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STATUTORY INSTRUMENTS

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**2000 No. 944**

**Education (Student Loans) (Repayment) Regulations 2000**

**PART IV**

**DEDUCTION OF REPAYMENTS BY EMPLOYERS**

**Interpretation**

**27.** In this Part—

“the Contributions Regulations” means the Social Security (Contributions) Regulations 1979(1);

“deductions working sheet” means any form of record on or in which are to be kept the matters required by the Contributions Regulations in connection with an employee’s emoluments and deductions;

“emoluments” means, subject to regulation 30 of these Regulations, such sums as—

- (a) constitute earnings for the purposes of section 3 of the Social Security Contributions and Benefits Act 1992(2) as calculated for the purposes of the Contributions Regulations as amended from time to time, and
- (b) are to be taken into account for the purposes of the computation of secondary Class 1 contributions under section 9 of the Social Security Contributions and Benefits Act 1992(3);

“employee” means any person in receipt of emoluments;

“employer” means any person paying emoluments to an employee, including the Crown;

“income tax month” means the period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

“income tax period” means income tax quarter where regulation 39(2) has effect, but otherwise means income tax month;

“income tax quarter” means the period beginning on 6th April and ending on 5th July, or beginning on 6th July and ending on 5th October, or beginning on 6th October and ending on 5th January, or beginning on 6th January and ending on 5th April;

“the Income Tax Regulations” means the Income Tax (Employments) Regulations 1993(4);

“national insurance number” means the national insurance number allocated within the meaning of the Contributions Regulations.

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(1) S.I. 1979/591.

(2) 1992 c. 4. Section 3 was amended by the Social Security Act 1998 (c. 14), sections 48 and 49 and is further amended from a date to be appointed by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), section 2, Schedule 3, paragraph 3.

(3) Section 9 was substituted by section 51(4) of the Social Security Act 1993 (c. 14), and subsection 4 was added by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), section 2, Schedule 3, paragraph 9.

(4) S.I. 1993/744.

### **Repayment of student loans by employees**

**28.** Repayments by a borrower who is an employee shall be made, accounted for and recovered in like manner as income tax deducted from the emoluments of an office or employment by virtue of regulations under section 203 of the 1988 Act; and in such case the provisions contained in this Part (which with extensions and modifications include provisions of the Income Tax Regulations) shall apply to and for the purposes of such repayments.

### **Amount of repayments**

**29.—(1)** The repayment deducted shall be 9% of any emoluments paid to, or provided to or for the benefit of, the borrower in respect of the employment which exceed the threshold specified in paragraph (2).

(2) The threshold shall be—

- (a) where the earnings period specified in respect of those emoluments is a year, £10,000; or
- (b) in any other case, the amount which bears the same relation to £10,000 as the number of days, weeks or months of the earnings period specified in respect of those emoluments bears to the number of days, weeks or months in the year respectively.

(3) Where a repayment calculated under paragraph (1) includes pence as well as pounds the pence shall be ignored.

(4) In the alternative the repayment specified in the last preceding paragraph may be calculated in accordance with the appropriate scale prepared by the Secretary of State.

(5) Where the amount of emoluments to which the appropriate scale is to be applied does not appear in the scale, the amount of the repayment shall be calculated by reference to the next smaller amount of emoluments in the appropriate column in the scale.

(6) Where a scale would, but for the period to which it relates, be appropriate and the earnings period in question is a multiple of the period in the scale, the scale shall be applied by dividing the emoluments in question so as to obtain the equivalent emoluments for the period to which the scale relates and by multiplying the amount of repayments shown in the scale as appropriate to those equivalent emoluments by the same factor as the earnings were divided.

### **Calculation of emoluments**

**30.—(1)** In calculating emoluments for the purposes of these Regulations emoluments paid to or for the benefit of an employee shall be aggregated or not aggregated as they are for the purposes of the Contributions Regulations.

(2) The Board may, where they are satisfied as to the existence of any practice in respect of the payment of emoluments whereby the incidence of repayments is avoided or reduced by means of the payment of emoluments to or for the benefit of an employee by different persons in respect of different employments, give directions for securing that such repayments are made as if that practice were not followed.

(3) The Board may, where they are satisfied as to the existence of any practice in respect of the payment of emoluments whereby the incidence of repayments is avoided or reduced by means of irregular or unequal payments, give directions for securing that such repayments are made as if that practice were not followed.

### **Earnings periods**

**31.—(1)** The amount of repayments, if any, which shall be deducted by the employer shall, subject to the provisions of paragraphs (2) and (3), be calculated by reference to the amount of emoluments paid to, or provided to or for the benefit of, the borrower in respect of the employment,

in the earnings period specified or determined in respect of those emoluments for the purposes of the Contributions Regulations.

- (2) Where emoluments in respect of two or more employments—
  - (a) fall to be aggregated for the purposes of the Contributions Regulations; and
  - (b) the earnings periods in respect of those emoluments are, by virtue of the Contributions Regulations, of different lengths

the earnings period specified in respect of the aggregated emoluments shall be the shorter or shortest of those earnings periods.

(3) Regulation 6B of the Contributions Regulations shall not apply in determining the earnings period specified in respect of a payment of statutory maternity pay or statutory sick pay.

### **Multiple employers**

**32.**—(1) Where an employer has made an election under regulation 3 of the Income Tax Regulations to be treated as a different employer in respect of each group of employees specified in the election, he shall be treated as having made an election for the purposes of these Regulations.

(2) Where emoluments in respect of two or more employments fall to be aggregated under regulation 12(1)(a) of the Contributions Regulations, the amount to be deducted shall be apportioned between the employers in the same proportions as secondary Class 1 contributions are apportioned between them under that regulation.

### **Intermediate employers**

**33.**—(1) Where an employee works for a person who is not his immediate employer, that person (“the principal employer”) shall be deemed to be the employer for the purposes of these Regulations, and the immediate employer shall furnish the principal employer with such particulars of the employee’s emoluments as may be necessary to enable the principal employer to comply with these Regulations.

- (2) If the employee’s emoluments are actually paid to him by the immediate employer—
  - (a) the immediate employer shall be notified by the principal employer of the amount of repayments which shall be deducted when the emoluments are paid to the employee, and shall deduct the amount so notified to him accordingly; and
  - (b) the principal employer may make a corresponding deduction on making to the immediate employer the payment out of which the said emoluments will be paid.

(3) Paragraphs (1) and (2) apply only in the circumstances that a direction has been given by the Board under section 203E of the 1988 Act (PAYE: mobile UK workforce).

- (4) In paragraphs (1) and (2)—
  - (a) “the principal employer” means the person specified as the relevant person in the direction referred to in paragraph (3), and
  - (b) “the immediate employer” means the person specified as the contractor in that direction.

### **Notice to employers**

**34.**—(1) Where the Board have been given notice by the Secretary of State under regulation 11(5) (b) that a borrower may be required to make repayments under this Part on and after a specified date the Board shall give notice to any person who to their knowledge is an employer of the borrower requiring the employer to make deductions of repayments from emoluments paid to the borrower in accordance with these Regulations.

- (2) A notice under paragraph (1) shall contain—

- (a) the employee's name;
- (b) his national insurance number;
- (c) the date on and after which the employer is required to make deductions.

(3) Where the Board have been given notice by the Secretary of State under regulation 11(5) (e) that repayments shall no longer be required to be made by a borrower under this Part after a particular date the Board shall give notice to any person who to their knowledge is an employer of that borrower requiring him not to make deductions, or to cease making such deductions accordingly.

(4) A notice under paragraph (3) shall contain—

- (a) the employee's name;
- (b) his national insurance number;
- (c) the date on and after which no deduction is required to be made.

### **Deduction of repayments**

**35.**—(1) Every employer who has received notice that an employee is required to make repayments, either from the Board under regulation 34(1) or by receiving a certificate under regulation 25 of the Income Tax Regulations (form P45), which contains a statement under regulation 50 of those Regulations, shall on making to that employee any payment of emoluments on or after the date referred to in paragraph (2) and before the date referred to in paragraph (3) deduct the appropriate repayment in accordance with these Regulations.

(2) The date referred to in this paragraph is—

- (a) where the employer has received notice from the Board under regulation 34(1) the date specified in the notice as the date on or after which he is required to make deductions; or
- (b) where the employer has received a certificate under regulation 25 of the Income Tax Regulations the date on which he first receives the certificate.

(3) The date referred to in this paragraph is the date specified in the notice given by the Board under regulation 34(3) as the date on or after which he is required not to make or to cease to make deductions.

(4) The date specified in a notice under paragraph (2)(a) or (3) shall—

- (a) where the employee's pay period is one week or shorter, be 14 days or more from the date of issue of the notice, or
- (b) in all other cases, be 42 days or more from the date of issue of the notice.

(5) Where two or more payments of emoluments fall to be aggregated for the purposes of calculating the amount of a repayment required to be deducted the employer may deduct that amount either wholly from one such payment or partly from one and partly from the other or any one or more of the others.

(6) If the employer on making any payment of emoluments to an employee does not deduct from it the full amount of a repayment he was required to deduct he may deduct the amount so underdeducted from any subsequent payment or payments of emoluments to that employee during the same year of assessment but—

- (a) a subsequent deduction shall not be made after the date referred to in paragraph (3); and
- (b) the amount of any subsequent deduction shall be an amount in addition to but not in excess of the amount deductible from the payment under the other provisions of this Part.

(7) If the employer deducts any repayment from the emoluments of an employee who is a borrower in accordance with these Regulations he shall not be required to repay any amount to the employee only because that amount was not owed by the employee to the Secretary of State as all or part of a student loan.

### **Priority where other deductions required**

**36.**—(1) Where an employer is required to deduct repayments from a payment under regulation 35 but the aggregate of the deduction and any deductions on account of income tax and national insurance contributions exceeds the amount of the payment he shall make the deductions on account of income tax and national insurance first, and the amount of the repayment required to be deducted shall be the remaining balance.

(2) Where an employer is required to deduct repayments from a payment under regulation 35 and is also required to comply with one or more—

(a) attachment of earnings orders made under the Attachment of Earnings Act 1971<sup>(5)</sup> (“the 1971 Act”), the Community Charge (Administration and Enforcement) Regulations 1989<sup>(6)</sup> (“the Community Charge Regulations”), the Council Tax (Administration and Enforcement) Regulations 1992<sup>(7)</sup> (“the Council Tax Regulations”), the Judgements Enforcement (Northern Ireland) Order 1981<sup>(8)</sup>, the Magistrates' Courts (Northern Ireland) Order 1981<sup>(9)</sup>; or

(b) deduction of earnings orders made under the Child Support (Collection and Enforcement) Regulations 1992<sup>(10)</sup>, or with one or more of both types of order paragraph (3) shall apply.

(3) An employer shall deduct repayments as if they were amounts required to be deducted pursuant to an order under the 1971 Act which—

(a) was not made to secure the repayment of a judgment debt or payments under an administration order,

(b) was the most recent order under that Act not so made, and

(c) specifies a protected earnings rate equal to the protected earnings rate specified in the most recent attachment of earnings order or deductions of earnings order not so made which specifies such a rate, unless there is no such order.

(4) Where under paragraph (3) an employer is required to comply with an attachment of earnings order made under the Community Charge Regulations or the Council Tax Regulations before deducting a repayment under regulation 35, he shall not deduct any repayment.

(5) Where an employer is required to deduct repayments from a payment under regulation 35 and is also required to comply with one or more earnings arrestments, current maintenance arrestments or conjoined arrestment orders within the meaning of the Debtors (Scotland) Act 1987<sup>(11)</sup> (whether or not he is also required to comply with an attachment of earnings order or a deduction of earnings order), he shall not deduct repayments under that regulation.

### **Deductions working sheet**

**37.**—(1) The employer shall record on the deductions working sheet for an employee the amount of any deduction from any payment of emoluments under these Regulations.

(2) Where two or more payments of emoluments fall to be aggregated for the purposes of calculating the amount of repayments required to be deducted the employer, instead of recording

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(5) 1971 c. 32.

(6) S.I. 1989/438, amended by the Community Charges (Administration and Enforcement) (Amendment) Regulations 1992 (S.I. 1992/219), the Community Charges (Administration and Enforcement) (Amendment) Regulations 1993 (S.I. 1993/775), and by the Community Charges (Administration and Enforcement) (Amendment) Regulations 1995 (S.I. 1995/21).

(7) S.I. 1992/613, amended by the Council Tax (Administration and Enforcement) (Amendment) Regulations 1992 (S.I. 1992/3008), and by the Council Tax (Administration and Enforcement) (Amendment) Regulations 1993 (S.I. 1993/773).

(8) S.I. 1981/234.

(9) S.I. 1981/552.

(10) S.I. 1992/1989, amended by the Child Support (Miscellaneous Amendment and Transitional Provisions) Regulations 1994 (S.I. 1994/227).

(11) 1987 c. 18.

separate amounts in respect of each such payment shall record a single amount, being the total of the amount required to be deducted in respect of the aggregated payments.

### **Certificate of repayments**

**38.**—(1) Where the employer is required to give an employee a certificate in accordance with regulation 39 of the Income Tax Regulations or paragraph 25 of Schedule 1 to the Contributions Regulations (form P60) he shall enter thereon in respect of the year to which the certificate relates the amount of repayments deducted by him.

(2) Where the employer is not required to give an employee who is in his employment on the last day of the year a certificate as described in paragraph (1) but has deducted repayments in respect of a year the employer shall nevertheless give the employee such a certificate showing thereon the amount of repayments deducted.

### **Payment of repayments deducted to the Inland Revenue**

**39.**—(1) Subject to paragraphs (2) and (3) the employer shall pay an amount equal to the repayments—

- (a) which he has deducted under these Regulations during an income tax month, or
- (b) which he is required to deduct under these Regulations during that income tax month,

whichever is the smaller amount, to the collector within 14 days of the end of that month.

(2) Subject to paragraph (3) the employer shall pay an amount equal to the repayments—

- (a) which he has deducted during an income tax quarter, or
- (b) which he is required to deduct during that quarter,

whichever is the smaller amount, to the collector within 14 days of the end of that quarter where under paragraph 26A of Schedule 1 to the Contributions Regulations he is required to pay national insurance contributions due in respect of emoluments paid in that quarter within 14 days of its end.

(3) Where the employer has, under regulation 7(2) of the Tax Credit (Payment by Employers) Regulations 1999(12), funded the payment of tax credit out of repayments deducted under these Regulations, the amount required to be paid to the collector under paragraph (1) or (2) shall be reduced by the amount of tax credit which the employer has so funded in the income tax period.

(4) If the employer has paid to the collector on account of repayments under this regulation an amount which he was not liable to pay, the amounts which he is liable to pay subsequently in respect of other payments of emoluments made by him during the same year shall be reduced by the amount overpaid, so however that if there was a corresponding overdeduction from any payment of emoluments to an employee the provisions of this paragraph shall apply only in so far as the employer has reimbursed the employee for that overdeduction.

### **Recovery of repayments deducted**

**40.**—(1) The provisions of the Taxes Acts and of any regulations under section 203 of the 1988 Act relating to the recovery of tax shall apply to the recovery of any amount which the employer is liable to pay to the collector under regulation 39 as if that amount had been tax charged by way of an assessment on the employer under Schedule E.

(2) In the application to any proceedings taken by virtue of this regulation of any provisions referred to in paragraph (1) limiting the amount which is recoverable in those proceedings, there shall be disregarded any amount of tax which may by virtue of the following paragraph be included as part of the cause of action or matter of complaint in those proceedings.

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(12) S.I. 1999/3219.

- (3) Proceedings may be brought for the recovery of—
- (a) the total amount which the employer is liable to pay to the collector under regulation 39, or
  - (b) the total amount which the employer is liable to pay to the collector under regulation 39 in addition to any tax which the employer is liable to pay to the collector for any income tax period, or
  - (c) the total amount which the employer is liable to pay to the collector under regulation 39 in addition to any national insurance contributions which the employer is liable to pay to the collector, or
  - (d) the total amount which the employer is liable to pay to the collector under regulation 39 in addition to any national insurance contributions and tax which the employer is liable to pay to the collector

without specifying the respective amounts or distinguishing the amounts which the employer is liable to pay in respect of each employee and without specifying the employees in question, and for the purposes of proceedings under section 66 or 67 of the 1970 Act (including proceedings under that section as applied by the provisions of this regulation) and for the purposes of summary proceedings (including in Scotland proceedings in the sheriff court), the said total amount shall, subject to the provisions of paragraph (2), be one cause of action or one matter of complaint; but nothing in this paragraph shall prevent the bringing of separate proceedings for the recovery of each of the several amounts referred to in this paragraph which is liable to pay to the collector for any income tax period in respect of his several employees.

### **Interest on unpaid repayments**

**41.**—(1) Where an employer has not on or before the 14th day after the end of a year of assessment paid an amount which he is liable to pay to the collector under regulation 39 in that year that amount shall carry interest at the rate applicable under section 178 of the Finance Act 1989<sup>(13)</sup> for the purposes of section 86 of the 1970 Act from that date until payment.

(2) Interest payable under this regulation shall be recoverable as if it were an amount which the employer is liable to pay under regulation 39.

(3) An amount to which paragraph (1) applies shall carry interest from the day mentioned in that paragraph even if that date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882.

(4) A certificate of the collector that any amount of interest payable under this regulation has not been paid to him, or to the best of his knowledge and belief, to any other collector or to any person acting on his behalf or on behalf of another collector, shall be sufficient evidence that the employer is liable to pay to the collector the amount of interest shown on the certificate and that the sum is unpaid and due to be paid, and any document purporting to be such a certificate shall be deemed to be a certificate until the contrary is proved.

(5) Where an employer has paid interest on an amount under this regulation and it is found not to have been due to be paid, although the amount in respect of which it was paid was due to be paid, that interest shall be repaid to him.

### **Returns by employers**

**42.**—(1) Not later than 44 days after the end of the year of assessment the employer shall render to the inspector or, if so required to the collector in such form as the Board may approve or prescribe, a return showing in respect of each employee, in respect of whom he was required at any time

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(13) 1989 c. 26.

during the year of assessment to prepare or maintain a deductions working sheet in accordance with regulation 37–

- (a) such particulars as the Board may require for the identification of the employee,
- (b) the year of assessment to which the return relates, and
- (c) the total amount of repayments deducted for the year of assessment from the emoluments paid to the employee.

(2) The return required by paragraph (1) shall include a statement and declaration in the form approved or prescribed by the Board containing a list of all deductions working sheets on which the employer was obliged to keep records in accordance with these Regulations in respect of the year of assessment, and shall also include a certificate showing the total amount of repayments deducted for the year of assessment in respect of each employee.

(3) Where the employer is a body corporate, the declaration and the certificate referred to in paragraph (2) shall be signed by the secretary or by a director of the body corporate.

(4) If within 14 days of the end of any year of assessment an employer has failed to pay to the collector the total amount of repayments he is liable to pay under regulation 39 the collector may prepare a certificate showing the amount of repayments remaining unpaid for the year of assessment in question, and the provisions of regulation 40 shall apply with any necessary modifications to the amount shown in the said certificate.

(5) Where an employer fails to make a return in accordance with paragraph (1) he shall be liable–

- (a) to a penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this paragraph has already been imposed, and
- (b) if the failure continues beyond twelve months, without prejudice to any penalty under paragraph (a) above, to a penalty not exceeding so much of the amount payable by him in accordance with the regulations for the year of assessment to which the return relates as remained unpaid at the end of the 19th April after the end of that year.

(6) For the purposes of subsection (5) the relevant monthly amount in the case of a failure to make a return–

- (a) where the number of persons in respect of whom particulars should be included in the return is fifty or less, £100, and
- (b) where that number is greater than fifty, is £100 for each fifty such persons and an additional £100 where that number is not a multiple of fifty.

(7) Where a return under this regulation is required to be made–

- (a) at the same time as–
  - (i) any specified return required to be made in accordance with regulations made by the Inland Revenue under section 203(2) (PAYE) or 566(1) (sub-contractors) of the 1988 Act to which section 98A of the 1970 Act (penalties) applies; or
  - (ii) any specified return required to be made in accordance with regulations made by the Secretary of State under paragraph 6 of Schedule 1 to the Social Security Contributions and Benefits Act 1992(14) in respect of which section 98A of the 1970 Act has been applied by such regulations, or
- (b) if the circumstances are such that a return mentioned in paragraph (a) does not fall to be made, at a time defined by reference to the time for making that return, had it fallen to be made



and a person has been required to pay a penalty under section 98A(2)(a) of the 1970 Act (first twelve months' default in consequence of a failure in respect of a tax return) in respect of the tax return or in respect of the national insurance contributions return or in respect of both he shall not also be required to pay a penalty in respect of any failure to submit the return under this regulation.

(8) Where an employer fraudulently or negligently makes an incorrect return under paragraph (1) he shall be liable to a penalty not exceeding £3,000 for each employee in respect of whom incorrect particulars are included in the return.

### **Inspection of employer's records**

**43.**—(1) Every employer, whenever called upon to do so by an officer authorised by the Board, shall produce to that officer for inspection, at such time as that officer may reasonably require, at the prescribed place—

- (a) all wages sheets, deductions working sheets, and other documents and records whatsoever relating to the calculation of payment of the emoluments of his employees in respect of the years of assessment specified by such officer or to the amount of the repayments required to be deducted in respect of those emoluments under these Regulations;
- (b) all wages sheets, deductions working sheets, and other documents and records whatsoever relating to the amount of repayments in fact deducted during the years of assessment specified by such officer; or
- (c) such of those wages sheets, deductions working sheets or other documents and records as may be specified by such officer.

(2) In paragraph (1) “the prescribed place” means—

- (a) such place in the United Kingdom as the employer and the authorised officer may agree upon; or
- (b) in default of such agreement, the place in the United Kingdom at which the documents and records referred to in paragraph (1) are normally kept; or
- (c) in default of such agreement and if there is no such place as is referred to in sub-paragraph (b), the employer's principal place of business in the United Kingdom.

(3) The authorised officer may—

- (a) take copies of, or make extracts from, any documents produced to him for inspection in accordance with paragraph (1);
- (b) if it appears to him to be necessary to do so, at a reasonable time and for a reasonable period, remove any document so produced, and, if he does so, shall provide a receipt for any documents so removed; and where a lien is claimed on a document produced in accordance with paragraph (1), the removal of the document under this sub-paragraph shall not be regarded as breaking the lien;

and where a document removed in accordance with sub-paragraph (1) is reasonably required for the proper conduct of a business the authorised officer shall within 7 days provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced.

(4) Where records are maintained by computer, the person required to make them available for inspection shall provide the authorised officer with all facilities necessary for obtaining information from them.

(5) For the purposes of paragraph (1) the wages sheets, deductions working sheets (not being deductions working sheets issued under regulation 21 of the Income Tax Regulations) and other documents and records therein mentioned shall be retained by the employer for not less than three years after the end of the year of assessment to which they relate.

(6) Section 98 of the 1970 Act (penalties for failure to furnish information) shall apply in relation to an employer's duties under this regulation as they apply to a person's duties under provisions specified in the Table below section 98.

### **Powers to obtain information**

**44.**—(1) Section 20 of the 1970 Act (power to call for documents etc.), and section 20B of that Act (restrictions on powers) so far as relating to section 20, shall apply in relation to an employer's compliance with this Part as they apply in relation to a person's tax liability or its amount.

(2) Those sections as they so apply shall have effect as if—

- (a) any reference to the taxpayer, a taxpayer or a class of taxpayer were a reference to the employer, an employer or a class of employers;
- (b) any reference to any provision of the Taxes Acts were a reference to this Part;
- (c) any reference to the proper assessment or collection of tax were a reference to the proper repayment of student loans;
- (d) the reference in section 20(8) to the taxpayer with whose liability the inspector or the Board is concerned were a reference to the employer with whose compliance with this Part the inspector or the Board is concerned;
- (e) the reference in section 20B(2) to an appeal relating to tax were a reference to an appeal relating to compliance with this Part; and
- (f) the reference in section 20B(6) to reasonable ground for believing that tax has, or may have been, lost to the Crown owing to the fraud of the taxpayer were a reference to reasonable ground for believing that student loan repayments have, or may have been, incorrectly deducted owing to the fraud of the employer.

(3) Section 20BB of the 1970 Act (falsification etc. of documents) shall apply in relation to documents to be delivered, or to be delivered or made available for inspection, under section 20 or 20B(1) as applied by this regulation.

### **Formal determination of repayments payable by employer**

**45.**—(1) This regulation applies where it appears to the inspector that there may be repayments payable by an employer under regulation 39 which—

- (a) have not been paid to the collector, and
- (b) have not been certified by the collector under regulation 42.

(2) Where this regulation applies, the inspector may determine the amount of those repayments to the best of his judgment, and shall serve notice of his determination on the employer.

(3) A determination under this regulation may—

- (a) cover the repayments payable by the employer under regulation 39 for any one or more tax periods in a year, and
- (b) extend to the whole of the repayments or to such part of them as is payable in respect of a class or classes of employees specified in the notice of determination (without naming the individual employees) or of one or more named employees so specified.

(4) A determination under this regulation shall be subject to the like provisions as are contained in Parts IV (Assessments and Claims), V (Appeals and Other Proceedings), except section 55, and VI (Collection and Recovery) of the 1970 Act as if it were an assessment, and as if the amount of repayments determined was income tax charged on the employer, and those Parts of that Act shall apply with any necessary modifications.

(5) An appeal against a determination under this regulation that is to be brought before the General Commissioners shall be brought before the General Commissioners for the division in which the determination was made.

#### **Interest on unpaid repayments which have been formally determined**

**46.**—(1) Where—

- (a) an employer has not paid an amount of repayments to the collector under regulation 39, and
- (b) the inspector makes a determination of the amount of such repayments under regulation 45, and
- (c) repayments are payable pursuant to that determination,

the repayments so payable shall carry interest at the applicable rate under section 178 of the Finance Act 1989 for the purposes of section 86 of the 1970 Act from the 14th day after the end of the year of assessment in which they are payable until payment.

(2) Interest payable under this regulation shall be recoverable as if it were an amount which the employer is liable to pay under regulation 39.

#### **Death of employer**

**47.** If an employer dies, anything which he would have been liable to do under these Regulations shall be done by his personal representative, or in the case of an employer who paid emoluments on behalf of another person, by the person succeeding him, or if no person succeeds him, the person on whose behalf he paid emoluments.

#### **Succession to a business**

**48.**—(1) This regulation applies where there has been a change in the employer from whom an employee receives emoluments in respect of his employment in any trade, business, concern or undertaking, or in connection with any property, or from whom an employee receives any annuity other than a pension.

(2) Subject to paragraph (3), where this regulation applies in relation to any matter arising after the change the employer after the change shall be liable to do anything which the employer before the change would have been liable to do under these Regulations if the change had not taken place.

(3) An employer after the change shall not be liable for the payment of any repayment which was deductible from emoluments paid to the employee before, unless they are also deductible from emoluments paid to the employee after, the change took place.

#### **Payment by cheque**

**49.** For the purposes of regulations 39 to 41 where—

- (a) any payment to the collector is made by cheque, and
- (b) the cheque is paid on its first presentation to the banker on whom it is drawn,

the payment shall be treated as paid on the day on which the cheque was received by the collector, and “pay”, “paid”, “unpaid” and “overpaid” shall be construed accordingly.

#### **Cessation of employment**

**50.** Where an employer sends a certificate under regulation 23(1) of the Income Tax Regulations (form P45) if on the date of the certificate he—

- (a) has received notice that the employee is a borrower as described in regulation 34(1); and

- (b) he has not received notice from the Board under regulation 34(3) requiring him to cease making deductions on and after a date which is before the date on which he ceased to employ the employee

he shall include in the statement a statement that the employee is a borrower.

### **Penalties**

**51.**—(1) Where in the case of any employee an employer fraudulently or negligently—

- (a) makes incorrect deductions, or
- (b) makes or receives incorrect payments in a year of assessment

in pursuance of this Part he shall be liable to a penalty not exceeding £3,000 for each employee in respect of whom incorrect deductions or payments are made.

(2) A penalty under paragraph (1) shall not be imposed before the end of the year of assessment in question; and no more than one such penalty may be imposed by reference to any one employee in relation to any year of assessment.

### **Collection and Recovery of Penalties**

**52.** Section 69 of the 1970 Act (recovery of penalties etc.) shall apply to penalties imposed under this Part as it applies to penalties imposed under that Act.