act 1998. In terms of scrutiny, which was one of the issues raised by the hon. Member for Reading, East, those regulations are subject to approval by Parliament under the negative procedure. Any new regulations with which the Government come forward would similarly be subject to such scrutiny.”

**Subsection (2):**

Section 22(5)(f) of the Teaching and Higher Education Act 1998 - section 22(5)(f) allows the Secretary of State to require borrowers to reimburse costs incurred by the Secretary of State in recovering unpaid sums.

**Subsection (4):**

Transferred loans - see section 1(8).

**Pepper v Hart Note** (see General Note: Pepper v Hart):

On the Report Stage of the Bill for this Act in the House of Commons on 23rd January 2008 the Minister for Lifelong Learning, Further and Higher Education (Bill Rammell) said as follows:

“Let me state this for the record; ... The loan regulations that we establish through the negative resolution procedure in the House will apply equally to debt owned by the public sector and by the private sector. That is the fundamental reassurance: the graduate repaying their student loan will notice no difference whatever in the terms and conditions involved. Indeed, apart from receiving a letter from the Student Loans Company when the sale initially takes place, they are unlikely to notice any difference as, according to the requirements that we have set out, we will expect the SLC to continue to collect on behalf of the owner of the debt, whether that is the Government or a private sector owner. The value-for-money judgment on each transaction will, of course, be open to parliamentary scrutiny.”

**Subsection (6):**

The Government's Explanatory Notes (see General Note: Explanatory Notes) say- "In making or amending such loan regulations, or regulations under section 186 of the Education Act 2002, section 5(6) requires the Secretary of State to give consideration to borrowers whose loans have been sold

so as to avoid detriment to any such borrower resulting solely from the fact that the loan is sold. The Secretary of State must compare borrowers with their notional selves and aim to ensure that their position is not worsened as a result of any proposed amendment to regulations, as compared to someone with the same characteristics whose loan has not been sold."

**Subsection (7):**

Section 186 of the Education Act 2002 - see the note to section 2(3)(a) above.

## 6 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).
  - (4) Subsection (3) is subject to any provision included in transfer arrangements by virtue of section 2.
  - (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 ” ” .
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### Section 6

This section allows provision to be made about how repayments are made in respect of loans that have been sold by the Secretary of State.

#### Subsection (1):

Loan regulations – see section 1(2).

Loan arrangements – see section 1(4)(b): essentially, the loan contract between the student and the Secretary of State.

Transfer arrangements – see section 1(1).

#### Subsection (2)(a):

Loan purchaser – see section 1(1).

#### Subsection (2)(b):

Her Majesty's Commissioners for Revenue and Customs – see General Note: HMRC.

#### Subsection (3):

See General Note: Consolidated Fund.

#### Subsection (4):

In other words, although subsection (3) creates a presumption that all money paid under a loan goes to the purchaser of the loan and not to the Secretary of State, when the loan is sold it may be sold

on terms that reserve certain payments to the Government – such as, for example, penalties incurred before the loan was sold (see section 2(3)).

**Subsection (5):**

Section 44(2)(e) of the Commissioners for Revenue and Customs Act 2005 – HMRC are under a general duty to pay all receipts into the Consolidated Fund: this amendment broadens an existing exception to the general duty so that money collected in respect of student loans can be passed to the loan purchaser.

## 7 Information

(1) Section 24 of the Teaching and Higher Education Act 1998 (c. 30) (supply of information by HMRC) shall have effect with the following modifications.

(2) Modification 1 is that the permitted purposes for disclosure (under section 24(2)) include purposes in connection with loans that have been or may be transferred (including onward disclosure by virtue of subsection (4)).

(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—

(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 for purposes in connection with loans that have been or may be transferred, and

(b) in any case, disclosure to an actual loan purchaser (or its agent) for purposes in connection with a transferred loan.

(5) The reference in subsection (4)(b) to an agent includes an auditor.

(6) 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.

(8) But section 19 shall not apply to disclosure—

(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)—

(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

(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) 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.

(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)).”

## Section 7

This section amends the Teaching and Higher Education Act 1998 so that HMRC can disclose information about student loans to loan purchasers or for general purposes connected with sold loans.

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say—

“The section extends section 24 so that the latter will allow for HMRC information about borrowers’ loans which has been initially disclosed to the Secretary of State or SLC to be shared with purchasers or their agents (including auditors) for the purpose of administering or enforcing the loans. It will also allow disclosure of anonymised data to other parties who would need to see information for purposes connected with sold loans or loans that are to be sold. Examples of parties that might require non-personal data in connection with sold loans and loans to be sold would include: purchasers; potential purchasers; bondholders; potential bondholders; banks providing advice on structuring; independent auditors; rating agencies; monoline insurers and other guarantors; swap providers; liquidity providers; trustees acting for Special Purpose Vehicles and other parties who had a demonstrable need for this information in the context of the sale of loans. Information disclosed can only lawfully be used for the purposes for which it was disclosed. The section 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 personal HMRC information shared in relation to loans for any purposes other than those set out above.”

### Subsection (1):

Section 24 of the Teaching and Higher Education Act 1998 – which contains limited permission for information to be supplied by HMRC to Ministers to enable them to run the student loan scheme. See General Note: HMRC.

### Subsection (3):

Delegated functions provisions – see section 24(6)(a) of the 1998 Act.

**Subsection (4):**

The effect is that once loans have been sold, particulars may be disclosed; while the sale is only a prospect, only anonymised information may be disclosed (which arguably does not require statutory authority).

**Subsection (6):**

This section makes unlawful disclosure an offence, by amending section 24 of the 1998 Act so as to add 5 subsections which apply the offence in section 19 of the Commissioners for Revenue and Customs Act 2005. The application requires 5 subsections and is rather complicated only (a) because of the multiple permutations of possible onward disclosure by people to whom HMRC discloses information, and (b) because of the need to catch employees of corporate persons to which HMRC discloses information.

## 8 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.
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### Section 8

This section ensures that student loans are exempt from the Consumer Credit Act 1974.

#### **Pepper v Hart Note** (see General Note: Pepper v Hart):

Introducing the Second Reading of the Bill for this Act in the house of Commons on 22nd November 2007 the Minister for Lifelong Learning, Further and Higher Education (Bill Rammell) said as follows:

“Clause 7 explicitly confirms an existing understanding that all student loans are exempt from the terms of the Consumer Credit Act 1974 because their characteristics differ substantially from commercial loans.”

#### **Subsection (1):**

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say—

“Section 8 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.”

#### **Subsection (2):**

This makes the section retrospective. In other words, if there ever was any doubt about the disapplication of the Consumer Credit Act, this section removes it for past loans as well as for the future. Retrospective legislation can be controversial: but where the only purpose is to declare what is thought by the Government always to have been the better construction of the law, retrospection is arguably essential: because otherwise the provision that expressly removes the doubt for the future would in effect be confirming it in relation to past transactions. See General Note: Retrospection.

## 9 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.

(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—

(a) section 2(4)(a),

(b) section 2(5) in so far as it has effect by virtue of section 2(6), and

(c) section 5(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 5(2) and (3) and 6(2)(b) is to be made by the Secretary of State in connection with Welsh transfer arrangements.

(6) Section 4 does not apply to Welsh transfer arrangements.

### Section 9

This section applies the whole of the Act to Welsh student loans.

#### Subsection (1):

See General Note: Welsh Ministers.

#### Subsection (2):

The Secretary of State’s functions of making loans under section 22 of the Teaching and Higher Education Act 1998 are exercisable in respect of Wales by the Welsh Ministers. This position arises as follows: the functions were transferred (for Wales) to the National Assembly for Wales by section 44 of the Higher Education Act 2004 and the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) Order 2005 (S.I. 2005/1833 (W. 149) (C. 79)) as amended by the Higher Education Act 2004 (Commencement No. 2 and Transitional Provision) (Wales) (Amendment) Order 2006 (S.I. 2006/1660 (W.159) (C.56)). The functions of the National Assembly for Wales were then transferred to the Welsh Ministers by virtue of paragraphs 30(1) and 30(2)(a) of Schedule 11 of the Government of Wales Act 2006.

#### Subsection (3):

This simply provides for the whole Act to apply to Welsh loans.

**Subsection (4) and (5):**

For most purposes, in applying this Act to Welsh loans it is necessary to substitute references to the Welsh Ministers for references to the Secretary of State. There are exceptions (subsections (4)(a) to (c) and (5)), which reflect the fact that the Secretary of State's powers to provide for the reduction of balances and for the collection of repayments through the tax system have never been transferred to the Welsh Ministers.

**Subsection (6):**

Section 4 – report to Parliament. The effect of subsection (6) is that nobody, not the Secretary of State and not the Welsh Ministers, has to make a report to Parliament about Welsh loans. This is not an oversight – the Government's Explanatory Notes (see General Note: Explanatory Notes) say "The duty to report to Parliament does not extend to Welsh Ministers or to Welsh loan sales".

## 10 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)
Loan purchaser	Section 1(1)
Loan regulations	Section 1(2)
Student loans	Sections 1(2) and 9(2)
Transfer arrangements	Section 1(1)
Transferred loan	Section 1(8)
Welsh transfer arrangements	Section 9(3)

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### Section 10

This section provides an index to expressions defined in the Act and has no substantive legal effect.

## **11 Money**

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

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### **Section 11**

This section gives authority for the Secretary of State's administrative expenses under the Act: it is a mere sink clause and has no legal effect – see General Note: Sink Clause.

## **12 Short title**

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

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## **Section 12**

See General Note: Short Title.

## **13 Extent**

This Act extends to England and Wales only.

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### **Section 13**

See General Note: Extent.

## 14 Commencement

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

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### Section 14

See General Note: Commencement.

Royal Assent – 21<sup>st</sup> July 2008.