

*Draft Regulations laid before Parliament under section 42(5) of the Teaching and Higher Education Act 1998 and under section 133(2B) of the Education (Scotland) Act 1980 for approval by a resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2000 No.**

**EDUCATION, ENGLAND AND WALES  
EDUCATION, SCOTLAND**

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

*Made* - - - -

*Coming into force* - - *1st April 2000*

The Secretary of State for Education and Employment, in exercise of the powers conferred on the Secretary of State by sections 22 and 42(6) of the Teaching and Higher Education Act 1998<sup>(1)</sup> and sections 73(f) and 73B of the Education (Scotland) Act 1980<sup>(2)</sup>, hereby makes the following Regulations, a draft of which has been laid before and approved by both Houses of Parliament:—

**PART I  
GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Education (Student Loans) (Repayment) Regulations 2000, and shall come into force on 1st April 2000.

(2) Subject to paragraph (3) these Regulations extend to England and Wales only.

(3) These Regulations extend to all of the United Kingdom in so far as they impose any obligation or confer any power on the Board, an employer or a borrower in relation to repayments under Part III or IV.

**Interpretation**

2. In these Regulations—

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(1) 1998 c. 30.

(2) 1980 c. 44; section 73(f) was amended by the Teaching and Higher Education Act 1998, section 29(1); section 73B was inserted by the same Act, section 29(2).

“the Act” means the Teaching and Higher Education Act 1998;

“the 1970 Act” means the Taxes Management Act 1970<sup>(3)</sup> as amended from time to time both before and after the date of these Regulations;

“the 1988 Act” means the Income and Corporation Taxes Act 1988<sup>(4)</sup> as amended from time to time both before and after the date of these Regulations;

“the Board” means the Commissioners of Inland Revenue;

“borrower” means a person to whom the Secretary of State has lent money pursuant to regulations made under section 22 of the Act and who has not received a notice from him that it has been repaid in full or cancelled, and also has the meaning given it in regulation 3(3);

“collector” means a Collector of Taxes;

“inspector” means an Inspector of Taxes;

“repayment” means a repayment of a student loan;

“Secretary of State” includes any person exercising functions on behalf of a Secretary of State pursuant to section 23(4) of the Act, and also has the meanings given it in regulation 3(3) and (5);

“student loan” means the total outstanding principal, interest, penalties and charges owed by a borrower to the Secretary of State pursuant to these or any other regulations made under section 22 of the Act, excluding any interest, penalties or charges payable under Part III or IV, and also has the meaning given to it in regulation 3(3);

“year of assessment” means the period 6th April to the following 5th April.

## Application

3.—(1) These Regulations apply to repayments of student loans made under the Act.

(2) Where the Scottish Ministers have determined that repayments of student loans made under the Education (Scotland) Act 1980 shall be collected by the Board under Parts III and IV they shall give notices to the borrower and to the Board in accordance with regulation 11.

(3) Where the Scottish Ministers have given notices in accordance with regulation 11(5)(a) or (b) Parts III and IV, and the provisions of Parts I and II so far as they relate to the application of Parts III and IV, shall apply to repayments of students loans made under the Education (Scotland) Act 1980 as they apply to student loans made under the Act, and for those purposes in these Regulations—

“borrower” means a person to whom the Secretary of State or the Scottish Ministers have lent money pursuant to regulations made under section 73(f) of the Education (Scotland) Act 1980 and who has not received a notice from them that it has been repaid in full or cancelled;

“Secretary of State” means, other than in this regulation and regulation 4, the Scottish Ministers, and includes any person exercising functions on behalf of the Secretary of State or the Scottish Ministers pursuant to section 73A(4) of the Education (Scotland) Act 1980; and

“student loan” means the total outstanding principal, interest and charges owed by a borrower to the Scottish Ministers pursuant to regulations made under section 73(f) of the Education (Scotland) Act 1980, excluding any interest, penalties or charges payable under Part III or IV.

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(3) 1970 c. 9.

(4) 1988 c. 1.

## **Functions of the Inland Revenue**

4.—(1) The Board shall collect repayments from borrowers in accordance with Parts III and IV, and the provisions of section 1 of the 1970 Act shall apply for those purposes as they apply for the purposes of income tax.

(2) The Board shall, at such times and in such manner as the Treasury may direct, account to the Secretary of State for, and pay to him the sums estimated by the Board (in the manner so directed) to have been collected by them as repayments in accordance with Parts III and IV.

(3) Repayments shall not include any interest, penalties or charges payable under Part III or IV, and the Board shall cause any such sums which they recover to be paid, at such times and under such regulations as the Treasury may from time to time prescribe, to accounts, to be intituled “The Account of Her Majesty’s Exchequer”, at the Bank of England, and the sums so paid shall form part of the Consolidated Fund.

## **Inspectors and collectors**

5. Any legal proceedings or administrative act authorised by or done for the purposes of these Regulations and begun by one inspector or collector may be continued by another inspector or, as the case may be, collector; and any inspector or collector may act for any division or other area.

## **Service by post**

6. Any notice or other document which is authorised or required to be given, served or issued under these Regulations may be sent by post.

## **Penalties etc. in relation to Parts III and IV**

7.—(1) Section 98 of the 1970 Act (special returns etc.) shall apply for the purposes of repayments under Part III or IV as if any reference to a provision in the Table in that section were a reference to a provision in those Parts other than regulation 16.

(2) Section 99 of the 1970 Act (assisting in the preparation of incorrect returns etc.) shall apply in the case of returns, statements, declarations, accounts, information or documents for the purposes of repayments under Part III or IV as they apply for the purposes of income tax.

(3) Sections 100 and 100A (determination of penalties by officer of Board), 100B (appeals against penalty determinations), 100C (penalty proceedings before Commissioners), 100D (penalty proceedings before court), 102 (mitigation of penalties), 103(3) and (4) (time limits for penalties), 103A (interest on penalties), 104 (savings for criminal proceedings) and 105 (evidence in case of fraudulent conduct) of the 1970 Act shall apply to penalties in connection with repayments under Part III or IV as they apply to penalties in connection with income tax.

(4) Sections 112 to 115A of and Schedule 3A to the 1970 Act (documents) shall apply to assessments, returns or any other documents made, required, issued, served, sent or lodged for the purposes of or in connection with repayments under Part III or IV as they apply to documents for the purposes of or in connection with income tax.

(5) Section 118(2) of the 1970 Act (failure to act within limited time) shall apply in relation to anything required to be done under Part III or IV as it applies in relation to anything required to be done under that Act.

(6) For the purposes of these Regulations the amount of a repayment covered by any assessment under Part III shall not be deemed to be finally determined until that assessment can no longer be varied, whether by any Commissioners on appeal or by the order of any court.

## Revocation

8. Regulation 27 of the Education (Student Support) Regulations 1999 is hereby revoked.

## PART II

### PROVISIONS APPLICABLE TO ALL REPAYMENTS

#### Interpretation

- 9.—(1) In this Part—

“date of receipt” in relation to a repayment shall be construed in accordance with paragraphs (2) and (3);

“disability related benefit” means long term incapacity benefit or short term incapacity benefit at the higher rate, severe disablement allowance, disability living allowance, industrial injuries benefit and disability working allowance, all payable under the Social Security Contributions and Benefits Act 1992(5), or the amount of any disability premium and severe disability premium included in the applicable amount in calculating the income support payable under the Income Support (General) Regulations 1987(6).

(2) For the purposes of this Part a repayment shall be considered to have been paid by the borrower and received by the Secretary of State as follows:

- (a) where an amount is paid by the borrower directly to the Secretary of State, a repayment of that amount shall be considered to have been received by him on the date on which the amount is in fact received;
- (b) where the Board has notified the Secretary of State that an amount has become payable to the Board in respect of a year of assessment under Part III, a repayment of that amount shall be considered to have been received by him on 31st January following the year of assessment, whether or not the borrower has in fact paid any or all of that amount to the Board; and
- (c) where an amount is deducted by an employer under Part IV that amount shall be aggregated with all other such amounts deducted in the same year of assessment and repayments of the aggregate amount shall be considered to have been received by the Secretary of State in equal instalments received on the days during the year of assessment which are—
  - (i) the last days of a month,
  - (ii) days after the date on which the Secretary of State has given notice under regulation 11(5)(b) that payment should be deducted, and
  - (iii) days before the date on which he has given notice under regulation 11(5)(e) that payment should cease to be deducted.

#### Interest and penalties

10.—(1) Interest or penalties charged under Parts III or IV shall not be added to the principal outstanding, and payment of such interest or penalties shall not be credited against the principal outstanding.

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(5) 1992 c. 4, amended by the Social Security (Incapacity for Work) Act 1994 (c. 18), sections 1 to 3, 5 to 6, 8 to 11 and Schedules 1 and 2.

(6) S.I.1987/1967 (see Parts III and IV of Schedule 2); the relevant amending regulations are S.I. 1988/663, 1988/2022, 1989/1678, 1991/1559, 1991/2742, 1993/1150, 1993/2119, 1994/2139, 1994/3061, 1995/482, 1995/515, 1997/543.

(2) Any repayment received by the Secretary of State shall be applied by him in reduction or in satisfaction of:

- (a) first, any outstanding penalties or charges under Part V,
- (b) second, any outstanding interest, and
- (c) third, any outstanding principal, which shall be reduced or satisfied from the date of receipt.

### Time for repayments

**11.**—(1) A borrower may repay all or any part of his student loan to the Secretary of State at any time.

(2) A borrower shall not be required to repay any of his student loan before 6th April 2000.

(3) A borrower shall not be required to repay such part of his student loan as relates to a particular notification of eligibility under the Education (Student Support) Regulations 1999(7) until the year of assessment beginning after the date on which that eligibility terminates under regulation 8 of those Regulations.

(4) A borrower—

- (a) whose student loan was made in connection with his attendance at a course for the initial training of teachers, other than a course leading to a first degree; and
- (b) who has notified the Secretary of State in writing that he does not wish to repay that loan during any period in which he is required to repay a loan made under the Education (Student Loans) Act 1990(8) or the Education (Student Loans) (Northern Ireland) Order 1990(9);

shall not be required to repay any of his student loan during any such period.

(5) Subject to paragraph (7) the Secretary of State shall notify the borrower and the Board of—

- (a) the first, or as the case may be next, year of assessment in respect of which the borrower may be required to make repayments under Part III;
- (b) the date on and after which a borrower may be required to make repayments by way of deduction from his emoluments under Part IV;
- (c) where the borrower has given the Secretary of State notification in accordance with paragraph (4), the year of assessment in respect of which the borrower shall cease to be required to make repayments under Part III;
- (d) the final year of assessment in respect of which the borrower shall be required to make repayments under Part III because—
  - (i) the loan has been repaid to the Secretary of State in full, or
  - (ii) an amount sufficient to repay the balance owing to the Secretary of State in full is likely to be received by the Board under Part IV and by the Secretary of State under Part V by the 30th April following the date of issue of the notice, or
  - (iii) the loan has been cancelled; and
- (e) the date after which a borrower shall not be required to make repayments by way of deduction from his emoluments under Part IV because—

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(7) S.I. 1999/496, amended by S.I. 1999/2266.

(8) 1990 c. 6, amended by the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 67; by the Further and Higher Education (Scotland) Act 1992 (c. 37), Schedule 9, paragraphs 12(2) and (3); by the Education Act 1994 (c. 30), Schedule 2, paragraph 9; by the Education (Student Loans) Act 1996 (c. 9), section 1(1) and the Schedule; by the Education Act 1996 (c. 56), Schedule 37, paragraph 98 and Schedule 38, and by the Education (Student Loans) Act 1998 (c. 1), sections 1 to 3.

(9) S.I. 1990/1506 (N.I. 11).

- (i) the loan has been repaid to the Secretary of State in full, or
- (ii) an amount sufficient to repay the balance owing to the Secretary of State in full is likely to be received by the Board under Parts III and IV and by the Secretary of State under Part V by that date, or
- (iii) the loan has been cancelled; or
- (iv) the borrower has given the Secretary of State notification in accordance with paragraph (4).

(6) The Secretary of State shall not issue a notice under paragraph (5)(d) after the end of the calendar year during which the final year of assessment specified in the notice ends.

(7) Where the Secretary of State has notified a borrower and the Board that repayments under Parts III and IV shall no longer be made but at a later date it appears to him that the student loan has not been fully repaid he may give further notices in accordance with paragraph (5).

(8) The Secretary of State shall not be required to give notices under paragraph (5)(a) or (b) where the borrower's student loan does not exceed £120.

(9) Where under paragraph (8) the Secretary of State is not requested to give notices under paragraph (5)(a) or (b) he may require the borrower to repay his student loan in such manner and over such period of time as in all the circumstances seems appropriate.

## Cancellation

**12.**—(1) Subject to paragraph (4) where a borrower is not in breach of any obligation to repay his loan in accordance with Part V or in breach of any obligation to repay any other loan mentioned in paragraph (2) and the Secretary of State is satisfied that he—

- (a) has died;
- (b) has attained the age of 65; or
- (c) receives a disability related benefit and because of his disability he is permanently unfit for work

the Secretary of State shall cancel his liability to repay his student loan.

(2) The loans mentioned in this paragraph are loans made under the Education (Student Loans) Act 1990(**10**), the Education (Student Loans) (Northern Ireland) Order 1990(**11**), the Education (Scotland) Act 1980(**12**) and regulations made thereunder and the Education (Student Support) (Northern Ireland) Order 1998(**13**) and regulations made thereunder.

(3) For the purposes of this Part the cancellation of a student loan shall have effect on the date on which it is cancelled, not on the date the event giving rise to the right to cancellation takes place.

(4) The cancellation of a borrower's liability to repay his student loan under paragraph (1) shall not affect his liability to make repayments under Part III subject to and in accordance with that Part in respect of any year of assessment—

- (a) in the case of cancellation under paragraph (1)(a) during which the borrower was alive; and
- (b) in any other case preceding the year of assessment during which the loan is cancelled.

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(10) 1990 c. 6, amended by the Further and Higher Education Act 1992 (c. 13), Schedule 8, paragraph 67; by the Further and Higher Education (Scotland) Act 1992 (c. 37), Schedule 9, paragraph 12(2) and (3); by the Education Act 1994 (c. 30), Schedule 2, paragraph 9; by the Education (Student Loans) Act 1996 (c. 9), section 1(1) and the Schedule; by the Education Act 1996 (c. 56), Schedule 37, paragraph 98 and Schedule 38, and by the Education (Student Loans) Act 1998 (c. 1), sections 1 to 3.

(11) S.I. 1990/1506 (N.I. 11).

(12) 1980 c. 44, amended by the Teaching and Higher Education Act 1998 (c. 30), section 29.

(13) S.I. 1998/1760 (N.I. 14).

(5) The cancellation of a borrower's liability to repay his student loan under paragraph (1) shall not affect his liability to make repayments by way of deductions made under Part IV subject to and in accordance with that Part in respect of any earnings period ending before the date of cancellation.

### **Refunds**

**13.**—(1) Where the Secretary of State has received a repayment either directly from the borrower or from the Board under Part IV—

- (a) which results in the student loan being paid in full, or
- (b) when the student loan has already been paid in full

he shall refund to the borrower any amount not required to repay the loan in full together with interest calculated as if it were the principal of a student loan outstanding from the date of receipt of the repayment to the date of the refund.

(2) Where the Secretary of State is considered to have received a payment from the Board under Part III in respect of a year of assessment—

- (a) which results in the student loan being paid in full, or
- (b) when the student loan has already been paid in full

the repayment shall be considered to have been received by the Secretary of State on the 31st January next following the year of assessment in accordance with regulation 9(2)(b), and the Secretary of State shall refund to the Board for the account of the borrower any overpayment which results from the receipt.

(3) A refund under paragraph (2) shall not carry interest, and the Board shall be considered to have received the refund on the date on which the amount refunded was considered to have been received by the Secretary of State in accordance with regulation 9.

(4) Where in accordance with Part IV the Secretary of State has received a repayment by way of deduction from a borrower's emoluments for a year of assessment and those emoluments do not exceed £10,000 the Secretary of State shall on application by the borrower refund the amount deducted.

## **PART III**

### **REPAYMENTS BY ASSESSMENT TO INCOME TAX**

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

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

#### **Time for and amount of repayments**

**15.**—(1) Every borrower who has received notice from the Secretary of State under regulation 11(5)(a) that he may be required to make repayments of his student loan shall make a repayment in respect of any year of assessment—

- (a) which is specified in a notice under regulation 11(5)(a) or which, subject to paragraph (2), is any subsequent year up to and including any year specified in a notice under regulation 11(5)(d); and

- (b) in respect of which he has been required to make and deliver a return under section 8 of the 1970 Act.
- (2) A borrower shall not be required to make repayments in respect of any year of assessment specified in a notice under regulation 11(5)(c) or any subsequent year falling before a year specified in a subsequent notice under regulation 11(5)(a).
- (3) The repayment shall be an amount equal to the 9% of the borrower's total income for that year calculated in accordance with the Taxes Acts.
- (4) In calculating a borrower's total income for the purposes of paragraph (1) any deduction which falls to be made by way of personal reliefs provided for in Chapter I of Part VII of the 1988 Act shall not be made.
- (5) In calculating a borrower's total income for the purposes of paragraph (1) there shall be excluded:
- (a) the first £10,000 of that income;
  - (b) income on which the borrower could not become liable to tax under a self-assessment made under section 9 of the 1970 Act for that year;
  - (c) unearned income unless the amount of such income for that year exceeds £2,000;
  - (d) incapacity benefit payable under the Social Security Contributions and Benefits Act 1992(14);
  - (e) amounts chargeable to tax under sections 145, 146, 154, 157, 158, 159AA, 159A, 160 or 162 of the 1988 Act (benefits in kind);
  - (f) amounts in respect of which relief is given under Part XIV of the 1988 Act (pension schemes, social security benefits, life annuities etc.);
  - (g) the amount of any loss in respect of which relief is given under section 380 of the 1988 Act (trade etc. losses set-off against general income); and
  - (h) the amount of any payment in respect of which relief is given under section 109A of the 1988 Act (relief for post-cessation expenditure).
- (6) For the purposes of this regulation unearned income is income other than—
- (a) earned income within the meaning of section 833(4) and (5) of the 1988 Act;
  - (b) income referred to in section 127(1) of that Act (enterprise allowance);
  - (c) the profits arising from a business chargeable to tax under Case I of Schedule D pursuant to section 503(1) of that Act (furnished holiday accommodation);
  - (d) payments and other benefits chargeable to tax under section 148(1) of that Act (payments and benefits in connection with termination of employment);
  - (e) income treated as earned income under section 107 of that Act (receipts after cessation of trade);
  - (f) sums treated as earned income under section 491(5) of that Act (certain receipts from bodies corporate carrying on mutual business);
  - (g) an amount treated as earned income under section 531(6) of that Act (consideration in respect of the disposal of know-how);
  - (h) any annuity treated as earned income of the annuitant under section 619(1)(b) of that Act (certain retirement annuities); and
  - (i) annual payments treated as earned income under section 628(1) of that Act (partnership annuities).



## Personal return

16. For the purposes of establishing the amount of the repayment which a borrower is required to make for a year of assessment under regulation 14 an inspector or an officer of the Board may require him—

- (a) to include in a return required to be made and delivered under section 8 of the 1970 Act such information as may reasonably be required, and
- (b) to deliver with the return such accounts, statements and documents, relating to information contained in the return by virtue of sub-paragraph (a), as may reasonably be required.

## Returns to include self-assessment

17.—(1) Subject to subsection (2), every return made and delivered by a borrower under section 8 of the 1970 Act shall include a self-assessment, that is to say—

- (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 15 he is required to make for the year of assessment under regulation 15; and
- (b) an assessment of the amount payable by him by way of repayment, that is to say, the difference between the amount of the repayment which he is assessed to make for the year of assessment under sub-paragraph (a) and the aggregate amount of any repayments deducted from emoluments under Part IV during that year.

(2) Section 9(2) to (6) (self-assessment) and section 9A (power to enquire into returns) of the 1970 Act shall apply to a self-assessment under this regulation as they apply to a self-assessment under section 9(1) of that Act, and any reference in the Taxes Acts to those sections shall be construed as a reference to them as extended by this regulation.

## Records

18. Section 12B of the 1970 Act (records to be kept for the purposes of returns) shall apply in the case of a borrower as if any reference to a return includes reference to a return including the information required by regulation 16(a).

## Other returns and information

19.—(1) Part III of the 1970 Act (other returns and information) shall apply for the purposes of establishing the amount of the repayment a borrower may be required to make under this Part as it applies for the purposes of establishing the amounts in which a person is chargeable to income tax.

(2) Section 19A of the 1970 Act (power to call for documents for purposes of certain enquiries) shall apply where an officer of the Board gives notice under section 9A(1) of that Act in relation to a self-assessment under regulation 16 of these Regulations as it applies to a self-assessment under section 9 of that Act.

## Assessments, claims and appeals

20.—(1) Subject to paragraph (2) Parts IV (assessment and claims) and V (appeals and other proceedings) of the 1970 Act shall 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 any 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) An officer of the Board shall not make a determination of the amount of a repayment 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**

**21.**—(1) Any repayment by a borrower under this Part shall be paid as if the repayment were an amount of income tax payable by him 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 that Act within six months from the end of the year of assessment, but
- (b) was not given notice under section 8 of that Act until after the 31st October next following that year

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

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

(4) Section 59B(4A), (5) or (6) of that Act shall apply 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 shall be treated as a reference to a repayment by a borrower.

(5) Section 59B(5A), (7) and (8) of that Act shall not apply for the purposes of this regulation.

### **Surcharges**

**22.** Section 59C of the 1970 Act (surcharges on unpaid income tax and capital gains tax) shall apply 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**

**23.** Part VI of the 1970 Act (collection and recovery) shall apply 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**

**24.** 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 shall 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**

**25.**—(1) Any repayment due and payable under this Part shall carry interest at the rate applicable under section 178 of the Finance Act 1989 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 21(2), or
- (b) the date mentioned in regulation 21(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(15).

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

(3) A refund by the Board to a borrower of an overpayment of amounts payable under this Part shall carry 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

26.—(1) Section 93 of the 1970 Act (failure to make return for income tax and capital gains tax) shall apply to returns under section 8 of that Act which are required to include information under regulation 16 as it applies to any other such returns.

(2) In the case of such returns the references in section 93 to liability to tax which would have been shown in the return shall be 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 the Act (payment of income tax and capital gains tax), and

(b) where the taxpayer is a borrower by way of a repayment under regulation 15.

(3) Section 95 of the 1970 Act (incorrect return or accounts for income tax or capital gains tax) shall apply 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) shall be the difference between—

(a) the amount calculated under regulation 15(1), and

(b) 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.

(4) Section 97 (incorrect return or accounts: supplemental) of the 1970 Act shall apply in the case of returns, statements, declarations, accounts, information or documents for the purposes of repayments under this Part as they apply for the purposes of income tax.

## PART IV

### DEDUCTION OF REPAYMENTS BY EMPLOYERS

#### Interpretation

27. In this Part—

“the Contributions Regulations” means the Social Security (Contributions) Regulations 1979(16);

“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—

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(15) 1882 c. 61. Section 92 was amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

(16) S.I. 1979/591.

- (a) constitute earnings for the purposes of section 3 of the Social Security Contributions and Benefits Act 1992(17) 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(18);

“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(19);

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

### 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.

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(17) 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.

(18) 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.

(19) S.I. 1993/744.

(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(20) (“the 1971 Act”), the Community Charge (Administration and Enforcement) Regulations 1989(21) (“the Community Charge Regulations”), the Council Tax (Administration and Enforcement) Regulations 1992(22) (“the Council Tax Regulations”), the Judgements

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(20) 1971 c. 32.

(21) 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).

(22) 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).

Enforcement (Northern Ireland) Order 1981(23), the Magistrates' Courts (Northern Ireland) Order 1981(24); or

- (b) deduction of earnings orders made under the Child Support (Collection and Enforcement) Regulations 1992(25),

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(26) (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 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.

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(23) S.I. 1981/234.

(24) S.I. 1981/552.

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

(26) 1987 c. 18.



### **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(27), 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.

(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>(28)</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 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.

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(28) 1989 c. 26.

(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(29) 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—

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(29) 1992 c. 4.

- (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.

## **PART V**

### **REPAYMENTS BY OVERSEAS RESIDENTS**

#### **Interpretation**

**53.** In this Part—

“gross income” means income from all sources before deductions for or relief from tax or other statutory charge;

“residence” in or outside the United Kingdom shall have the same meaning as it has in the Taxes Acts.

#### **Notice of overseas residence**

**54.—**(1) A borrower shall notify the Secretary of State of any period of residence outside the United Kingdom which exceeds three months.

(2) A borrower shall provide such information about any period of residence outside the United Kingdom which exceeds three months as the Secretary of State may require, including—

- (a) the purpose of the residence outside the United Kingdom,
- (b) whether the borrower is employed, or self-employed, during that residence,
- (c) the likely duration of the residence outside the United Kingdom, and
- (d) the amount of any repayments likely to be payable under Part III and deducted or likely to be deducted under Part IV in respect of any year or years of assessment during which the residence occurs.

#### **Notice of liability to make repayments**

**55.—**(1) Where the Secretary of State is satisfied that—

- (a) a borrower is resident outside the United Kingdom,
- (b) he is not likely to be resident in the United Kingdom for any year or years of assessment during which the period of residence falls

he may serve a notice on the borrower requiring the borrower to repay his loan in monthly instalments in accordance with regulation 56.

(2) In a notice served under paragraph (1) the Secretary of State may require a borrower who has failed to—

- (a) give the notice required by regulation 54(1), or
- (b) provide any information required by the Secretary of State under regulation 54(2),

to repay forthwith such part of his student loan as will reduce the amount outstanding to the amount which the Secretary of State considers would have been outstanding if the borrower had given the notice or provided the information required of him.

(3) When he serves a notice under paragraph (1) the Secretary of State may determine that a student loan shall bear interest at three times the rate or rates which would otherwise be applicable during any period—

- (a) beginning when the borrower fails to give notice or provide information as described in paragraph (2),
- (b) ending when the borrower has given the notice and provided the information required and made any repayment required under paragraph (2).

### **Repayment by instalments**

**56.**—(1) Subject to paragraph (2) a borrower shall not later than the day specified in a notice served under regulation 55 and on the same day of each subsequent month pay the Secretary of State an instalment of £246.

(2) Instead of paying the monthly instalment referred to in paragraph (1) a borrower shall be entitled to pay monthly instalments determined by the Secretary of State under paragraph (3) in respect of the twelve months referred to in the determination.

(3) On application by a borrower the Secretary of State may determine that the amount of each of the twelve monthly instalments beginning with such date as may be determined by the Secretary of State, being a date not more than three months earlier or two months later than the date of the determination, shall be one twelfth of the relevant amount.

(4) The relevant amount shall be 9% of the gross income which the Secretary of State considers that the borrower is likely to receive during the twelve month period in respect of which the instalments will be paid, disregarding—

- (a) the first £10,000 of such income; and
- (b) income in respect of which the Secretary of State is satisfied that repayments are likely to be made under Part III or IV.

(5) After the expiry of the twelve months referred to in a determination under paragraph (3) the borrower shall pay instalments in accordance with paragraph (1), subject to any further determination under paragraph (3).

(6) If a borrower does not pay an instalment or other amount when it is due the Secretary of State may require him to repay his student loan in full immediately.

(7) The Secretary of State may allow a borrower to pay an instalment late or to fail to pay all or part of an instalment, but such indulgence shall not affect any rights or duties in relation to any other instalment.

### **Application to cease repayment by instalments**

**57.**—(1) A borrower who—

- (a) is required to make repayments in accordance with regulation 56, and
- (b) who has not been required to repay his student loan in full immediately under regulation 56(6),

may apply to the Secretary of State for a determination that he shall no longer be required to make such payments.

(2) The Secretary of State may determine that a borrower who has applied under paragraph (1) shall not be required to make repayments under this Part from a date specified in his determination,



being a date not more than three months earlier and two months later than the date of the determination, if he is satisfied that—

- (a) the borrower is resident in the United Kingdom, and
  - (b) he is likely to be resident in the United Kingdom for the year of assessment during which the date specified in his determination will fall.
- (3) A determination under paragraph (2) shall have effect until any further notice under regulation 55 is served on the borrower.

March 2000

Minister of State,  
Department for Education and Employment

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are the first to be made under section 22 of the Teaching and Higher Education Act 1998 dealing with the repayment of student loans. The Regulations apply to students who started higher education courses in September 1998 or later. Students who began their courses before then, and certain students who began their courses after then (for example gap year students), remain subject to the previous system of mortgage style loans for maintenance under the Education (Student Loans) Act 1990.

Repayments will be collected in three ways:

- (a) by the Inland Revenue through self assessment (SA) (Part III)
- (b) by employers (Part IV)
- (c) by the Secretary of State, where borrowers are living and working abroad (Part V).

Borrowers may also make voluntary repayments to the Secretary of State at any time.

**Part I** of the Regulations sets out miscellaneous provisions, including provision for the collection of loans made under the Education (Scotland) Act 1980 under these Regulations if Scottish Ministers so determine, accounting by the Inland Revenue for repayment of student loans, functions of tax inspectors and collectors, and how provisions of the Taxes Management Act 1970 in relation to penalties will apply to Parts III and IV.

**Part II** of the Regulations sets out the terms which will apply to all loans regardless of the method of repayment. Repayments made directly to the Secretary of State will be taken to be received on the date of receipt. Repayments payable to the Inland Revenue through the self assessment tax system will be taken to be received on 31st January in the financial year following the financial year to which the repayment relates. Repayments made via employers will be taken to be received in monthly instalments received on the last day of each month in a year to which the repayment relates (*regulation 9*).

Any interest or penalties incurred by borrowers under these Regulations, whatever their method of loan repayment, will be kept separate from the loan account (*regulation 10*).

Borrowers are not required to make repayments until the 6th April after they have completed or left their courses; and no repayments are due until 6th April 2000. Borrowers may repay their loans before they are required to do so if they wish, without penalty. The Secretary of State must tell borrowers and the Inland Revenue when repayments are due to start and when they should cease. This will be because the loan has been or is likely to have been repaid in full or has been cancelled or, for students whose loan is for a Postgraduate Certificate of Education and who are simultaneously required to repay a mortgage style loan, they have elected to defer repaying their loan whilst they are repaying their mortgage style loan. Borrowers whose loan does not exceed £120 may be asked to make repayments directly to the Secretary of State (*regulation 11*).

Provided that a borrower has met all his student loans repayment obligations, loans are to be cancelled when the borrower reaches the age of 65, or dies, or if he becomes disabled and because of his disability is permanently unfit for work. Cancellation takes effect on the date on which the Secretary of State cancels the loan. For borrowers in SA who die, loan repayments are collected through annual tax returns, including that for the year in which the borrower dies. For those in SA whose loans are cancelled at age 65 or due to permanent disability, liability to make loan repayments

ceases at the start of the tax year in which the loan is cancelled. For borrowers making repayments via their employers, the liability to make repayments ceases on the date of cancellation (*regulation 12*).

If a borrower makes any repayments which exceed the total outstanding balance on his loan, the Secretary of State must refund the overpayment together with interest. Interest is to be paid from the date of receipt of the overpayment at the same rate that it is charged to loan accounts. Where an amount is received through self-assessment to tax which exceeds the total amount outstanding, the overpayment is to be refunded to the Inland Revenue and the borrower's liability to the Inland Revenue reduced accordingly. Where a borrower has made repayments through his employer in a particular tax year and his income is less than £10,000, he may apply to the Secretary of State to have those repayments refunded. This type of refund does not attract interest (*regulation 13*).

**Part III** of the Regulations sets out the terms of repayment which apply to borrowers who are required for tax reasons to submit a self assessment tax return. Various provisions of the Taxes Management Act 1970 dealing with the payment of income tax through self assessment are extended to cover the repayment of student loans. Loan repayments collected through SA are treated in the same way as income tax payments.

The amount of loan repayment to be made by a borrower in SA is 9% of his total annual income over £10,000 including any taxable unearned income, provided this exceeds £2,000. When calculating total income, certain matters are to be left out of account. These include incapacity benefit, benefits in kind, pension schemes, social security benefits and losses set-off against general income (*regulation 15(4)*).

To enable the Inland Revenue to establish the amount of repayment due, they may require a borrower to include relevant information in his tax return or provide documents or accounts with his return. When making an SA return, a borrower must calculate how much student loan is due, taking account of any repayment he has made via his employer. However, there is no provision for a refund if the amount calculated on the return is less than the amount already deducted by the employer, unless the whole balance of the loan has been paid off. Borrowers must keep records supporting the information contained in their returns in the same way as is required for tax purposes (*regulations 16 to 18*).

Borrowers must make loan repayments by 31st January following the tax year to which the repayment relates. There are exceptions where SA returns have been demanded or generated at different times in the tax cycle (*regulation 21(2)*). If a borrower is late making repayments, makes insufficient repayments or fails to make a tax return correctly or on time, he may be liable to pay surcharges, interest on overdue payments and penalties in line with those which apply to the payment of income tax (*regulations 22, 25 and 26*).

**Part IV** of the Regulations sets out how repayments are to be collected by employers on behalf of employees who are borrowers. Loan repayments are to be collected and accounted for by employers in the same way as income tax deducted from an employee's emoluments. Emoluments has the same meaning as it does for National Insurance contributions purposes, so that employers can calculate student loan repayments on the same sum as NI contributions. Deductions will be made on a non-cumulative basis.

The amount of loan repayment due is 9% of a borrower's annual emoluments over £10,000 or the proportionate part thereof, according to the pay period in question. Employers can either calculate the value of the deduction themselves or they can use tables provided by the Inland Revenue for the purpose (*regulations 28 and 29*).

The rules for aggregating emoluments and for determining earnings periods, where an employee has more than one employment with a single employer, is the same for student loans as it is for national insurance contributions. Where they are satisfied that an employer is avoiding, or reducing the amount of, loan repayments by adopting certain pay practices, the Inland Revenue may give directions to ignore the effect of the practices (*regulations 30 and 31*). Where a borrower works for someone who is not his immediate employer, that person—the principal employer—is required to act in accordance with these Regulations. The immediate employer must provide any information

which may be necessary for the principal employer to be able to comply with the Regulations (*regulation 33*).

The Inland Revenue must send a notice to an employer informing them that they have an employee who has a student loan and instructing them either to start making deductions or to cease making deductions. The notice must include the name and national insurance number of the borrower and the date from which deductions should be made. Notices relating to the cessation of deductions are to follow the same format (*regulation 34*).

Employers must start making deductions on the date specified in the notice, which will be at least 14 days from date of issue of the notice for employers with weekly payrolls, and 42 days from that date for others. Where employers receive a form P45 which indicates that an employee has a student loan, deductions should begin from date of receipt (*regulation 35(1) to (3)*). If an employer makes an under deduction, he may recover the shortfall in the next pay period or periods provided that it is in the same tax year and that he has not in the meantime received notice instructing him to stop making deductions (*regulation 35(6)*). The amount of any additional deduction must not exceed the amount of the ordinary deduction for the relevant pay period. An employer who has made a deduction in accordance with these regulations is not required to repay it to the employee by reason only that the employee has already paid off his loan (*regulation 35(7)*).

In cases where an employee has both a student loan and is subject to an attachment of earnings order or deduction from earnings order, the employer is to treat student loans deductions as if they were made by a priority attachment of earnings order made subsequently to any other such order. Where an attachment of earnings order in respect of Community Charge or Council Tax is required to be deducted before any student loan repayment, or where an employee is subject to an earnings arrestment, current maintenance arrestment or conjoined arrestment order within the meaning of the Debtors (Scotland) Act 1987, the employer is not to deduct any student loan repayments (*regulation 36*).

Employers must record any student loan repayments deducted on a deductions working sheet and on the annual P60 form (*regulations 37 and 38*).

Employers must pay to the Inland Revenue, in accordance with the existing timescale for remittance of tax and national insurance contributions, the amount of any student loan repayments actually deducted (*regulation 39*). The Inland Revenue may recover any student loan repayments which have been or should have been deducted in the same way that they may recover income tax. Similarly, any unpaid loan repayments attract interest at the rate applicable to unpaid income tax (*regulations 40 and 41*).

Annual returns which employers are obliged to submit to the Inland Revenue setting out income tax and national insurance contributions made by employees are also required to include details of any student loan repayments deducted. Penalties apply if an employer fails to submit a return on time, if the return is not a proper record of the deductions which have been made or if the proper deductions have not been made. Where an employer fraudulently or negligently makes an incorrect return in respect of a year of assessment he is liable, after the end of the year in question, to a penalty of up to £3,000 per employee in respect of whom incorrect particulars are included in the return (*regulation 42*).

Employers must make available to the Inland Revenue documents, such as wages sheets, relating to the calculation of employees' emoluments and student loan deductions. Employers must also allow the Inland Revenue access to any records held electronically. Records relating to the emoluments paid to and student loan repayments deducted from employees are required to be held by employers for a minimum of 3 years following the tax year to which they relate. Employers are liable to a penalty if they do not furnish the Inland Revenue with the information they require (*regulation 43*).

Regulation 44 applies provisions of the Taxes Management Act in relation to obtaining information. If the Inland Revenue determine that an employer has not paid over the amount of student loan repayments deducted from an employee, they may serve a notice setting out how much is due.

Employers will be able to appeal against any such notice. Overdue payments will attract interest in the same way as overdue payments of income tax (*regulations 45 and 46*).

On the death of an employer any duties relating to the deduction of student loan repayments transfer to his representative. Where there is a change of employer, the new employer has responsibility for deducting student loan repayments from the date of change of employer (*regulations 47 and 48*). Where a borrower ceases working for an employer, the employer must record on his P45 form the fact that the employee is a student loan borrower (*regulation 50*).

Where an employer fraudulently or negligently makes an incorrect deduction or makes or receives an incorrect payment in a year of assessment he may be liable, after the end of the year in question, to a penalty of up to £3,000 per employee in respect of whom incorrect deductions or payments have been made (*regulation 51*).

**Part V** of the Regulations deals with borrowers who are not resident in the UK for income tax purposes. Borrowers must tell the Secretary of State if they are resident overseas for more than three months. They must on request provide information about their residence overseas, such as the purpose of their stay and their employment. If a borrower fails to provide the Secretary of State with required information, the Secretary of State may require the borrower to repay immediately that part of the loan that would have been repaid had the information been provided and apply a rate of interest to the loan at three times the normal rate of interest until the information is provided (*regulations 54 and 55*).

A borrower who is outside the UK tax system because he is living abroad must make repayments directly to the Secretary of State and will receive a notification from the Secretary of State to that effect. Repayments will be due at the rate of £246 a month (based on 9% of income over £10,000 at the assumed rate of twice UK national average earnings measured in months each year). However, a borrower may apply to pay a lower monthly instalment equal to 1/12 of 9% of his annual income over £10,000. If a borrower misses one or more repayments, the Secretary of State may require him to repay the total outstanding loan balance immediately (*regulation 56*).

Provision is made for a borrower who ceases to be resident abroad to be no longer required to make repayments directly to the Secretary of State (*regulation 57*).

A full regulatory impact assessment of the effect that these Regulations will have on the costs of business is available from John Gorman, Student Support 2, DFEE, Sanctuary Buildings, Great Smith Street, London SW1P 3BT. Requests to be made either in writing or by e.mail ([john.gorman@dfee.gov.uk](mailto:john.gorman@dfee.gov.uk)).