
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact with amendments the Education (Student Loans) (Repayment) Regulations 2000. Like those Regulations, these Regulations govern repayments of student loans by borrowers who have taken out income- contingent repayment loans for courses which began any time in or after September 1998. Students who began their courses before then, and certain limited, transitional categories of students who began their courses shortly 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.

These Regulations set out the principal terms and conditions applying to repayments of income-contingent student loans in England and Wales.

These Regulations are Composite Regulations made by the Secretary of State as respects England and by the Welsh Ministers for Wales. The Secretary of State also makes various provisions for the tax system which apply across the United Kingdom to the extent that student loans are collected through the taxation system operated by Her Majesty's Revenue and Customs (known in the Regulations as 'HMRC') and to the extent these consist of rights or obligations imposed on HMRC, employers or borrowers as part of that tax provision, or on others in respect of the inspection or production of information and records. In general, the Secretary of State and Welsh Ministers are referred to in these Regulations as 'the Authority'.

This consolidating Instrument also brings together for the first time other provisions which concern repayments of student loans but which were previously found elsewhere in Regulations under section 22 of the Teaching and Higher Education Act 1998, namely provisions relating to the interest which may be charged on the loans during repayment and the effect of bankruptcy on a student's entitlement to the loan, or obligation to repay it. Those other relevant regulations are revoked by these Regulations.

The majority of the provisions of these Regulations come into force on 6 April 2009. Provisions relating to the interest payable on loans and the insolvency provisions in Part 6 come into force on 1 September 2009. Provisions relating to repayment by direct debit come into force on 21 December 2009.

Under these Regulations, repayments will be made by borrowers in four ways:

- (c) through HMRC through the tax self-assessment process;
- (d) by deductions from salaries and other employment-related payments by employers, which are paid directly to HMRC by employers;
- (e) by direct payments to the Secretary of State or Welsh Ministers, either as voluntary repayments or where borrowers are living and working abroad; or
- (f) by direct debit payments to the Secretary of State or Welsh Ministers, within the last two years of the loan's repayment term.

Borrowers can make direct payments to the Secretary of State, Welsh Ministers, or a loan purchaser at any time. Repayment by direct debit in the last 23 months of repayment for borrowers in England and Wales enables a borrower to manage repayments so as not to risk overpayment through the tax system, and represents a change from the previous system. A borrower may notify the Secretary of State or Welsh Ministers of a desire to repay the remainder of their loan by fixed instalments. Subject to certain exceptions and conditions the Secretary of State or Welsh Ministers will agree.

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Part 1 sets out the main definitions applying to the Regulations and deals with the application of the Regulations to the different parts of the United Kingdom. It also deals with how notices and communications required or permitted under the Regulations may be made or given. Parts 1 and 2 of the Regulations extend to both England and Wales. However, Parts 3 and 4 only apply to Wales if the Welsh Ministers determine that student loan repayments are to be made through the tax system and give notice of this to the Secretary of State in respect of student loans collectively, or individually. If Parts 3 and 4 are not applied by Welsh Ministers, those regulations in Part 2 which also relate to repayments through the tax system will also cease to apply.

These Regulations do not extend to Scotland other than to the extent that they may impose requirements or rights on employers, borrowers, loan purchasers or HMRC anywhere in the United Kingdom in relation to repayments of student loans governed by these Regulations.

The Scottish Ministers may, if they determine, give notice to HMRC that they wish repayments of student loans made under the Education (Scotland) Act 1980 to be collected through the tax system, and in those circumstances Parts 3 and 4, and any necessary provisions of Part 2 will also apply to those loans.

Part 2 makes provisions which apply to all loans made by the Secretary of State and to loans made by the Welsh Ministers, though some aspects will not apply in relation to Wales if Welsh Ministers do not determine to collect student loan repayments through the tax system.

This Part sets out the functions of HMRC in relation to monies collected by it, how the penalty regime set out in the Taxes Management Act 1970 will be applied to the repayments system and how repayments of loans sold to private sector bodies (known in the Regulations as ‘loan purchasers’) will be dealt with (*regulations 10-13*).

It sets out how repayments made by borrowers will be applied to outstanding penalties, charges, costs, interest and principal (*regulation 14*). Borrowers do not become liable to repay any loan until the April after they have completed or left their courses. A borrower may, however, repay a loan at any point if the borrower wishes to.

The Secretary of State or Welsh Ministers must notify the borrower and HMRC of the dates when loan repayments are to start and cease (*regulation 15*). A borrower’s liability to repay a student loan will end only if the loan is cancelled, the loan is repaid in full or if specified other events occur. Different provision is made for eligible teachers who qualify under the Education (Teacher Student Loans) (Repayment etc) Regulations 2003 (*regulation 16*).

Repayments made directly to the Secretary of State, to Welsh Ministers, or by direct debit are credited to a borrower’s account on the date of receipt. Repayments made through self-assessment are credited to the borrower’s account on 31 January in the tax year following the tax year for which those repayments are due. Repayments made through PAYE are deemed paid in 12 equal amounts across the year (*regulation 17*).

A borrower may repay through direct debit at the end of the life of their loan to prevent over-repayment through the tax system if they request it, and previous attempts at payment by this method have not failed as a result of the direct debit being refused or cancelled without permission. A borrower can agree to re-enter the PAYE system at any time (*regulation 18*).

Loans are cancelled when a borrower dies, is permanently disabled or reaches the age of 65. In relation to post -2006 student loans, the cancellation at age 65 is replaced with cancellation after 25 years (*regulation 19*).

If a borrower repays more than is owed to the Secretary of State or Welsh Ministers, any over-payment is repaid. Over-payment through PAYE is repaid with interest at the same level as is applied to the loans by the Secretary of State or Welsh Ministers (*regulation 20*).

The loans may carry interest which is applied daily at a rate of interest set by the Secretary of State from year to year, and which (if interest is charged) is equivalent to the Retail Prices (All items) Index for the 12 months to March preceding the beginning of the academic year in September (subject to an

overall ‘low interest’ cap imposed by consumer credit legislation). The Secretary of State and Welsh Ministers must publish the rate annually (*regulation 21*). These interest provisions were previously contained in the annual Education (Student Support) Regulations and the Welsh equivalent. Such interest provisions contained in those Regulations are revoked in these Regulations.

The Secretary of State or Welsh Ministers may require the borrower to provide information about their name, address, personal details and income and may apply penalties to the borrower if the borrower fails to comply with these requirements (*regulations 22-27*). In addition to specific penalties for failing to comply, if the Secretary of State or Welsh Ministers incur any costs or expenses, whether on their own account or on behalf of a loan purchaser, in obtaining information which the borrower is required to provide, they may recover those costs and expenses and add them to the balance of the loan outstanding to its owner (*regulation 25*). The Regulations may also require the borrower to repay the loan in full, immediately, if the borrower fails to comply with the obligations to provide information or pay penalties (*regulation 27*).

Part 3 deals with repayment of student loans through the self-assessment system for borrowers required to submit a self- assessment tax return. Provisions of the Taxes Management Act 1970 dealing with payment of income tax through self-assessment are extended to cover repayment of student loans, and loan repayments through self-assessment are treated like income tax.

The borrower repays 9% of total annual income over £15,000 including any unearned income over £2000. Certain exclusions and reliefs are applied to the calculation of the borrower’s income for these purposes (*regulation 29*).

Borrowers repaying through self-assessment must include information on student loan repayments in their annual return, and HMRC can request further information, accounts and documents as they can in relation to income tax. Borrowers make repayment by 31 January in the tax year following the relevant tax year, unless other requirements about a borrower’s return are imposed (*regulation 35*). The borrower may be liable to surcharges, interest and penalties as would apply to income tax, if the borrower’s return is missing, late, incomplete, misleading or if the borrower makes late or incomplete repayments.

Part 4 deals with how borrowers who are employees repay student loans through their employers. Loan repayments are collected and accounted for by employers in the same way as income tax is deducted from an employee’s earnings, and earnings has the same meaning as it does for National Insurance contributions purposes. Employers can therefore calculate repayments on the same sum as they calculate National Insurance contributions. Repayment is made at the rate of 9% of annual earnings over £15,000 or the proportionate part of it, depending on the pay period. Employers can calculate the value of the deduction themselves or use Tables provided by the Secretary of State or Welsh Ministers for this purpose (*regulation 44*). The rules on aggregating earnings and for determining earning 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 an employer adopts practices to avoid or reduce the amount of student loan repayments, HMRC may give directions to ignore those practices (*regulation 45*).

HMRC may notify anyone who to their knowledge is an employer of a borrower and require that employer to make deductions from the employee’s earnings, and pay them to HMRC (*regulation 49*). The notice will apply from the first available pay date on or after that notice, and apply up until the date specified in a subsequent notice requiring the employer to cease making deductions (*regulation 50*). The employer is given directions as to how such deductions from the employee’s earnings rank against other deductions that the employer may be required to make (*regulation 51*), and specifies when and how student loan repayments must be paid to HMRC (*regulation 54*). HMRC may require an employer to render a return in respect of all employees detailing the repayments which the employer is liable to deduct, and may certify sums owing in respect of them whether HMRC is unaware of sums which may be owed by that employer (*regulation 55*) or has reason to believe that the employer is liable to pay repayments to HMRC (*regulation 56*). HMRC may require employers to pay interest on student loan repayments which are not made to HMRC at the

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right time (*regulation 58*). HMRC may recover any sums owing by employers as though they were income tax and may recover student loan repayments in the same cause of action as outstanding National Insurance contributions or tax (as part of a ‘combined amount’ (*regulation 57*)). For tax years commencing on or after 6 April 2009 those penalties provided for in Schedule 24 to the Finance Act 2007 will apply to employers who carelessly or deliberately submit incorrect returns, in place of the previous regime (*regulation 59*). Powers to inspect records and obtain information contained in Schedule 36 to the Finance Act 2008 will now apply (with modifications) in relation to a borrower’s compliance with Part 3 (*regulation 33*) and an employer’s compliance with Part 4 (*regulations 60 and 61*). The Regulations also provide for HMRC to formally determine, and certify, any sums which it appears are outstanding to HMRC from employers in respect of student loan repayments. Interest may also be charged on these sums formally determined (*regulations 62 and 63*).

If an employer dies, or the business is transferred to another person, the personal representative or successor will be liable, in general, to do anything which the original employer was liable to do under these Regulations (*regulations 64-65*).

Where an employee leaves an employment, the employer must state in that employee’s Form P45 that the employee is a borrower provided that the employer had received a notice stating that the employee is liable to make repayments, and had not also subsequently received a notice requiring the employer not to make deductions before the employee left the employment (*regulation 67*).

An employer who either fraudulently or negligently makes incorrect deductions or makes or receives incorrect payments in a tax year for an employee is liable to a penalty of £3000 per each such employee per tax year in respect of whom the fraudulent or negligent behaviour has occurred (*regulation 68*). Penalties under Part 4 may be recovered by HMRC in the same way as income tax (*regulation 69*). Various provisions of the PAYE Regulations are applied to collections with certain modifications (*regulation 70*).

Part 5 provides for repayment by borrowers who are not resident in the UK for income tax purposes. Borrowers must tell the Secretary of State or Welsh Ministers if they are overseas for more than 3 months, and provide other details (including income levels) if requested to by the Secretary of State or Welsh Ministers. The Secretary of State or Welsh Ministers may require a borrower resident overseas to make repayments by way of fixed instalments each month (*regulation 75*) and, if a borrower has failed to provide necessary notices or information, may require the borrower to make such repayment as will reduce the amount outstanding on the loan to the level it would have been had the borrower given the notice or provided the information (*regulation 73*).

A borrower who has provided the necessary information to the Secretary of State or Welsh Ministers about residence overseas and income levels may apply to the Secretary of State or Welsh Ministers (as appropriate) to make repayments by way of income-related instalments, and if the Secretary of State or Welsh Ministers agree, the repayments must be at the rate of 9% of gross income which the Secretary of State or Welsh Ministers consider the borrower is likely to receive in the next 12 months, disregarding any income below the applicable threshold or on which payment will be made through the UK tax system (*regulation 75*). The applicable threshold varies according to where in the world the borrower is and the level of the price level index for that country determined by Eurostat or the World Bank (*regulation 76*). A borrower may apply to the Secretary of State or Welsh Ministers to cease making repayments by instalments if they become resident in the UK and have not been required to repay the loan in full immediately under regulation 78 (*regulation 77*).

A borrower failing to make repayment of any instalment or sum which is due may be required by the Secretary of State or Welsh Ministers to make immediate repayment of the outstanding balance of the loan (*regulation 78*).

If the Secretary of State or Welsh Ministers incur any costs or expenses, whether on their own account or on behalf of a loan purchaser in obtaining information about a borrower’s location, details and income abroad, or in obtaining payment of the whole of the outstanding loan, they may recover those costs and expenses and add them to the balance of the loan (*regulation 79*).

Part 6 re-enacts provisions previously contained in the Student Support Regulations concerning insolvency of borrowers. This provides that in relation to borrowers in England and Wales, and Northern Ireland, sums by way of student loans which are received or to which a borrower is entitled after their bankruptcy, do not form part of their estate for the purposes of that bankruptcy. In England and Wales, any debt which a student loan borrower owes to the Secretary of State, Welsh Ministers or loan purchaser does not at any time form part of the debts of that borrower for the purposes of the bankruptcy, if the bankruptcy commences on or after 1 September 2004. If the bankruptcy commences prior to that date, only sums received or entitled to be received by the borrower prior to the commencement of the bankruptcy will form part of the bankrupt's debts in the bankruptcy.

Similar provisions are applied to Northern Ireland, except that the relevant date for determining whether student loan debts incurred prior to the bankruptcy form part of the debts of the bankruptcy is 1 March 2005.

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.