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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 128**

**The Education (Student Loans) (Repayment)  
Regulations (Northern Ireland) 2009**

**PART 3**

**Repayments by Assessment to Income Tax**

**Repayments of student loans by persons required to submit a tax return**

**23.** Repayments by a borrower who in respect of any tax year is required to make and deliver to HMRC a return under section 8 of the 1970 Act must be made, accounted for and recovered in the same manner as income tax payable under the Taxes Acts; and in such cases the provisions of this Part (which with extensions and modifications include provisions of the Taxes Acts) will apply to and for the purposes of such repayments.

**Time for and amount of repayments**

**24.—(1)** Every borrower who has received a notice from the Department of a requirement to make repayments of a student loan under regulation 11(3)(a) must make repayment in respect of any tax year—

- (a) which is specified in a notice under regulation 11(3)(a) or which is any subsequent year up to and including any year specified in a notice under regulation 11(3)(c); and
- (b) for which the borrower has been required to make and deliver a return under section 8 of the 1970 Act.

(2) The repayment must be an amount equal to 9% of the borrower's total income for that year calculated in accordance with paragraph (3).

(3) A borrower's total income for the purposes of paragraph (2) will be calculated by identifying the borrower's total income in accordance with step 1 of section 23 of the 2007 Act and from that total income:

- (a) excluding the first £15,000;
- (b) excluding unearned income unless the amount of such income for that year exceeds £2,000;
- (c) excluding incapacity benefit payable under the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(1)</sup>;
- (d) excluding amounts chargeable to tax under Chapters 5, 6, 7 or 10 of Part 3 of the 2003 Act (benefits in kind);
- (e) excluding employment and support allowance paid under the Welfare Reform Act (Northern Ireland) 2007<sup>(2)</sup>;

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(1) 1992 c.7  
(2) 2007 c.2 (N.I.)

- (f) deducting the amount of any loss in respect of which relief is given under—
    - (i) section 64 of the 2007 Act (in respect of losses in a trade, profession or vocation), or
    - (ii) section 128 of the 2007 Act (in respect of losses in an employment); and
  - (g) deducting the amount of any payment in respect of which relief is given under section 96 of the 2007 Act (relief for post-cessation expenditure);
  - (h) deducting any amounts in respect of which relief is given under Part 4 Chapter 4 of the Finance Act 2004 (pension schemes etc)<sup>(3)</sup> and that have not been included in the calculation of total income at step 1 of section 23 of the 2007 Act<sup>(4)</sup>.
- (4) For the purposes of this regulation, unearned income is income other than—
- (a) income charged under the provisions of either the 2003 Act or Part 2 of the 2005 Act except jobseeker’s allowance to which Chapter 3 of Part 10 of the 2003 Act applies; and
  - (b) the profits of a UK furnished holiday lettings business within the meaning of section 127(2) of the 2007 Act.
- (5) For the purposes of this regulation, “jobseeker’s allowance” means an allowance within the meaning of Part II of the Jobseekers (Northern Ireland) Order 1995<sup>(5)</sup>.

### Personal return

- 25.** For the purposes of establishing the amount of the repayment which a borrower is required to make for a tax year under regulation 24, HMRC may require the borrower—
- (a) to include such information as may reasonably be required, in a return required to be made and delivered under section 8 of the 1970 Act ; and
  - (b) to deliver with the return such accounts, statements and documents as may reasonably be required relating to information contained in the return as a result of paragraph (a).

### Returns to include self-assessment

- 26.**—(1) Subject to paragraph (2), every return made and delivered by a borrower under section 8 of the 1970 Act must include a self-assessment, namely—
- (a) an assessment of the amount of the repayment which, on the basis of the information contained in the return and taking into account any relief or allowance mentioned in regulation 24 the borrower is required to make for the tax year under regulation 24; and
  - (b) an assessment of the amount payable by the borrower by way of repayment, being the difference between the amount of the repayment which the borrower is assessed to make for the tax year under sub-paragraph (a) and the aggregate amount of any repayments deducted from earnings under Part 4 during that year.
- (2) Section 9(2) to (3A) (self-assessment) and section 9A (power to enquire into returns) of the 1970 Act apply to a self-assessment under this regulation as they apply to a self-assessment under section 9(1) of that Act, and any references in the Taxes Acts to those sections is to be construed as a reference to them as extended by this regulation.

(3) [2004 c.2 \(N.I.\)](#)

(4) The requirements to ‘exclude’ certain income and to ‘deduct’ other sources of income from a borrower’s total income for the purposes of student loan repayments reflects the structure of section 23 of the 2007 Act

(5) [SI 1995/2705 \(N.I. 15\)](#)

## Records

27. Section 12B of the 1970 Act (records to be kept for the purposes of returns) applies in the case of a borrower as if any reference to a return includes reference to a return including the information required by regulation 25(b).

## Other returns and information

28.—(1) Sections 13 (persons in receipt of taxable income belonging to others), 15 (return of employees' earnings etc), 16 (fees, commissions, etc), 16A (agency workers), 20A (power to call for papers of tax accountant), 20BA (orders for the delivery of documents) and 20BB (falsification etc of documents) of the 1970 Act apply for the purposes of establishing the amount of the repayment a borrower may be required to make under this Part as they apply for the purposes of establishing the amounts in which a person is chargeable to income tax.

(2) Schedule 36 to the Finance Act 2008(6) (information and inspection powers) applies in relation to checking a borrower's compliance with this Part as it applies in relation to checking a person's tax position (as defined in that Schedule) subject to the modifications in paragraph (3).

(3) The modifications are —

- (a) any reference to any provision of the Taxes Acts is to be treated as a reference to this Part;
- (b) any reference to prejudice to the assessment or collection of tax is to be treated as a reference to prejudice to the assessment or collection of student loan repayments;
- (c) the reference to information relating to the conduct of a pending appeal relating to tax is to be treated as a reference to information relating to the conduct of a pending appeal relating to compliance with this Part; and
- (d) in paragraph 21(6)—
  - (i) paragraphs (a) and (c) are omitted; and
  - (ii) in paragraph (b) the reference to relevant tax for the chargeable period is to be treated as a reference to the amount of the student loan repayment shown in the self-assessment under regulation 26.

## Assessment, claims and appeals

29.—(1) Subject to paragraph (2), Parts 4 (assessment and claims) and 5 (appeals and other proceedings) of the 1970 Act apply with any necessary modifications for the purposes of—

- (a) assessing the amount of the repayment a borrower is required to make under this Part;
- (b) claims or other matters concerning such assessment; and
- (c) appeals against any such assessment,

as if any reference to an assessment or a self-assessment included a reference to an assessment or self-assessment for the purposes of this Part.

(2) HMRC may not determine the amount of a repayment which a borrower may be required to make under this Part under section 28C of the 1970 Act (determination of tax where no return delivered).

## Payment

**30.**—(1) Any repayment by a borrower under this Part must be paid as if the repayment were an amount of income tax payable by the borrower under section 59B of the 1970 Act (payment of income tax and capital gains tax) in accordance with the following paragraphs.

(2) In a case where the borrower—

- (a) gave the notice required by section 7 of the 1970 Act within 6 months from the end of the tax year, but
- (b) was not given notice under section 8 of the 1970 Act until after 31st October next following that year,

any repayment by a borrower must be made at the end of the period of three months beginning with the day on which the notice under section 8 of the 1970 Act was given.

(3) In any other case the repayment must be made on or before 31st January next following the tax year.

(4) Section 59B(4A), (5) or (6) of the 1970 Act applies where an enquiry, an amendment of a self-assessment or an assessment is made in respect of a repayment under this Part respectively, and any reference to tax payable in those subsections is to be treated as a reference to a repayment by a borrower.

(5) Sections 59B(5A), (7) and (8) of the 1970 Act do not apply for the purposes of this regulation.

## Surcharges

**31.** Section 59C of the 1970 Act (surcharges on unpaid income tax and capital gains tax) applies to repayments which have become payable by a borrower under this Part as it applies to income tax payable in accordance with section 55 or 59B of that Act.

## Collection and recovery

**32.** Part 6 of the 1970 Act (collection and recovery) applies to repayments, interest and penalties which have become due and payable by a borrower under this Part as it applies to income tax and interest charged and penalties imposed under that Act.

## Persons chargeable in a representative capacity

**33.** Sections 72 (trustees, guardians, etc of incapacitated persons), 74 (personal representatives), 75 (receivers appointed by a court) and 76 (protection for certain trustees, agents and receivers) of the 1970 Act apply in the case of repayments due and payable by a borrower under this Part as they apply in the case of income tax chargeable to any person.

## Interest

**34.**—(1) Any repayment due and payable under this Part carries interest at the rate applicable under section 178 of the Finance Act 1989(7) for the purposes of section 86 of the 1970 Act from whichever of the following days is applicable—

- (a) the last day of the period referred to in regulation 30(2); or
- (b) the date mentioned in regulation 30(3),

until payment, whether or not the applicable day is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(8).

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(7) 1989 c.26

(8) 1882 c.61. Section 92 was amended by the Banking and Financial Dealings Act 1971 (c.80) sections 3(1) and 4(4)

(2) Sections 90 and 91 of the 1970 Act apply to interest under this regulation as they apply to interest on income tax.

(3) A refund by HMRC to a borrower of an overpayment of amounts payable under this Part carries interest at the rate applicable under section 178 of the Finance Act 1989 from the date on which the overpayment arose to the date on which the order for the refund is issued.

## **Penalties**

**35.**—(1) Section 93 of the 1970 Act (failure to make a return for income tax and capital gains tax) applies to returns under section 8 of that Act which are required to include information under regulation 25 as it applies to any other such returns.

(2) In the case of such returns the references in section 93 of the 1970 Act to liability to tax which would have been shown in the return are construed as references to the aggregate of the amounts which, if a proper return had been delivered on the filing date, would have been payable—

- (a) by the taxpayer under section 59B of that Act (payment of income tax and capital gains tax); and
- (b) where the taxpayer is a borrower, by way of repayment under regulation 24.

(3) For tax years ending on or before 5th April 2008—

- (a) section 95 of the 1970 Act (incorrect return or accounts for income tax or capital gains tax) applies in relation to anything done for the purposes of or in connection with the ascertainment of liability of a borrower to make a repayment under this Part as it applies for the purposes of or in connection with the ascertainment of liability to income tax, and for that purpose the difference referred to in section 95(2) is the difference between—
  - (i) the amount calculated under regulation 24(1); and
  - (ii) the amount which would have been the amount so calculated if the return, statement, declaration or accounts as made or submitted by the borrower had been correct;
- (b) section 97 (incorrect returns or accounts; supplemental) of the 1970 Act applies in the case of returns, statements, declarations, accounts, information or documents for the purposes of repayments under this Part as it applies for the purposes of income tax.

(4) For tax years commencing on or after 6th April 2008, where the date on which the return is due to be filed is on or after 6th April 2009, Schedule 24 to the Finance Act 2007<sup>(9)</sup> (penalties for errors) applies—

- (a) in relation to anything done for the purposes of or in connection with the ascertainment of liability of a borrower to make a repayment under this Part as it applies for the purposes of or in connection with the ascertainment of liability to income tax; and
- (b) in the case of returns, statements, declarations, accounts, information or documents for the purposes of repayments under this Part as it applies for the purposes of income tax.

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(9) 2007 c.11. Schedule 24 was amended by the Finance Act 2008 (c.9) section 122 and Schedule 40