

**2008 No. 2715**

**EDUCATION**

**The Education (Student Loans) (Repayment) (Amendment)  
(No. 2) Regulations 2008**

<i>Made</i>	- - - -	<i>12th October 2008</i>
<i>Laid before Parliament</i>		<i>21st October 2008</i>
<i>Coming into force</i>	- -	<i>14th November 2008</i>

The Secretary of State for Innovation, Universities and Skills makes the following Regulations in exercise of the powers conferred by sections 22 and 42 of the Teaching and Higher Education Act 1998(a), sections 5 and 6 of the Sale of Student Loans Act 2008(b), and sections 73(f) and 73B of the Education (Scotland) Act 1980(c):

**PART 1**

**General**

**Citation and Commencement**

1. These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2008 and come into force on 14 November 2008.

**Application**

2. Part 2 applies to England only(d).

**Amendment of Regulations**

3. These Regulations amend the Education (Student Loans) (Repayment) Regulations 2000(e) as follows:—

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- (a) 1998 c.30. Section 22 was amended by the Learning and Skills Act 2000 (c.21) section 146, the Income Tax (Earnings and Pensions) Act 2003 (c.1) Schedule 6, the Finance Act 2003 (c.14) section 147 and by the Higher Education Act 2004 (c.8) sections 42 and 43.
- (b) 2008 c.10
- (c) 1980 c.44. Section 73B was inserted by section 29 of the Teaching and Higher Education Act 1998.
- (d) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004 (c.8) except for those functions under sub-sections 22(2)(a), (c), (j), or (k), (3)(e) or (f) or (5). Functions under sub-sections 22(2)(a), (c) or (k) were exercisable concurrently with the National Assembly. The functions so transferred were subsequently transferred to the Welsh Ministers by the Government of Wales Act 2006 (c.32) section 162 and Schedule 11, paragraph 30(2).
- (e) SI 2000/ 944; relevant amending regulations are SI 2001/971, 2002/2087, 2004/1175, 2004/2752, 2005/2690, 2006/2009 and 2007/1683.

## PART 2

### Amendments consequent on the Sale of Student Loans Act 2008 and amendments to Part 6

#### Amendment of Definitions

- 4.—(1) In regulation 2 insert in the appropriate place—
- (a) ““the 2008 Act” means the Sale of Student Loans Act 2008;”;
  - (b) ““further transfer arrangements” has the meaning given to it in the 2008 Act;”;
  - (c) ““loan purchaser” in addition to the meaning given to it in the 2008 Act includes any person who has entered into transfer arrangements or further transfer arrangements with the Secretary of State or with another loan purchaser or both and who owns one or more student loans made pursuant to regulations under section 22 of the Act;”;
  - (d) ““transfer arrangements” has the meaning given to it in the 2008 Act;”;
  - (e) ““transferred loan” means any loan made to a borrower pursuant to regulations under section 22 of the Act and which has been the subject of transfer arrangements under the 2008 Act entered into by the Secretary of State;”.
- (2) At the end of the definition of “Secretary of State” in regulation 2, add “and 3(6)”.
- (3) At the end of the definition of “student loan” in regulation 2, insert “and 3(8)”.

#### Transferred loans

5.—(1) In the definition of “Secretary of State” in regulation 3(5), after the first occurrence of “regulation”, for “and regulation 4”, substitute “, regulation 4 and the definition of “transferred loan” in regulation 2”.

- (2) At the end of regulation 3, insert—

“(6) Where these Regulations apply to a transferred loan, “Secretary of State” means, for the purposes of those regulations listed in paragraph (7)(a), the loan purchaser and, for the purposes of those regulations listed in paragraph 7(b), the Secretary of State acting on behalf of the loan purchaser (regardless of whether any person is also exercising functions on behalf of the Secretary of State pursuant to section 23(4) of the Act).

- (7) For the purposes of this paragraph, the regulations listed are:

- (a) regulations 10, 11(5)(d) (i),(ii), (e)(i),(ii), and 12A;
- (b) regulation 9, regulation 11 (except 11(5)(d) (i),(ii), (e)(i),(ii)), regulations 13, 13A to 13F, and 60 to 67.

(8) Where these Regulations apply to a transferred loan, “student loan” means, subject to any provision of transfer arrangements, the total outstanding principal, interest, penalties and charges, owed by the borrower to a loan purchaser pursuant to these or any other Regulations made under section 22 of the Act.”

#### Repayments collected by HMRC in respect of transferred loans

6.—(1) In regulation 4(1) after “borrowers”, insert “(whether or not any loan of the borrower is a transferred loan)”.

- (2) After regulation 4(2), insert—

“(2A) HMRC shall account for and pay to the Secretary of State such sums as are referred to in paragraph (2) regardless of whether the Secretary of State is entitled to retain such repayments or receives them on behalf of a loan purchaser.”

- (3) In regulation 4(3), for “Repayments”, substitute “Payments to the Secretary of State”.

7.—(1) After regulation 4 insert—

**“Transfer of other repayments due to a loan purchaser**

4A.—(1) The Secretary of State must pay to a loan purchaser at such time and in such amount as may be agreed with the loan purchaser any sums which are paid directly to the Secretary of State in connection with transferred loans whether under Part 2 or 6.

(2) The Secretary of State may make aggregate payments to a loan purchaser in respect of all or a number of transferred loans owned by that loan purchaser.”.

8.—(1) At the end of regulation 9(2)(b), omit “and”.

(2) At the end of regulation 9(2)(c)(iii), omit “.” and insert —

“; and

(d) for the purposes of transferred loans, payment to the loan purchaser by the borrower shall be considered to have been received on the same date as payment is considered to have been received by the Secretary of State in accordance with this regulation.”.

**Interest and Penalties**

9. In regulation 10(2)(a), for “regulation 13C or regulation 13D”, substitute “regulations 13C, 13D or 67”.

**Costs incurred on behalf of loan purchasers**

10. For regulation 13D, substitute—

“13D.—(1) Where the Secretary of State incurs reasonable costs or expenses in taking steps to—

- (a) serve an Information Notice on a borrower under regulation 13B(1),
- (b) serve a Penalty Notice on a borrower under regulation 13C(4), or
- (c) obtain the information requested in an Information Notice served under regulation 13B(1),

the Secretary of State may require the reimbursement of those costs or expenses by the borrower and may add them to the borrower’s loan account.

(2) Where the Secretary of State incurs such costs or expenses as are referred to in paragraphs (1)(a) to (c) in respect of a transferred loan, the Secretary of State is entitled to recover such costs and expenses as are incurred on behalf of the loan purchaser and may add them to the borrower’s loan account.

(3) Any sum added to the borrower’s loan account in accordance with paragraph (2) is owed to the loan purchaser.”.

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

11. In regulation 14, after “payable under the Taxes Acts”, insert “(whether or not any loan of the borrower is a transferred loan)”.

**Repayments of loans through deductions by employers**

12. At the end of regulation 28, insert “(whether or not any loan of the borrower is a transferred loan)”.

13. In regulation 35(7) after “Secretary of State”, insert “or loan purchaser (as the case may be)”.

## **Costs and expenses in relation to repayment by overseas borrowers**

14. After regulation 66, insert—

### **“Costs and expenses of the Secretary of State**

67.—(1) Where the Secretary of State incurs reasonable costs or expenses in taking steps—

- (a) resulting from a borrower’s failure to comply with regulation 60, to—
  - (i) obtain a borrower’s address outside the United Kingdom; or
  - (ii) obtain information about a borrower’s income during any period of residence outside the United Kingdom;
- (b) to serve a notice under regulation 61(1) in any of the circumstances set out in regulation 61(2); or
- (c) to recover the outstanding balance of the loan in full under regulation 66,

the Secretary of State may require reimbursement of those costs or expenses by the borrower and may add them to the borrower’s loan account.

(2) Where the Secretary of State incurs such costs and expenses as are referred to in paragraphs (1)(a) to (c) in respect of a transferred loan, the Secretary of State is entitled to recover such costs as are incurred on behalf of the loan purchaser and may add them to the borrower’s loan account.

(3) Any sum added to the borrower’s loan account in accordance with paragraph (2) is owed to the loan purchaser.”.

## **PART 3**

### **Amendments relating to collection of repayments from employers**

#### **Amendment to Definitions and correction of drafting error**

15.—(1) In regulation 2, —

- (a) at the end of the definition of “the Act” insert “as amended from time to time both before and after the date of these Regulations”;
- (b) before the definition of “inspector”, insert ““HMRC” means Her Majesty’s Revenue and Customs;”;

(2) Paragraph 1 of the Schedule to The Education (Student Loans) (Repayment) (Amendment) Regulations 2001(a) is revoked.

#### **Definition of ‘combined amount’**

16. In regulation 27—

(1) after the definition of “the 2003 Act”, insert—

““combined amount” means an amount which includes deductions of student loan repayments under this Part and one or more of the following:

- (a) tax due under the PAYE Regulations;
- (b) earnings-related contributions due under the Contributions Regulations; or
- (c) amounts due under the Income Tax (Construction Industry Scheme) Regulations 2005(b).”

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(a) SI 2001/971  
(b) SI 2005/2045

(2) In the definition of “Contributions Regulations”, for “1979” substitute “2001(a)”.

**Amendments to Regulation 39B (Notice of specified amount and certificate when repayments deducted not paid)**

17. Regulation 39B is amended as follows:—

(1) For paragraph (2), substitute—

“(2) Where this regulation applies, an officer of HMRC, upon consideration of the employer’s record of past payments, whether of student loan repayments or of combined amounts, may to the best of that officer’s judgment specify the amount in respect of student loan repayments or of a combined amount which that officer considers the employer is liable to pay, and serve notice on the employer of that amount.”.

(2) In paragraph (5)—

- (a) after “tax period specified in the notice is”, insert “,or includes,”;
- (b) after “the full amount”, insert “of student loan repayments”.

(3) In paragraph (6)—

- (a) omit the first occurrence of “in respect of student loan repayments”;
- (b) in sub-paragraph (a) after “in respect of student loan repayments”, insert “,or to include an amount in respect of student loan repayments,”;

(4) In paragraph (7)(a), omit “in respect of student loan repayments”.

**Amendments to regulation 40 (Recovery of repayments deducted)**

18. Regulation 40 is amended as follows:—

(1) In paragraph (1), for “under Schedule E”, substitute “as employment income under the 2003 Act.”;

(2) In paragraph (1A)—

- (a) after “student loan repayments,”, insert “or a combined amount,”;
- (b) after the words “or such part of it as remains unpaid,”, insert “together with any interest payable on such amount,”;
- (c) in the last line for “item”, substitute “time”;

(3) In paragraph (2) for “amount of tax”, substitute “other element of a combined amount”;

(4) In paragraph (3)—

- (a) for sub-paragraph (b), substitute—

“(b) the total amount which the employer is liable to pay to an officer of HMRC as a combined amount including any amount under regulation 39,”;
- (b) omit sub-paragraphs (c) and (d).
- (c) in the text immediately following those sub-paragraphs after “without specifying the respective amounts”, insert “of any component of a combined amount”.

**Amendments to regulation 41(Interest on unpaid amounts)**

19. In regulation 41 after paragraph (4), insert—

“(4A) An officer of HMRC may prepare a certificate certifying the total amount of interest payable in respect of the whole of a combined amount without specifying to what

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(a) SI 2001/1004. These Regulations have been amended but none are relevant.

component of the combined amount the interest relates and paragraph (4) shall apply to that certificate.”

12th October 2008

*David Lammy*  
Minister of State  
Department for Innovation, Universities and Skills

## EXPLANATORY NOTE

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

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2000 (“the Principal Regulations”) to reflect changes introduced by the Sale of Student Loans Act 2008 (“the 2008 Act”), to make changes to the recovery of student loan payments from employers and to make other minor amendments.

Regulation 2 provides that the changes introduced by the 2008 Act only apply in England. The changes to the system of recovery of student loans from employers apply across the UK.

Part 2 deals with the changes consequent on the 2008 Act. That Act allows the Secretary of State to sell the right to repayment of income-contingent repayment student loans to private sector organisations. A buyer of a loan or loans is referred to in the Act and these Regulations as the ‘loan purchaser’. Loans for which the right to repayments have been sold by the Secretary of State are referred to as ‘transferred loans’. This does not include loans made by Welsh Ministers. These Regulations amend the Principal Regulations by inserting a new regulation 4A to allow repayments of transferred loans to be passed to the loan purchaser (regulation 7; see also section 6(2) of the 2008 Act).

The amendments to the Principal Regulations substitute the loan purchaser for the Secretary of State in those places, listed in the inserted regulation 3(7)(a), where the purchaser is to be the lender of record. In those places referred to in the inserted regulation 3(7)(b), references to the Secretary of State are treated in relation to transferred loans as being references to the Secretary of State acting on behalf of the loan purchaser in loan administration under the Principal Regulations (regulation 5). All other references to the Secretary of State are unaffected. The Secretary of State may continue to delegate functions in accordance with section 23(4) of the Teaching and Higher Education Act 1998. The existing processes used by Her Majesty’s Revenue and Customs (HMRC) (referred to in the Principal Regulations as the Board) for collection through self-assessment and Pay As You Earn (PAYE) are continued for transferred loans but are otherwise unaffected. Repayment methods by borrowers are also unaffected.

The Regulations allow the Secretary of State to recover costs from borrowers incurred on behalf of loan purchasers under Part 2 of the Principal Regulations (regulation 10). They also insert a new regulation 67 into the Principal Regulations to allow the Secretary of State to recover, on his own and loan purchasers’ behalf, costs incurred in obtaining information or payment from borrowers resident overseas (regulation 14).

Part 3 allows HMRC to collect outstanding student loan repayments and any interest due on them from employers together with other outstanding amounts of tax, national insurance or payments under the Construction Industry Scheme Regulations without having to differentiate between the various components. The amendments allow proceedings to be taken in relation to the whole sum.

An impact assessment has not been prepared in respect of this instrument as it has no impact on the costs of business, charities or voluntary bodies. The impact on the public sector is minimal.

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STATUTORY INSTRUMENTS

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