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STATUTORY INSTRUMENTS

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**2016 No. 606**

**EDUCATION, ENGLAND**

**The Education (Postgraduate Master's  
Degree Loans) Regulations 2016**

<i>Made</i>	- - - -	<i>24th May 2016</i>
<i>Laid before Parliament</i>		<i>26th May 2016</i>
<i>Coming into force</i>	- -	<i>16th June 2016</i>

The Secretary of State for Business, Innovation and Skills makes the following Regulations in exercise of the powers conferred by sections 22 and 42(6) of the Teaching and Higher Education Act 1998(1):

**Citation, commencement, extent and application**

1.—(1) These Regulations may be cited as the Education (Postgraduate Master's Degree Loans) Regulations 2016 and come into force on 16th June 2016.

(2) Subject to paragraphs (3) and (4), these Regulations apply in relation to England only.

(3) Regulation 97(1) applies to Wales as well as England, and regulation 97(2) extends to Northern Ireland.

(4) These Regulations extend to all of the United Kingdom in so far as they impose any obligation or confer any power on HMRC, an employer or a borrower in relation to repayments under Chapters 3 or 4 of Part 2 or on any other person in relation to the retention or production of information or records.

(5) These Regulations apply in relation to the provision of a loan to students in relation to a postgraduate master's degree course which begins on or after 1st August 2016 whether anything done under these Regulations is done before, on or after 1st August 2016.

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(1) 1998 c.30. Section 22 was amended by the Learning and Skills Act 2000 (c.21), section 146 and Schedule 11, the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, the Finance Act 2003 (c.14), section 147 the Higher Education Act 2004 (c.8), sections 42 and 43 and Schedule 7 and the Apprentices, Skills, Children and Learning Act 2009 (c.22), section 257(1) and (2). See section 43(1) of the 1998 Act for the definition of "prescribed" and "regulations".

# PART 1

## CHAPTER 1

### Interpretation

2.—(1) For the purposes of Part 1—

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

“academic authority” means, in relation to an institution, the governing body or other body having the functions of a governing body and includes a person acting with the authority of that body;

“academic year” means the period of twelve months beginning on 1st January, 1st April, 1st July or 1st September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1st January and before 1st April, on or after 1st April and before 1st July, on or after 1st July and before 1st August or on or after 1st August and on or before 31st December, respectively;

“authority-funded” means—

- (a) in relation to educational institutions in England, maintained or assisted by recurrent grants from the Higher Education Funding Council for England;
- (b) in relation to educational institutions in Wales, maintained or assisted by recurrent grants from the Higher Education Funding Council for Wales;
- (c) in relation to educational institutions in Scotland, maintained or assisted by recurrent grants from the Scottish Funding Council; and
- (d) in relation to educational institutions in Northern Ireland, maintained or assisted by recurrent grants from the Department for the Economy in Northern Ireland or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

“course” means a taught programme of study, a programme of research, or a combination of both, and which may include one or more periods of work experience, and which leads, on successful completion, to the award of a postgraduate master’s degree;

“designated course” means a course designated under regulation 4 or by the Secretary of State under regulation 4(6);

“Directive 2004/38” means Directive 2004/38 of the European Parliament and of the Council of 29th April 2004<sup>(2)</sup> on the rights of citizens of the Union and their family members to move and reside freely in the territory of the Member States;

“distance learning course” means a course on which a student undertaking the course is not required to be in attendance by the institution providing the course, where “required to be in attendance” is not satisfied by a requirement imposed by the institution to attend any institution—

- (a) for the purposes of registration or enrolment or any examination;
- (b) on a weekend or during any vacation; or
- (c) on an occasional basis during the week;

“electronic signature” is so much of anything in electronic form as—

- (a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and

(2) OJ L158, 30.4.2004, p77-123.

- (b) purports to be so incorporated or associated for the purpose of being used in establishing the authenticity of the communication or data, the integrity of the communication or data, or both;

“eligible prisoner” means a prisoner—

- (a) who begins a designated course on or after 1st August 2017;
- (b) who is serving a sentence of imprisonment in the United Kingdom;
- (c) has been authorised by the prison Governor or Director or other appropriate authority to study the designated course; and
- (d) whose earliest release date is within 4 years of the first day of the first academic year of the designated course.

“eligible student” has the meaning given in regulation 3;

“equivalent or higher qualification” means a qualification determined in accordance with paragraph (2) to be an equivalent or higher qualification;

“EU national” means a national of a Member State of the EU;

“fees” has the meaning given in section 41(1) of the Higher Education Act 2004(3);

“full-time equivalent” means a full-time course leading to a postgraduate master’s degree in the same subject as the part-time course in question;

“healthcare bursary” means a bursary or award of similar description under section 63 of the Health Services and Public Health Act 1968(4) or Article 44 of the Health and Personal Social Services (Northern Ireland) Order 1972(5);

“information” includes documents;

“Islands” means the Channel Islands and the Isle of Man;

“period of eligibility” has the meaning given in regulation 5 in relation to an eligible student;

“periods of work experience” means—

- (a) periods of industrial, professional or commercial experience associated with the designated course at an institution, but at a place outside that institution;
- (b) periods during which a student is employed and residing in a country whose language is one that the student is studying for that student’s designated course (provided that the period of residence in that country is a requirement of that student’s course and the study of one or more modern languages accounts for not less than one half of the total time spent studying on the course);

“person granted humanitarian protection” means a person—

- (a) who, on the grounds of humanitarian protection, has been granted leave to remain under the immigration rules as defined in section 33(1) of the Immigration Act 1971(6);
- (b) whose leave to remain is extant, or in respect of whose leave to remain an appeal is pending (within section 104 of the Nationality, Immigration and Asylum Act 2002(7); and

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(3) 2004 c.8, to which there have been amendments not relevant to these Regulations.

(4) 1968 c.46, as amended by 1973 (c.32), 1977 (c.49), 1978 (c.29), 1985 (c.51), 1988 (c.49), 1994 (c.39), 1995 (c.17), 1997 (c.46), 1999 (c.8), 2001 (c.15), 2002 (c.17), 2003 (c.43), 2004 (c.31), 2006 (c.43), S.I. 1996/1008, S.I. 2002/2202, S.I. 2002/2469, S.I. 2004/288, S.I. 2004/957, S.I.2006/1056 and S.I. 2007/961.

(5) S.I. 1972/1265 (N.I. 14), to which there have been amendments not relevant to these Regulations.

(6) 1971 c.77.

(7) 2001 c.41; section 104 was amended by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c.19), section 26 and Schedule 2 and the Immigration, Asylum and Nationality Act 2006 (c.13), section 9).

(c) who has been ordinarily resident in the United Kingdom and Islands throughout the period since the person was granted such leave to remain;

“postgraduate master’s degree loan” means the total outstanding principal, interest, penalties and charges owed by a borrower to the Authority pursuant to these Regulations excluding any interest, penalties or charges payable under Chapter 3 or 4 of Part 2;

“prisoner” includes a person detained in a young offender institution;

“private institution” means an institution which is not publicly funded;

“public funds” means moneys provided by Parliament or by a government authority outside the United Kingdom;

“publicly funded”, unless otherwise indicated, means maintained or assisted by recurrent grants out of public funds and related expressions are to be interpreted accordingly;

“refugee” means a person who is recognised by Her Majesty’s government as a refugee within the meaning of the United Nations Convention relating to the Status of Refugees done at Geneva on 28th July 1951<sup>(8)</sup> as extended by the Protocol thereto which entered into force on 4th October 1967<sup>(9)</sup>;

“right of permanent residence” means a right arising under Directive 2004/38 to reside in the United Kingdom permanently without restriction;

“student loans legislation” means the student support regulations, the Education (Student Loans) Act 1990<sup>(10)</sup>, the Education (Student Loans) (Northern Ireland) Order 1990<sup>(11)</sup>, the Education (Scotland) Act 1980<sup>(12)</sup> and regulations made under those Acts or that Order, the Education (Student Support) (Northern Ireland) Order 1998<sup>(13)</sup> and regulations made under that Order or the 1998 Act and regulations made under that Act;

“student support regulations” means the Education (Student Support) Regulations 2011<sup>(14)</sup>;

“Turkish worker” means a Turkish national who—

- (a) is ordinarily resident in the United Kingdom and Islands; and
- (b) is, or has been, lawfully employed in the United Kingdom;

(2) The Secretary of State may determine that a qualification is an equivalent or higher qualification if—

- (a) an eligible student holds a higher education qualification from any institution whether or not in the United Kingdom; and
- (b) the qualification referred to in sub-paragraph (a) is a postgraduate master’s degree from an institution in the United Kingdom or is of an academic level which, in the opinion of the Secretary of State, is equivalent to or higher than a qualification to which the designated course leads.

<sup>(8)</sup> Cmnd. 9171.

<sup>(9)</sup> Cmnd. 3906 (out of print).

<sup>(10)</sup> 1990 c.6; Repealed by the Teaching and Higher Education Act 1998 (c.30), Schedule 4.

<sup>(11)</sup> S.I. 1990/1506 (N.I. 11); amended by S.I. 1996/274 (N.I. 1), Article 43 and Schedule 5 Part II, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (NI) 1998 No 306.

<sup>(12)</sup> 1980 c44.

<sup>(13)</sup> S.I. 1998/1760 (N.I. 14), to which there have been amendments not relevant to these Regulations.

<sup>(14)</sup> S.I. 2011/1986; amended by S.I. 2012/1653, S.I. 2013/235, S.I.2013/630, S.I.2013/1728, S.I.2013/3106, S.I.2014/1766, S.I.2014/2013, S.I. 2014/2765, S.I.2015/1951, S.I. 2016/27, S.I. 2016/584.

## CHAPTER 2

### Eligible students

**3.—(1)** An eligible student qualifies for a postgraduate master’s degree loan in connection with a designated course subject to and in accordance with these Regulations.

(2) Subject to paragraphs (3) to (7), a person is an eligible student in connection with a designated course if in assessing that person’s application for a postgraduate master’s degree loan the Secretary of State determines that the person falls within one of the categories set out in Part 2 of Schedule 1.

(3) A person (“A”) is not an eligible student if—

- (a) A has reached the age of 60 on the first day of the academic year in which the designated course starts;
- (b) A is in breach of any obligation to repay any loan;
- (c) A has reached the age of 18 and has not ratified any agreement for a loan made with A when A was under the age of 18;
- (d) A has, in the opinion of the Secretary of State, shown by A’s conduct that A is unfitted to receive a postgraduate master’s degree loan;
- (e) A is a prisoner, unless A is an eligible prisoner;
- (f) A is enrolled on a course which is a designated course under regulations 5 (designated course), 122 (designated distance learning course) and 139 (designated part-time course) of the student support regulations and is receiving support under the student support regulations for that course;
- (g) A has already obtained an equivalent or higher qualification;
- (h) A is already enrolled on a designated course and is in receipt of a postgraduate master’s degree loan under these Regulations for that course;
- (i) Subject to paragraph (7), A has previously received a postgraduate master’s degree loan under these Regulations; or
- (j) A is eligible to apply for, in connection with the course,—
  - (i) a healthcare bursary;
  - (ii) any allowance under the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007<sup>(15)</sup>; or
  - (iii) any allowance, bursary or award of similar description made under section 67(4)(a) of the Care Standards Act 2000<sup>(16)</sup> which includes payment for meeting additional expenditure incurred by A by reason of A’s disability.

(4) Where the eligible student is undertaking a designated course which is a distance learning course, the student does not qualify for support in respect of that course unless the Secretary of State considers that the student is undertaking the course in England on the first day of the course, whether the course is a designated course at that date or is designated on a later date during the academic year.

(5) An eligible student ceases to be eligible for a postgraduate master’s degree loan in respect of a distance learning course, if the Secretary of State considers that the student is undertaking the course outside the United Kingdom notwithstanding whether that student has previously been considered by the Secretary of State to be undertaking their course within the United Kingdom.

(6) For the purposes of paragraphs (3)(b) and (3)(c), “loan” means a loan made under any provision of the student loans legislation.

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<sup>(15)</sup> S.S.I. 2007/151, amended by S.S.I. 2007/503.

<sup>(16)</sup> 2000 c.14.

(7) The Secretary of State may deem a person who has previously received a postgraduate master's degree loan under these Regulations in relation to a designated course, to be an eligible student where the Secretary of State is of the view that the person had not been able to complete the designated course to which the previous postgraduate master's degree loan related due to compelling personal reasons.

(8) The Secretary of State may only exercise his discretion to award a subsequent postgraduate master's degree loan to a particular person under paragraph (7) once in respect of a particular student.

### **Designated courses**

4.—(1) Subject to paragraphs (5) and (6), a course is a designated course for the purposes of section 22(1) of the 1998 Act and regulation 3 if it is—

- (a) a postgraduate master's degree course which falls within paragraph (2);
- (b) one of the following—
  - (i) wholly provided by an authority-funded institution;
  - (ii) provided by a publicly funded institution situated in the United Kingdom on behalf of an authority-funded institution; or
  - (iii) provided by an authority-funded institution in conjunction with an institution which is situated outside the United Kingdom;
- (c) substantially provided in the United Kingdom; and
- (d) a postgraduate master's degree course which—
  - (i) leads to an award granted or to be granted by a body falling within section 214(2)(a) or (b) of the Education Reform Act 1988<sup>(17)</sup>; and
  - (ii) the teaching and supervision which comprise the course has been approved by that body.

(2) For the purpose of paragraph 1(a), the postgraduate master's degree course must be one of the following—

- (a) a full-time course of one or two academic year's duration;
  - (b) a part-time course which it is ordinarily possible to complete in no more than twice the period ordinarily required to complete its one or two academic year full-time equivalent; or
  - (c) a part-time course that does not have a full-time equivalent and which it is ordinarily possible to complete in up to three academic years.
- (3) For the purposes of paragraph (1)(b) and (c)—
- (a) a course is provided by an institution if it provides the teaching and supervision which comprise the course, whether or not the institution has entered into an agreement with the student to provide the course;
  - (b) a course is substantially provided in the United Kingdom where at least half of the teaching and supervision which comprise the course is provided in the United Kingdom;
  - (c) a university and any constituent college or institution in the nature of a college of a university is to be regarded as authority-funded if either the university or the constituent college or institution is authority-funded;
  - (d) an institution is not to be regarded as publicly funded or authority-funded by reason only that it receives public funds from the governing body of a higher education institution in accordance with section 65(3A) of the Further and Higher Education Act 1992<sup>(18)</sup>; and

<sup>(17)</sup> 1988 c.40; s214(2)(a) was amended by 1992 (c.13).

<sup>(18)</sup> 1992 c.13; section 65(3A) was inserted by the Teaching and Higher Education Act 1998 (c.30), section 27.

- (e) a course is not to be regarded as provided on behalf of an authority-funded educational institution where a part of the course is provided by a private institution.
- (4) The designated course may, but need not, be a distance learning course.
- (5) A course cannot be a designated course for the purposes of regulation 3 if it is recognised as a designated course for the purposes of regulation 5 of the student support regulations<sup>(19)</sup>.
- (6) For the purposes of section 22 of the 1998 Act<sup>(20)</sup> and regulation 3(1), the Secretary of State may designate courses of higher education which are not designated under paragraph (1).
- (7) The Secretary of State may revoke or suspend the designation of a course which is designated under paragraph (6).

### **Period of eligibility**

- 5.—(1) A student’s status as an eligible student is retained in connection with a designated course until the status terminates in accordance with this regulation or regulation 3.
- (2) The period for which an eligible student retains that status is the “period of eligibility”.
- (3) Subject to the following paragraphs and regulation 3, the period of eligibility terminates at the end of the academic year in which the student completes the designated course.
- (4) The period of eligibility terminates when—
  - (a) the eligible student (“A”) withdraws from A’s designated course in circumstances where the Secretary of State is not obliged under regulation 6 to transfer A’s status as an eligible student to another course; or
  - (b) A abandons or is expelled from A’s designated course.
- (5) The Secretary of State may terminate the period of eligibility where A has shown by A’s conduct that A is unfitted to receive a postgraduate master’s degree loan.
- (6) If the Secretary of State is satisfied that an eligible student has failed to comply with any requirement to provide information under these Regulations or has provided information which is inaccurate in a material particular, the Secretary of State may take such of the following actions as the Secretary of State considers appropriate in the circumstances—
  - (a) terminate the period of eligibility;
  - (b) determine that the student no longer qualifies for a postgraduate master’s degree loan;
  - (c) treat any postgraduate master’s degree loan paid to the student as an overpayment which may be recovered under regulation 17.
- (7) Where the period of eligibility terminates before the end of the academic year in which the student completes the designated course, the Secretary of State may, at any time, renew the period of eligibility for such period as the Secretary of State determines.

### **Transfer of status**

- 6.—(1) Where an eligible student “A” transfers to another course, the Secretary of State must transfer A’s status as an eligible student to that course where—
  - (a) he receives a request from the eligible student to do so;
  - (b) he is satisfied that one or more of the grounds for transfer in paragraph (2) applies; and
  - (c) the period of eligibility has not terminated.
- (2) The grounds for transfer are—

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<sup>(19)</sup> S.I. 2011/1986; regulation 5 was amended by S.I. 2013/1728, S.I. 2013/3106, S.I.2014/2765.

<sup>(20)</sup> 1998 c.30.

- (a) on the recommendation of the academic authority A ceases one designated course and starts to undertake another designated course at the same institution; or
- (b) A starts to undertake a designated course at another institution.

(3) Where A transfers under paragraph (1), A is entitled to receive in connection with the academic year of the course to which A transfers the remainder of the postgraduate master's degree loan in accordance with regulation 13 and, where relevant, regulation 16, in respect of the academic year of the course from which A transfers.

### **Students becoming eligible in the course of an academic year**

7. Where one of the events listed in regulation 8 occurs during the currency of a student's course, a student may qualify for a postgraduate master's degree loan, provided the student complies with the application provisions set out in chapter 3 of Part 1.

### **Events**

8. The events are—
- (a) the student's course becomes a designated course;
  - (b) the student or the student's spouse, civil partner or parent is recognised as a refugee or becomes a person granted humanitarian protection;
  - (c) a state accedes to the EU where the student is a national of that state or a family member (as defined in Part 1 of Schedule 1) of a national of that state;
  - (d) the student becomes a family member (as defined in Part 1 of Schedule 1) of an EU national;
  - (e) the student acquires the right of permanent residence;
  - (f) the student becomes the child of a Turkish worker;
  - (g) the student becomes a person described in paragraph 6(1)(a) of Schedule 1;
  - (h) the student becomes the child of a Swiss national; or
  - (i) the student commences a designated course after the start date of the designated course as the relevant academic authority has permitted the student to commence the course at this later start date.

## **CHAPTER 3**

### **Applications for a postgraduate master's degree loan**

9.—(1) Where a person (the "applicant") applies for a postgraduate master's degree loan in connection with a designated course, the applicant must complete and submit to the Secretary of State an application in such form and accompanied by such documentation as the Secretary of State may require.

(2) The Secretary of State may take such steps and make such inquiries as the Secretary of State considers necessary to determine whether the applicant is an eligible student.

(3) The Secretary of State must notify the applicant of whether the applicant qualifies for a postgraduate master's degree loan.

### **Time limits**

- 10.—(1) The general rule is that the application must reach the Secretary of State no later than—



- (a) the end of the ninth month of the academic year in respect of which it is submitted, where the designated course is of one year in duration; or
- (b) no later than the end of the ninth month of the second academic year of the course, where the designated course has a duration of more than one academic year.

(2) The general rule does not apply where the Secretary of State considers that having regard to the circumstances of the particular case the time limit should be relaxed, in which case the application must reach the Secretary of State not later than such date as the Secretary of State specifies.

(3) Where the applicant is applying to amend the amount of the postgraduate master's degree loan under regulation 12(3), the application must reach the Secretary of State no later than—

- (a) the end of the ninth month of the academic year in respect of which it is submitted, where the designated course is of one year in duration; or
- (b) no later than the end of the ninth month of the second academic year of the course, where the designated course has a duration of more than one academic year.

#### **Requirement to enter into a contract for a postgraduate master's degree loan**

**11.**—(1) To receive a postgraduate master's degree loan a student must enter into a contract with the Secretary of State.

(2) Where the Secretary of State requires a contract to be signed by a student, an electronic signature in such form as the Secretary of State may specify satisfies such a requirement.

### **CHAPTER 4**

#### **Amount of the postgraduate master's degree loan**

**12.**—(1) Subject to paragraph (2), a person may apply for a postgraduate master's degree loan of up to £10,000 towards the costs of undertaking a designated course.

(2) An applicant whom the Secretary of State would consider to be an eligible prisoner may apply for a postgraduate master's degree loan to cover the whole or part of the fees of the designated course (but not towards other costs), but such postgraduate master's degree loan cannot be of more than £10,000.

(3) An eligible student may apply to the Secretary of State to amend the amount of postgraduate master's degree loan for which the student has applied, provided that—

- (a) the maximum postgraduate master's degree loan amount set out in paragraphs (1) and (2) is not exceeded;
- (b) such application is made in accordance with regulation 10(3).

(4) If the Secretary of State under regulation 9(2) has determined that the applicant is an eligible student, the Secretary of State must pay the amount the eligible student has applied for in accordance with regulation 13, provided that the amount applied for is in accordance with paragraphs (1) and (2).

#### **Payment of postgraduate master's degree loans**

**13.**—(1) The Secretary of State may pay the postgraduate master's degree loan for which a student qualifies under this Part—

- (a) either as a lump sum or by instalments; and
- (b) at such times, and in such manner, as the Secretary of State considers appropriate.

(2) The Secretary of State may make it a condition of entitlement to payment that the eligible student must provide the Secretary of State with particulars of a bank or building society account in the United Kingdom into which payments may be made by electronic transfer.

(3) In the case of an eligible prisoner, the Secretary of State must pay the postgraduate master's degree loan for which an eligible prisoner qualifies to the institution to which the eligible prisoner is liable to make payment for the fees or to such third party that the Secretary of State considers appropriate for the purpose of ensuring the payment of the fees to the relevant institution.

(4) The Secretary of State must not pay the whole or part of the postgraduate master's degree loan until the Secretary of State has received from the academic authority confirmation (in such form as may be required by the Secretary of State) of the student's attendance on the course.

(5) The academic authority must forthwith inform the Secretary of State and provide the Secretary of State with particulars if the student withdraws, is suspended or is expelled from their course, or is otherwise absent.

### **Provision of United Kingdom national insurance number**

14.—(1) The Secretary of State may make it a condition of entitlement to payment of the whole or part of the postgraduate master's degree loan that the eligible student must provide the Secretary of State with the student's United Kingdom national insurance number.

(2) Where the Secretary of State has imposed a condition under paragraph (1), the Secretary of State must not make payment of the whole or part of the postgraduate master's degree loan to the eligible student before the Secretary of State is satisfied that the student has complied with that condition.

(3) Despite paragraph (2), the Secretary of State may make payment of the whole or part of the postgraduate master's degree loan to an eligible student if the Secretary of State is satisfied that owing to exceptional circumstances it would be appropriate to make such a payment without the eligible or qualifying student having complied with the condition imposed under paragraph (1).

### **Absence from course**

15.—(1) Subject to paragraphs (2) to (4), if the Secretary of State receives notice under regulation 13(5) or paragraph (2) (a) to (c) of Schedule 2 to these Regulations of an eligible student's lack of attendance on the designated course, the Secretary of State may not make any further payment of the postgraduate master's loan.

(2) Further payments may be made despite the student's lack of attendance if, in the opinion of the Secretary of State, those payments would be appropriate in all the circumstances during the student's absence.

(3) If the eligible student recommences the course the student must inform the Secretary of State and give full details of the length and cause of the preceding absence.

(4) After considering the student's notification under paragraph (2), the Secretary of State must recommence further payments of the postgraduate master's loan under regulation 13 if, in the opinion of the Secretary of State, it would be appropriate in all the circumstances for such payment to be made.

### **Effect of becoming, or ceasing to be, an eligible prisoner**

16.—(1) Paragraph (2) applies where an eligible student who is in receipt of a postgraduate master's degree loan becomes an eligible prisoner and continues to undertake a designated course.

(2) The Secretary of State must—

- (a) adjust future payment of the postgraduate master's degree loan or future payments of instalments of the postgraduate master's degree loan, so that the total of the postgraduate master's degree loan awarded complies with the maximum postgraduate master's degree loan amount the student, as an eligible prisoner, is entitled to under regulation 12(2); and

(b) pay any remaining sum of the postgraduate master's degree loan, or any future instalments of the postgraduate master's degree loan, in accordance with regulation 13(3).

(3) Paragraphs (4) to (6) apply where an eligible prisoner who is in receipt of a postgraduate master's degree loan ceases to be an eligible prisoner and remains an eligible student, and continues to undertake a designated course.

(4) The Secretary of State must pay the remaining sum or the postgraduate master's degree loan, or future instalments of the postgraduate master's degree loan, in accordance with regulation 13(1).

(5) Where an eligible student ("A") ceases to be an eligible prisoner and would have qualified for a higher amount of postgraduate master's degree loan had A not been an eligible prisoner when A's loan application was originally determined in accordance with these Regulations, A may apply for the amount of loan to be increased.

(6) The maximum amount of the increase in A's postgraduate master's degree loan for which A may apply under paragraph (5) is the amount which is calculated by reference to the following formula—

$$\frac{(F - R)}{M} \times T$$

where—

F equals the amount which A would have qualified for if A had not been an eligible prisoner;

R equals the amount which A qualifies for as an eligible prisoner;

T is the number of days of the course which remain when A ceases to be an eligible prisoner beginning with the day after the day on which A ceases to be an eligible prisoner; and

M is the total number of days of the duration of the course.

### **Overpayments of a postgraduate master's degree loan**

17.—(1) Any overpayment of a postgraduate master's degree loan is recoverable by the Secretary of State from—

(a) the institution or third party which received the monies of the postgraduate master's degree loan where payment was made to such an institution or third party; or

(b) the student who received the postgraduate master's degree loan.

(2) A student must, if so required by the Secretary of State, repay any amount of the postgraduate master's degree loan paid in respect of a student which for whatever reason exceeds the amount of loan to which the student is entitled.

(3) An overpayment of a postgraduate master's degree loan may be recovered from a student under paragraph (1)(b) in whichever one or more of the following ways the Secretary of State considers appropriate in all the circumstances—

(a) by subtracting the overpayment from any amount of the postgraduate master's degree loan which remains to be paid;

(b) by subtracting the overpayment from any kind of grant or loan payable to the student from time to time pursuant to regulations made by the Secretary of State under section 22 of the 1998 Act;

(c) by requiring the student to repay the postgraduate master's degree loan in accordance with Part 2; or

(d) by taking such other action for the recovery of an overpayment as is available to the Secretary of State.

## CHAPTER 5

### Information requirements

**18.**—(1) Schedule 2 makes further provision about the supply of information by applicants and eligible students.

(2) The Secretary of State may at any time request from an applicant or eligible student information that the Secretary of State considers is required to recover a postgraduate master's degree loan.

(3) The Secretary of State may at any time require an applicant or eligible student to enter into an agreement to repay a postgraduate master's degree loan by a particular method.

(4) The Secretary of State may at any time request from an applicant or eligible student sight of their valid national identity card, valid passport issued by the state of which they are a national or their birth certificate.

(5) Where the Secretary of State has requested information under this regulation, the Secretary of State may withhold any payment of a postgraduate master's degree loan until the person provides what has been requested or provides a satisfactory explanation for not complying with the request.

(6) Where the Secretary of State has required an agreement as to the method of repayment under this regulation, the Secretary of State may withhold any payment of a postgraduate master's degree loan until the person provides what has been required.

## PART 2

### CHAPTER 1

### Interpretation

**19.**—(1) For the purposes of Part 2—

“the 1970 Act” means the Taxes Management Act 1970(**21**);

“the 1998 Act” means the Teaching and Higher Education Act 1998(**22**);

“the 2003 Act” means the Income Tax (Earnings and Pensions) Act 2003(**23**);

“the 2005 Act” means the Income Tax (Trading and Other Income) Act 2005(**24**);

“the 2007 Act” means the Income Tax Act 2007(**25**);

“the 2009 Regulations” means the Education (Student Loans) (Repayment) Regulations 2009(**26**);

“academic year” means the period from 1 September in any year to 31 August of the following year, regardless of whether this is, in fact, the period over which a borrower's course runs;

“the Authority” in relation to a Masters loan made by the Secretary of State pursuant to Part 1 of these Regulations, means the Secretary of State;

“borrower” means a person to whom the Authority has lent money pursuant to Part 1 of these Regulations and who has not received a notice from the Authority that it has been repaid or cancelled;

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(21) 1970 c.9.

(22) 1998 c.30.

(23) 2003 c.1.

(24) 2005 c.5.

(25) 2007 c.3.

(26) S.I. 2009/470.

“HMRC” means Her Majesty’s Revenue and Customs;

“National Insurance number” means the National Insurance number allocated within the meaning of the Social Security (Contributions) Regulations 2001(27);

“overseas provisions” means the requirements of these Regulations in Chapter 5 of this Part;

“overseas borrowers” means borrowers making or due to make repayments in accordance with Chapter 5 of this Part;

“postgraduate master’s degree loan” means the total outstanding principal, interest, penalties and charges owed by a borrower to the Authority pursuant to these Regulations excluding any interest, penalties or charges payable under Chapter 3 or 4 of this Part;

“repayment” means repayment of a postgraduate master’s degree loan;

“repayment threshold” has the meaning given to it in regulation 39(7);

“RPI” means the percentage increase between the retail prices all items index published by the Office for National Statistics for the two Marches immediately before the commencement of the academic year;

“Secretary of State” includes any person exercising functions on behalf of a Secretary of State pursuant to section 23(4) of the 1998 Act;

“student loans legislation” means the student support regulations, the Education (Student Loans) Act 1990(28), the Education (Student Loans) (Northern Ireland) Order 1990(29), the Education (Scotland) Act 1980(30) and regulations made under those Acts or that Order, the Education (Student Support) (Northern Ireland) Order 1998(31) and regulations made under that Order or the 1998 Act and regulations made under that Act;

“student support regulations” means the Education (Student Support) Regulations 2011(32);

“the Taxes Acts” has the same meaning as it has in the 1970 Act;

“tax year”—

- (a) for the purposes of Chapter 4 of this Part and any provision of Chapter 2 of this Part relating to Chapter 4 means the period from 6 April to 5 April of the following year;
- (b) subject to sub-paragraph (c), for the purposes of Chapter 3 of this Part and any provision of Chapter 2 of this Part relating to Chapter 3 means any year of assessment for the purposes of the 1970 Act;
- (c) for the purposes of regulations 46 and 50(1) and (2) means the period from 6 April to 5 April of the following year;

“the tribunal” means the First-tier Tribunal or, where determined by or under the Tribunal Procedure (Upper Tribunal) Rules 2008(33), the Upper Tribunal.

### **Service by post or electronic communication**

**20.**—(1) Any notice or other document which is authorised or required to be given, served or issued under Chapters 1 to 5 of this Part may be sent by post, or, if the recipient has previously agreed to receive communications in this format, by an agreed electronic format.

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(27) S.I. 2001/1004.

(28) 1990 c.6; Repealed by the Teaching and Higher Education Act 1998 (c.30), Schedule 4.

(29) S.I. 1990/1506 (N.I. 11); amended by S.I. 1996/274 (N.I. 1), Article 43 and Schedule 5 Part II, S.I. 1996/1918 (N.I. 15), Article 3 and the Schedule and S.I. 1998/258 (N.I. 1), Articles 3 to 6 and revoked, with savings, by SR (NI) 1998 No 306.

(30) 1980 c.44.

(31) S.I. 1998/1760 (N.I. 14), to which there have been amendments not relevant to these Regulations.

(32) S.I. 2011/1986; amended by S.I. 2012/303, S.I. 2012/1653, S.I. 2013/235, S.I. 2013/630, S.I. 2013/1728, S.I. 2013/1728, S.I. 2014/1530, S.I. 2014/1766, S.I.2014/2103, S.I. 2014/2756, S.I. 2015/1951, S.I.2016/211, S.I. 2016/270.

(33) S.I. 2008/2698.

(2) In particular, any notice which the Authority may give to HMRC may be transmitted electronically, and for these purposes a notice is transmitted electronically where the content and form of a notice is sent and received by electronic media between computer systems operated by the Authority and HMRC respectively.

## CHAPTER 2

### Interpretation

**21.**—(1) In this Chapter—

“date of receipt” in relation to a repayment is to be construed in accordance with regulation 27; “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<sup>(34)</sup>, personal independence payment under Part 4 of the Welfare Reform Act 2012<sup>(35)</sup>, armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>(36)</sup>, 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<sup>(37)</sup>.

### Functions of HMRC

**22.**—(1) HMRC must collect repayments from borrowers in accordance with Chapters 3 and 4 of this Part, and the provisions of section 1 of the 1970 Act apply for those purposes as they apply for the purposes of income tax.

(2) HMRC must, at such time and in such manner as the Treasury may direct, account for, and pay to, the Secretary of State the sums estimated by HMRC (in the manner so directed) to have been collected by it as repayments in accordance with Chapters 3 and 4 of this Part.

(3) Payments to the Secretary of State do not include any interest, penalties or charges payable under Chapter 3 or 4 of this Part and HMRC must cause any such sums which it recovers to be paid, at such times and under such regulations as the Treasury may from time to time prescribe, to accounts to be entitled “The Account of Her Majesty’s Exchequer”, at the Bank of England and the sums so paid form part of the Consolidated Fund.

### Officers of Revenue and Customs

**23.** Any legal proceedings or administrative act authorised by or done for the purposes of these Regulations begun by an officer of Revenue and Customs may be continued by another officer; and any officer may act for any other division or area.

### Penalties in relation to Chapters 3 and 4 of this Part

**24.**—(1) Section 98 of the 1970 Act (special returns etc) applies for the purposes of repayments under Chapters 3 or 4 of this Part as if any reference in that section to a provision in the Table is a reference to a provision in those Chapters 3 or 4 of this Part with the exception of regulations 40, 43, 77 and 78.

<sup>(34)</sup> 1992 c.4.

<sup>(35)</sup> 2012 c.5.

<sup>(36)</sup> S.I. 2011/517.

<sup>(37)</sup> S.I. 1987/1967 (see parts 3 and 4 of Schedule 2); relevant amending Regulations are S.I. 1988/663, S.I. 1988/2022, S.I. 1989/1678, S.I. 1991/2742, S.I. 1993/2119, S.I. 1994/2139, S.I. 1994/3061, S.I. 1995/482, S.I. 1995/515, S.I. 1997/543, S.I. 2000/681, S.I. 2002/3019, S.I. 2003/2379, S.I. 2007/688 and S.I. 2007/719.

(2) Schedule 38 to the Finance Act 2012<sup>(38)</sup> (Tax Agents: Dishonest Conduct) applies for the purpose of repayments under Chapter 3 or 4 of this Part as it applies for the purposes of income tax.

(3) Schedule 24 to the Finance Act 2007<sup>(39)</sup> (penalties for errors) applies in relation to the assessment of penalties in connection with Chapter 3 of this Part as it applies to penalties in connection with income tax.

(4) Sections 100 (determination of penalties by officer of Revenue and Customs), 100A (provisions supplementary to section 100) and 100B (appeals against penalty determinations) of the 1970 Act apply to penalties other than those outlined in regulation 50(3) in connection with repayment under Chapter 3 of this Part and all penalties under Chapter 4 of this Part as they apply to penalties in connection with income tax.

(5) Section 100C (penalty proceedings before the tribunal), 100D (penalty proceedings before court), 102 (mitigation of penalties), 103(3) and (4) (time limit for penalties), 103A (interest on penalties), 104 (savings for criminal proceedings) and 105 (evidence in cases of fraudulent conduct) of the 1970 Act apply to penalties in connection with repayments under Chapter 3 or 4 of this Part as they apply in connection with income tax.

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

(7) Section 118(2) of the 1970 Act (failure to act within limited time) applies in relation to anything required to be done under Chapters 3 or 4 of this Part as it applies in relation to anything required to be done under that Act.

(8) For the purposes of these Regulations, the amount of a repayment covered by any assessment under Chapter 3 is not deemed finally determined until that assessment can no longer be varied, whether by the tribunal on appeal or by the order of any Court.

### **Interest and penalties**

**25.**—(1) Interest and penalties charged under Chapters 3 or 4 of this Part are not added to the principal outstanding, are not part of the loan, and payments of such interest or penalties are not credited against the principal outstanding.

(2) Any repayments received by the Authority must be applied in reduction or satisfaction of the liabilities of a borrower in the following order—

- (a) first, any outstanding penalties, costs, expenses or charges under regulations 34 or 35;
- (b) second, any outstanding penalties, costs, expenses or charges under Chapter 5 of this Part;
- (c) third, any outstanding interest;
- (d) fourth, any outstanding principal, which will be reduced or satisfied from the date of receipt.

### **Timing of repayments: general**

**26.**—(1) A borrower may repay all or any part of a postgraduate master's degree loan to the Authority at any time, by making direct payments to the Authority.

(2) Subject to paragraph (3), a borrower is not required to repay any part of the postgraduate master's degree loan before the start of the following tax year commencing on 6 April after a

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<sup>(38)</sup> 2012 c.14.

<sup>(39)</sup> 2007 c.11; Schedule 24 was amended by the Finance Act 2008 (c.9) Schedule 40.

borrower ceases to be eligible for a loan under Part 1, whether by reason of having completed that course or otherwise.

(3) A borrower is not required to repay any part of the postgraduate master's degree loan under paragraph (2) before 6 April 2019.

- (4) Subject to paragraphs (8) and (9), the Authority must notify the borrower and HMRC of—
- (a) the first or, as the case may be, next tax year in respect of which the borrower may be required to make repayments under Chapter 3 of this Part;
  - (b) the date on and after which a borrower may be required to make repayments by deductions from earnings under Chapter 4 of this Part;
  - (c) the tax year in which the borrower will cease to be required to make repayments under Chapter 3 because of the occurrence of a relevant event; and
  - (d) the date on and after which a borrower will cease to be required to make repayments by way of deduction from earnings under Chapter 4 because of the occurrence of a relevant event.
- (5) For the purposes of paragraph (4)(c), a ‘relevant event’ occurs when—
- (a) the loan has been repaid in full to or via the Authority;
  - (b) an amount sufficient to repay the balance owing to the Authority is likely to be received by HMRC under Chapter 4 of this Part or by the Authority directly from overseas borrowers by 30 April in the tax year immediately following the tax year in which the notice is issued; or
  - (c) the loan has been cancelled.
- (6) For the purposes of paragraph (4)(d), a ‘relevant event’ occurs when—
- (a) the loan has been repaid in full to or via the Authority;
  - (b) an amount sufficient to repay in full the balance owing to the Authority is likely to be received by HMRC under Chapters 3 and 4 of this Part and by the Authority directly from overseas borrowers by the date given in the notice;
  - (c) the loan has been cancelled; or
  - (d) the borrower has undertaken to repay the loan in full after the date given in the notice in accordance with regulation 28 and meets the criteria of that regulation.
- (7) The Authority must not issue a notice under paragraph (4)(c) after the end of the calendar year during which the tax year specified in the notice ends.
- (8) Where the Authority has notified a borrower and HMRC that repayments under Chapters 3 and 4 of this Part must no longer be made but at a later date it appears to the Authority that the postgraduate master's degree loan has not been fully repaid, then a further notice may be given in accordance with paragraph (4).
- (9) No notice need be given under paragraph (4)(a) or (b) if the borrower's loan does not exceed £120.
- (10) Any notice which the Authority is required to give to HMRC pursuant to this regulation may be given in respect of one or more than one borrower, and in respect of each borrower, the Authority must provide the particulars required in paragraph (4).

### **Date of repayment**

**27.** For the purposes of this Chapter, repayment is considered to have been made by the borrower and received by the Authority as follows—



- (a) where an amount is paid by the borrower directly to the Authority, or by direct debit under regulation 28, a repayment of that amount is considered to have been received on the date on which the amount is, in fact, received;
- (b) where HMRC have notified the Authority that an amount has become payable to it in respect of a tax year under Chapter 3, a repayment of that amount is considered to have been received by the Authority of this Part on 31 January following the tax year, whether or not the borrower has, in fact, paid any or all of that amount to HMRC;
- (c) where an amount is deducted by an employer under Chapter 4 of this Part, that amount must be aggregated with all other amounts deducted in the same tax year and repayments of the aggregate amount will be considered to have been received by the Authority in equal instalments received on the days during the tax year which are—
  - (i) the last days of a month;
  - (ii) days after the date on which the Authority has given notice under regulation 26(4)(b) that payment should be deducted; and
  - (iii) days before the date on which the Authority has given notice under regulation 26(4)(d) that payment should cease to be deducted.

### **Direct debit repayment**

**28.**—(1) This regulation applies if—

- (a) the borrower gives notice to the Authority of an intention to repay the outstanding balance in accordance with this regulation;
- (b) the Authority is satisfied that the borrower is likely to repay all of the outstanding balance of the postgraduate master's degree loan under Chapter 4 of this Part within 23 months of that notice; and
- (c) the borrower has not previously ceased making payments under this regulation without the loan having being repaid in full, unless such cessation was agreed by the Authority.

(2) Where this regulation applies, subject to paragraphs (3) and (4), the Authority must give notice to HMRC, in accordance with regulation 26(4)(d) that deductions from the borrower's earnings are to cease from the date specified in the notice.

(3) The borrower must complete and return to the Authority in the format required by the Authority from time to time, a standing instruction to the borrower's bank authorising monthly lump sum payments to the Authority in such sum as is required to ensure payment of the outstanding balance within the next 23 months.

(4) The first date on which a bank, authorised by a borrower to make a payment, makes a payment must fall no later than 30 days after the date which the Authority specifies in a notice pursuant to regulation 26(4)(d).

(5) If at any time the instruction to the borrower's bank—

- (a) is refused on any second presentation by the Authority; or
- (b) is cancelled or otherwise altered by the borrower without the permission of the Authority given under paragraph (6),

then the Authority must give notice of any refusal or failed payment to the borrower and must give a notice to HMRC and to the borrower pursuant to regulation 26(4) that deductions from earnings are to recommence unless regulation 26(9) would otherwise apply.

(6) The borrower may, at any time, agree with the Authority that repayment in accordance with this regulation will cease, and thereafter the Authority must give a notice to HMRC and to the borrower in accordance with regulation 26(4) that repayment through the tax system is to recommence unless regulation 26(9) would otherwise apply.

(7) The Authority may suspend or delay the operation of paragraph (5) if and to the extent it appears to the Authority expedient to do so, taking into account the causes of the failed payment and the Authority must notify the borrower of any suspension or delay as the case may be.

(8) This regulation will not affect any voluntary repayments made by a borrower by any method pursuant to regulation 26(1).

### **Cancellation**

**29.**—(1) This regulation applies where a borrower is not in breach of any obligation to repay a—

- (a) postgraduate master's degree loan under the overseas provisions;
- (b) postgraduate master's degree loan under regulation 28;
- (c) loan made under the student loans legislation.

(2) The Authority must cancel the borrower's liability to repay the postgraduate master's degree loan when one of the following occurs—

- (a) the borrower dies;
- (b) the borrower receives a disability-related benefit and because of the disability is permanently unfit for work; or
- (c) the 30th anniversary of the date on which the borrower became liable to repay the postgraduate master's degree loan.

(3) The cancellation of the borrower's liability to repay the postgraduate master's degree loan under paragraph (2) does not affect the liability of the borrower to make repayments under Chapter 3 of this Part subject to and in accordance with that Chapter in respect of any tax year—

- (a) in the case of cancellation under paragraph (2)(a), during which the borrower was alive; and
- (b) in any other case, preceding the tax year during which the postgraduate master's degree loan was cancelled.

(4) The cancellation of a borrower's liability to repay the postgraduate master's degree loan under paragraph (2) does not affect the employer's liability to make deductions under Chapter 4 of this Part subject to and in accordance with that Chapter in respect of any earnings period ending before the date of cancellation.

### **Refunds**

**30.**—(1) Where the Authority has received a repayment either directly from the borrower or from HMRC under Chapter 4 of this Part—

- (a) which results in the postgraduate master's degree loan being repaid in full; or
- (b) when the postgraduate master's degree loan has already been repaid in full,

the Authority must refund to the borrower any amount not required to repay the loan in full together with interest calculated in accordance with paragraph (2).

(2) Interest is calculated as if it were the principal of a postgraduate master's degree loan, outstanding from the date of receipt of the repayment to the earlier of—

- (a) the end of a period 60 days after the Authority issues a notice; or
- (b) the date on which the Authority makes the refund to the borrower,

after which period no interest will accrue.

(3) The notice to the borrower under paragraph (2)(a) must state that interest will accrue on any overpayment from the date of receipt of the repayment, under paragraph (1), until the earlier of—

- (a) the end of a period 60 days after the Authority issues the notice; or
  - (b) the date on which the Authority makes the refund to the borrower,
- after which period no interest will accrue.

(4) Where the Authority is considered to have received a payment from HMRC under Chapter 3 of this Part in respect of a tax year—

- (a) which results in the postgraduate master's degree loan being repaid in full; or
- (b) when the postgraduate master's degree loan has already been repaid in full,

the repayment is considered to have been received by the Authority on 31 January next following the tax year in accordance with regulation 27(b) and the Authority must refund to HMRC for the borrower's account any overpayment which results from the receipt.

(5) A refund under paragraph (4) does not carry interest and HMRC is to be considered to have received the refund on the date on which the amount refunded is considered to have been received by the Authority in accordance with regulation 27.

(6) Where the Authority has received a repayment by way of deduction from the borrower's earnings for a tax year in accordance with Chapter 4 and those earnings do not exceed the repayment threshold, the Authority must refund the amount deducted if the borrower applies for a refund.

### **Interest rate on loans**

**31.**—(1) The interest rate in relation to a postgraduate master's degree loan is RPI plus 3%.

(2) Interest accrues as of the date that the first instalment of the loan is paid out under regulation 13.

(3) Interest is calculated on the principal outstanding daily and is added to the principal monthly.

(4) The Authority must publish, at least once a year, by whatever means and in whatever media the Authority thinks fit, the interest rate for the forthcoming academic year or part of that year.

### **Information requests**

**32.** If a borrower—

- (a) changes home address; or
- (b) changes name,

the borrower must inform, and provide particulars of the change to, the Authority within six weeks of the relevant change.

### **Information notices**

**33.**—(1) The Authority may serve a notice ("an Information Notice") on a borrower at the borrower's home address.

(2) An Information Notice under paragraph (1) may require the borrower to provide some or all of the following, together with documentary evidence in support where relevant—

- (a) full name;
- (b) either a telephone number or an email address, or both;
- (c) National Insurance number or a valid reason for not having one;
- (d) date of birth;
- (e) a statement of whether the borrower is employed, self-employed or not employed;

- (f) the following particulars of employment and income during the period specified in the notice—
- (i) for each part of that period during which the borrower was employed, the dates on which the employment began and (unless continuing) ended, the name and address of the employer, employee number, and gross earnings;
  - (ii) for each part of that period during which the borrower was self-employed, the dates on which that self-employment began and (unless continuing) ended and the borrower's gross earnings; and
  - (iii) the amount, source and date of receipt of any other income;
- (g) such other information about the borrower's financial position as may be required to determine whether the borrower is in receipt of any income.

(3) An Information Notice under paragraph (1) must contain statements detailing the penalties for failure to comply with an Information Notice set out in regulations 34 and 37.

(4) Where the Authority serves an Information Notice on a borrower under paragraph (1), the borrower must comply with it within 28 days beginning with the day on which the Information Notice was served.

### **Penalties and Penalty Notices**

**34.**—(1) Where a borrower fails to comply with regulation 32, the Authority may require the borrower to pay a penalty of £50.

(2) Where a borrower fails to comply with regulation 33(4), the Authority may require the borrower to pay a penalty of £50.

(3) Where a borrower is liable to a penalty under paragraphs (1) or (2) and has not paid it by the time of the expiry of the time limit for payment, the Authority may require the borrower to pay one additional penalty of £100 in respect of that failure.

(4) Where a borrower was liable to a penalty under paragraphs (1) or (2) and has paid the penalty but not complied with the requirements of the relevant regulation within 28 days of the date of payment of the penalty, the Authority may require the borrower to pay one additional penalty of £100 in respect of that failure.

(5) The Authority must notify the borrower of a penalty imposed under paragraphs (1) to (4) by serving a notice (“a Penalty Notice”) on the borrower at the borrower's home address containing the details of that and other possible penalties under this regulation and regulation 20.

(6) A penalty imposed under paragraphs (1) to (4) is payable within 28 days beginning on the day on which the Penalty Notice was served, despite the provisions of regulation 26(4), (5), (6) or (7).

(7) The Authority may add any penalty imposed under this regulation to the borrower's loan account and it will form part of the principal of the loan from the date on which it is added.

### **Costs and expenses**

**35.**—(1) Where the Authority incurs reasonable costs or expenses in taking steps to—

- (a) serve an Information Notice on a borrower under regulation 33(1);
- (b) obtain the information requested in an Information Notice served under regulation 33(1);  
or
- (c) serve a Penalty Notice on a borrower under regulation 34(5),

the Authority may require the reimbursement of those costs or expenses by the borrower.

(2) The Authority may add any costs or expenses incurred under this regulation to the borrower's loan account and they will form part of the principal of the postgraduate master's degree loan from the date on which they are added.

#### **Alteration of relevant time limits**

**36.** Where the Authority considers that, having regard to all the circumstances of a particular case, a time limit in regulation 32, 33(4), 34(4) or 34(6) should be relaxed, the Authority may specify another time limit.

#### **Foreclosure**

**37.** Where a borrower fails to comply with an Information or Penalty Notice or both, the Authority may require the borrower to repay the postgraduate master's degree loan in full immediately.

### **CHAPTER 3**

#### **Repayments of postgraduate master's degree loans by persons required to submit a tax return**

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

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

**39.—(1)** Every borrower who has received a notice from the Authority of a requirement to make repayments of a postgraduate master's degree loan under regulation 26(4)(a) must make repayment in respect of any tax year—

- (a) which is specified in a notice under regulation 26(4)(a) or which, subject to paragraph (2), is any subsequent year up to and including any year specified in a notice under regulation 26(4)(c); and
- (b) for which the borrower has been required to make and deliver a return under section 8 of the 1970 Act.

(2) The repayment must be an amount equal to 6% of the borrower's total income for that year calculated in accordance with paragraph (4).

(3) The repayment under paragraph (2) is additional to and concurrent with any repayment due by the borrower under the student support regulations.

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

- (a) excluding the repayment threshold;
- (b) excluding unearned income unless the amount of such income for that year exceeds £2,000;
- (c) excluding incapacity benefit payable under the Social Security Contributions and Benefits Act 1992(40);

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(40) 1992 c.4.

- (d) excluding amounts chargeable to tax under Chapters 5, 6, 7 or 10 of Part 3 of the 2003 Act (benefits in kind);
  - (e) excluding Employment and Support Allowance paid under the Welfare Reform Act 2007<sup>(41)</sup>;
  - (f) deducting the amount of any loss in respect of which relief is given under any of the following—
    - (i) section 64 of the 2007 Act (trade loss relief against general income);
    - (ii) section 83 of the 2007 Act (carry-forward trade loss relief);
    - (iii) section 118 of the 2007 Act (carry-forward property loss relief);
    - (iv) section 120 of the 2007 Act (property loss relief against general income);
    - (v) section 128 of the 2007 Act (in respect of losses in an employment);
  - (g) deducting the amount of any payment in respect of which relief is given under section 96 of the 2007 Act (relief for post-cessation expenditure); and
  - (h) deducting any amounts in respect of which relief is given under Part 4 Chapter 4 of the Finance Act 2004<sup>(42)</sup> (pension schemes etc) and that have not been included in the calculation of total income at step 1 of section 23 of the 2007 Act.
- (5) For the purposes of this regulation, unearned income is income other than—
- (a) income charged under the provisions of either the 2003 Act or Part 2 of the 2005 Act except jobseeker’s allowance to which Chapter 3 of Part 10 of the 2003 Act applies; and
  - (b) the profits of a UK furnished holiday lettings business within the meaning of section 127(2) of the 2007 Act.
- (6) For the purposes of this regulation, “jobseeker’s allowance” means an allowance within the meaning of Part 1 of the jobseekers Act 1995<sup>(43)</sup>.
- (7) The repayment threshold for a borrower with a postgraduate master’s degree loan is an amount of £21,000.

### **Personal return**

**40.** For the purposes of establishing the amount of the repayment which a borrower is required to make for a tax year under regulation 39, HMRC may require the borrower—

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

### **Returns to include self-assessment**

**41.**—(1) Subject to paragraph (2), every return made and delivered by a borrower under section 8 of the 1970 Act must include a self-assessment, namely—

- (a) an assessment of the amount of the repayment which, on the basis of the information contained in the return and taking into account any relief or allowance mentioned in regulation 39, the borrower is required to make for the tax year under regulation 39; and
- (b) an assessment of the amount payable by the borrower by way of repayment, being the difference between the amount of the repayment which the borrower is assessed to make

<sup>(41)</sup> 2007 c.5.

<sup>(42)</sup> 2004 c.12.

<sup>(43)</sup> 1995 c.18.

for the tax year under sub-paragraph (a) and the aggregate amount of any repayments deducted from earnings under Chapter 4 of this Part during that year.

(2) Section 9(2) to (3A) (self-assessment) and section 9A (power to enquire into returns) of the 1970 Act apply to a self-assessment under this regulation as they apply to a self-assessment under section 9(1) of that Act, and any references in the Taxes Acts to those sections is to be construed as a reference to them as extended by this regulation.

### **Records**

**42.** Section 12B of the 1970 Act (records to be kept for the purposes of returns) applies in the case of a borrower as if any reference to a return includes reference to a return including the information required by regulation 40(b).

### **Other returns and information**

**43.**—(1) Sections 20BA (orders for the delivery of documents) and 20BB (falsification etc of documents) of the 1970 Act, Schedule 23 to the Finance Act 2011 and Schedule 38 to the Finance Act 2012 apply for the purposes of establishing the amount of the repayment a borrower may be required to make under this Chapter as they apply for the purposes of establishing the amount in respect of which a person is chargeable to income tax.

(2) Schedule 36 to the Finance Act 2008(**44**) (information and inspection powers) applies in relation to checking a borrower's compliance with this Chapter as it applies in relation to checking a person's tax position (as defined in that Schedule) subject to the modifications in paragraph (3).

(3) The modifications are—

- (a) any reference to any provision of the Taxes Acts is to be treated as a reference to this Chapter;
- (b) any reference to prejudice to the assessment or collection of tax is to be treated as a reference to prejudice to the assessment or collection of postgraduate master's degree loan repayments;
- (c) the reference to information relating to the conduct of a pending appeal relating to tax is to be treated as a reference to information relating to the conduct of a pending appeal relating to compliance with this Chapter; and
- (d) in paragraph 21(6)—
  - (i) paragraphs (a) and (c) are omitted; and
  - (ii) in paragraph (b) the reference to relevant tax for the chargeable period is to be treated as a reference to the amount of the postgraduate master's degree loan repayment shown in the self-assessment under regulation 41.

### **Assessment, claims and appeals**

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

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

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

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(44) 2008 c.9.

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

### **Payment**

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

(2) In a case where the borrower—

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

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

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

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

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

### **Late payment penalties**

**46.** Schedule 56 to the Finance Act 2009 (penalty for failure to make payments on time) applies to repayments which have become payable by a borrower under this Chapter as it applies to an amount of income tax which is payable for a tax year, and falls within—

- (a) item 1, 12, 18 or 19 of the Table in paragraph 1 of that Schedule; or
- (b) insofar as the tax falls within item 1 of that Table, item 17, 23 or 24 of that Table.

### **Collection and recovery**

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

### **Persons chargeable in a representative capacity**

**48.** Sections 74 (personal representatives) and 75 (receivers appointed by a court) of the 1970 Act apply in the case of repayments due and payable by a borrower under this Chapter as they apply in the case of income tax chargeable to any person.

### **Interest**

**49.**—(1) Subject to paragraph (2), any repayment due and payable under this Chapter carries interest at the rate applicable under section 103 of the Finance Act 2009 for the purposes of section 101 of the Finance Act 2009 from whichever of the following days is applicable—

- (a) the last day of the period referred to in regulation 45(2); or



(b) the date mentioned in regulation 45(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(45).

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

(3) A refund by HMRC to a borrower of an overpayment of amounts payable under this Chapter carries interest at the rate applicable under section 103 of the Finance Act 2009 from the date on which the overpayment arose to the date on which the order for the refund is issued.

## Penalties

**50.**—(1) Schedule 55 to the Finance Act 2009 (penalty for failure to make returns etc) applies—

- (a) in relation to a return or other document which is required to be made or delivered to HMRC for a tax year;
- (b) which falls within item 1 of the Table in paragraph 1 of that Schedule; and
- (c) which is required to include information under regulation 40,

as it applies to income tax on that same return.

(2) The references to liability to tax in Schedule 55 to the Finance Act 2009 are construed as references to 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 1970 Act (payment of income tax and capital gains tax); and
- (b) where the taxpayer is a borrower, by way of repayment under regulation 39.

(3) Schedule 24 to the Finance Act 2007 (penalties for errors) applies—

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

## CHAPTER 4

## Interpretation

**51.** In this Chapter—

“approved method” means—

- (a) in relation to the delivery of a return in accordance with this Chapter, the internet services or the Electronic Data Interchange services provided through PAYE Online(46) or PAYE Online for Agents(47);
- (b) in relation to the making of a payment in accordance with this Chapter, the services known as Direct Debit, BACS Direct Credit (including telephone and internet banking), CHAPS, debit and credit card over the internet (‘BillPay’), Government Banking Service (formerly known as Paymaster), Bank Giro and payments made through the Post Office.

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(45) 1882 c.61; Section 92 was amended by the Banking and Financial Dealings Act 1971 c.80 and the Consumer Credit Act 1974 (c.39).

(46) PAYE Online can be accessed at <https://www.gov.uk/payee-online>.

(47) PAYE Online for Agents can be accessed at <https://www.gov.uk/guidance/payeeis-for-agents-online-service>.

“combined amount” means an amount which includes deductions of postgraduate master’s degree loan repayments under this Chapter 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~~(48)~~;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 2001~~(49)~~;

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

“earnings” means, subject to regulation 55 of these Regulations, such sums as—

- (a) constitute earnings for the purposes of section 3 of the Social Security Contributions and Benefits Act 1992~~(50)~~ 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 calculating secondary Class 1 contributions under section 9 of the Social Security Contributions and Benefits Act 1992~~(51)~~;

“employee” means any person in receipt of earnings;

“employer” means any person paying earnings to an employee, and includes the Crown;

“Form P45” has the same meaning as in the PAYE Regulations;

“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 64(3) has effect, but otherwise means income tax month;

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

“the PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003~~(52)~~;

“Real Time Information employer” means an employer for the purposes of regulation 41A of the 2009 Regulations.

## Repayment of postgraduate master’s degree loans by employees

**52.** Subject to the provisions contained in this Chapter, repayments by a borrower who is an employee must be made, accounted for and recovered in the same manner as income tax deducted from the earnings of an office or employment by virtue of Regulations under section 684 of the 2003 Act.

~~(48)~~ S.I. 2005/2045.

~~(49)~~ S.I. 2001/1004. These Regulations have been amended but none are relevant.

~~(50)~~ 1992 c.4. Section 3 was amended by the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2) section 2 Schedule 3, and by the Social Security Act 1998 (c.14) sections 48 and 49.

~~(51)~~ Section 9 was amended by the Welfare Reform and Pensions Act 1999 (c.30) section 73 and Schedule 9, by the National Insurance Contributions Act 2002 (c.19) section 2, and by the Pensions Act 2007 (c.22) section 15 and Schedule 4.

~~(52)~~ S.I. 2003/2682 amended by S.I. 2005/2691, S.I.2006/777, S.I.2007/1077, S.I.2007/2069, S.I.2007/2296, S.I.2007/2969, S.I.2008/782 and S.I.2008/2601.

### **Commencement of employment with a Real Time Information employer**

**53.** An employee who commences employment with a Real Time Information employer must inform their employer whether the employee has any liability to repay any postgraduate master's degree loan.

### **Amount of repayments**

**54.**—(1) The repayment deducted must be 6% of any earnings 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 is—

- (a) £21,000, where the earnings period specified in respect of those earnings is a tax year; or
- (b) in any other case, the amount which bears the same relation to £21,000 as the number of days, weeks or months of the earnings period specified in respect of those earnings bears to the number of days, weeks or months in the tax year.

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

(4) Alternatively, the repayment calculated under paragraph (1) may be calculated in accordance with the appropriate table prepared by the Authority.

(5) Where a table would otherwise be appropriate, but the earnings period is a multiple of the period in the table, then the table may be applied by—

- (a) dividing the actual earnings by such figure (X) as will give the earnings earned for the period shown in the table;
- (b) taking the appropriate repayment specified in the table; and
- (c) multiplying the table repayment sum by figure X,

to produce the appropriate payment sum for the actual earnings period.

### **Calculation of earnings**

**55.**—(1) In calculating earnings for the purposes of these Regulations, earnings paid to or for the benefit of an employee are aggregated or not aggregated as they are for the purposes of the Contributions Regulations.

(2) HMRC may, where it is satisfied as to the existence of any practice in respect of the payment of earnings which causes the incidence of repayments to be avoided or reduced by means of the payment of earnings 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 the practice were not followed.

(3) HMRC may, where it is satisfied as to the existence of any practice in respect of the payment of earnings which causes the incidence of repayments to be 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**

**56.**—(1) The amount of repayments, if any, which is deducted by the employer must, subject to paragraph (2), be calculated by reference to the amount of earnings 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 earnings for the purposes of the Contributions Regulations.

- (2) Where earnings 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 earnings are, by virtue of the Contributions Regulations, of different lengths,

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

### **Multiple employers**

**57.**—(1) Where—

- (a) an employer has made an election under regulation 98(1) of the PAYE Regulations (Multiple PAYE schemes); and
- (b) no improper purpose notice has been issued under regulation 99(1) of those Regulations (Multiple PAYE schemes: election made for improper purpose ineffective), or, if one has been issued, it has been withdrawn under regulation 99(5),

the employer is to be treated as having made an election for the purposes of those Regulations.

(2) Where earnings in respect of two or more employments fall to be aggregated under regulation 15(1)(a) of the Contributions Regulations, the amount to be deducted is apportioned between the employers in the same proportions as secondary Class 1 contributions are apportioned between them under that regulation.

### **Intermediate employers**

**58.**—(1) This regulation applies where a direction has been given by HMRC under section 691 of the 2003 Act (PAYE: mobile UK workforce) and for the purposes of this regulation—

- (a) “the principal employer” means the person specified as the relevant person in the direction; and
- (b) “the immediate employer” means the person specified as the contractor in that direction.

(2) Where an employee works for a person who is not an immediate employer of the employee, that person (“the principal employer”) is deemed to be the employer for the purposes of these Regulations and the immediate employer must provide the principal employer with such particulars of the employee’s earnings as may be necessary to enable the principal employer to comply with these Regulations.

(3) If the employee’s earnings are paid to the employee by the immediate employer then—

- (a) the principal employer must notify the immediate employer of the amount of repayments which are to be deducted when the earnings are paid to the employee, and the immediate employer must deduct the amount notified accordingly; and
- (b) the principal employer may make a corresponding deduction on making the payment to the immediate employer of the sum from which the earnings in question are to be paid.

### **Notice to employers**

**59.**—(1) Where HMRC has been given notice by the Authority under regulation 26(4)(b) that a borrower may be required to make repayments under this Chapter on and after a specified date, HMRC must give notice to any person who to its knowledge is an employer of the borrower requiring the employer to make deductions of repayments from earnings paid to the borrower in accordance with these Regulations.

(2) A notice under paragraph (1) must contain—

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

(3) Where HMRC has been given notice by the Authority under regulation 26(4)(d) that it is no longer necessary for a borrower to make repayments after a particular date, HMRC must notify anyone who to its knowledge is an employer of that borrower requiring the employer not to make deductions from the borrower's earnings on or after a particular date under this Chapter accordingly.

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

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

(5) If HMRC is to give notices to an employer of two or more borrowers in accordance with paragraphs (1) or (3) or both, HMRC may give one notice in respect of all such borrowers containing, in respect of each of them, the particulars specified in paragraph (2) or (4) as the case requires.

### **Deductions of repayments**

**60.**—(1) Every employer who has received—

- (a) a notice under regulation 59(1);
- (b) a Form P45 containing a statement under regulation 84 of these Regulations; or
- (c) information under regulation 53 that the employee has any liability to repay any postgraduate master's degree loan,

must, on making to that employee any payment of earnings on the first available pay date, which falls on or after the date referred to in paragraph (2) and at any time after that pay date, but before the date referred to in paragraph (3), deduct the appropriate repayment in accordance with these Regulations.

(2) The date is—

- (a) where the employer has received notice from HMRC under regulation 59(1), the date specified in the notice as the date on and after which deductions must be made;
- (b) where the employer has received a Form P45, the date on which that Form is first received; or
- (c) where an employer has received information under regulation 53 that the employee has any liability to repay any postgraduate master's degree loan, the date on which that information is received.

(3) The date referred to in this paragraph is the date specified in the notice given by HMRC under regulation 59(3) as the date on and after which deductions must not be made; and the employer must not make deductions on or after the first available pay day on or after this date.

(4) Where two or more payments of earnings are to be aggregated for the purposes of calculating the amount of a repayment requiring deduction, 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.

(5) Subject to paragraphs (6) and (7), if the employer does not deduct from any payment of earnings to an employee the full amount of a repayment which should have been deducted, the employer may deduct the remainder of the sum which should have been deducted from any subsequent payment or payments of earnings to that employee during the same tax year.

(6) An employer may not make a subsequent deduction in respect of any remainder not previously deducted after the date referred to in paragraph (3).

(7) The amount of any subsequent deduction referred to in paragraph (5) may be an amount in addition to but must not exceed the amount deductible from the payment under the other provisions of this Chapter.

(8) If the employer deducts any repayment from the earnings of an employee who is a borrower in accordance with these Regulations, the employer is not required to repay any amount to the employee only because that amount was not owed by the employee to the Authority as all or part of a postgraduate master's degree loan.

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

**61.**—(1) Where any employer is required to deduct repayments from a payment under regulation 60 but the aggregate of the deduction and any deductions on account of income tax and National Insurance contributions exceeds the amount of the payment, the employer must make the deductions on account of income tax and National Insurance first and the amount of the repayment which is to be deducted must be the remaining balance.

(2) Where an employer is required to deduct repayments from a payment under regulation 60 and is also required to comply with one or more of any of the types of notice or order in paragraph (3), paragraph (4) applies.

(3) For the purposes of this paragraph, the notices and orders are—

- (a) attachment of earnings orders made under the Attachment of Earnings Act 1971 (“the 1971 Act”)(**53**), the Community Charge (Administration and Enforcement) Regulations 1989(**54**) (“the Community Charge Regulations”), the Council Tax (Administration and Enforcement) Regulations 1992(**55**) (“the Council Tax Regulations”), the Judgments Enforcement (Northern Ireland) Order 1981(**56**), the Magistrates’ Courts Order (**57**);
- (b) deductions of earnings orders made under the Child Support (Collection and Enforcement) Regulations 1992(**58**); or
- (c) income support deduction notices made under regulation 20 of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988(**59**) (“the Social Security Regulations”).

(4) An employer must deduct repayments as if they were amounts requiring deduction pursuant to an order under the 1971 Act which—

- (a) was not made to secure the repayment of a judgement debt or payments under an administration order;
- (b) was the most recent order under that Act not made for that purpose; and
- (c) specifies a protected earnings rate equal to the protected earnings rate specified in the most recent attachment of earnings order, deduction of earnings order or income support deduction notice not made for that purpose which specifies such a rate, unless there is no such order or notice.

(5) Where in the circumstances described in paragraph (4) an employer is required to comply with an attachment of earnings order made under the Community Charge Regulations, the Council Tax Regulations or an income support deduction notice under regulation 20 of the Social Security Regulations before deducting a repayment under regulation 50, no repayment must be deducted by the employer.

(53) 1971 c.32.

(54) S.I. 1989/438 amended by S.I. 1992/219, S.I.1993/775 and S.I.1005/21.

(55) S.I. 1992/613 amended by S.I. 1992/3008. There are other amending instruments but none are relevant.

(56) S.I 1981/234.

(57) S.I. 1981/552, to which there are amendments but none are relevant.

(58) S.I. 1992/1989.

(59) S.I. 1988/664, to which there are amendments but none are relevant.

(6) Where an employer is required to deduct repayments from a payment under regulation 60 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(60) (whether or not also required to comply with an attachment of earnings order, deduction of earnings order or income support deduction notice), no repayments under regulation 60 may be deducted.

(7) Where repayments to be deducted in accordance with paragraph (4) are reduced as a result of paragraph 4(c) and the total of the reduced payments includes pence as well as pounds the pence are to be ignored.

### **Deductions working sheet**

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

(2) Where two or more payments of earnings are to be aggregated for the purposes of calculating the amount of repayments requiring deduction, the employer must record a single amount, being the total of the amount requiring deduction in respect of the aggregated payments, rather than recording separate amounts in respect of each such payment.

### **Certificate of repayments**

**63.**—(1) Where the employer is required to give an employee a certificate in accordance with regulation 67 of the PAYE Regulations, or paragraph 9 of Schedule 4 to the Contributions Regulations (Form P60), the employer must record in the certificate the amount of repayments deducted by that employer in the tax year to which the certificate relates.

(2) Where the employer is not otherwise required to give an employee who is an employee on the last day of the tax year such a certificate but has deducted repayments in respect of a tax year, the employer must give the employee a certificate showing the amount of repayments deducted for that tax year.

### **Payment of repayments deducted to HMRC**

**64.**—(1) Subject to paragraphs (2), (3) and (6), the employer must pay an amount equal to the smaller of the repayments—

- (a) deducted by the employer under these Regulations during an income tax month (and, where required, reported under regulation 69 or 74); or
- (b) which the employer was required to deduct under these Regulations during that income tax month,

to HMRC within 14 days of the end of that income tax month.

(2) The amount specified in paragraph (1) must be adjusted to take account of errors corrected under regulation 75(5).

(3) Where, under paragraph 11 of Schedule 4 to the Contributions Regulations, the employer is required to pay National Insurance contributions due in respect of earnings paid in an income tax quarter within 14 days of its end, then subject to paragraphs (3) and (6), the employer must pay an amount equal to the smaller of the repayments—

- (a) deducted by the employer under these Regulations during an income tax quarter; or
- (b) which the employer is required to deduct during that quarter,

to HMRC within 14 days of the end of that income tax quarter.

(4) Subject to paragraph (5), if the employer has paid to HMRC on account of repayments under this regulation an amount which the employer was not liable to pay, the amounts which the employer is required subsequently to pay in respect of other payments of earnings made by the employer during the same tax year must be reduced by the amount overpaid.

(5) If the overpayment referred to in paragraph (4) corresponds to an over-deduction from the earnings of one or more employees, an employer may only act in accordance with paragraph (4) if and to the extent that the employer has reimbursed the employee or employees for that over-deduction.

(6) Where an employer makes a payment in accordance with paragraph (1) or (3) by an approved method of electronic communications, payment must be made within 17 days of the end of the relevant income tax period.

**Payments to and recoveries from HMRC for each income tax period by Real Time Information employers: returns under regulation 75(5)**

**65.**—(1) This regulation applies if, during any income tax period, a Real Time Information employer makes a return under regulation 75(5) (returns under regulation 69 and 74: amendments).

(2) The amount specified in regulation 64 for the final income tax period in the year covered by the return is to be adjusted to take account of the information in the return.

(3) If the value of the adjustment required by paragraph (2) is a negative amount, the employer may recover that amount—

- (a) by setting it off against the amount the employer is liable to pay under regulation 64(1) for the income tax period in which the return is made; or
- (b) from the Commissioners for Her Majesty's Revenue and Customs.

**Notice of specified amount and certificate when repayments not deducted**

**66.**—(1) This regulation applies where, after 17 days following the end of any income tax period, the employer has paid no amount in respect of postgraduate master's degree loan repayments to HMRC under regulation 64 for that income tax period and there is reason to believe that the employer is liable to pay such repayments.

(2) Where this regulation applies, HMRC upon consideration of the employer's record of past payments, whether of postgraduate master's degree loan repayments or of combined amounts, may to the best of its judgment specify the amount in respect of postgraduate master's degree loan repayments or of a combined amount which it considers the employer is liable to pay, and serve notice on the employer of that amount.

(3) In arriving at the amount under paragraph (2), HMRC may also take into account any returns made by the employer under these Regulations in the income tax period in which the return is made or earlier income tax periods.

(4) Where the employer has paid no amount under regulation 64 for the relevant income tax periods, HMRC may give a notice under paragraph (2) which extends to two or more consecutive income tax periods and these Regulations have effect as if those income tax periods were the latest income tax period specified in the notice.

(5) HMRC may give a notice under paragraph (2) even if an amount in respect of postgraduate master's degree loan repayments has been paid to it by the employer under regulation 64 for any income tax period, if HMRC is not satisfied, having sought the employer's explanation, that the amount paid is the full amount which the employer is liable to pay to it for that income tax period and this regulation applies to the amount specified.

(6) If the employer claims during the period allowed in a notice given under paragraph (2) that the payment made in respect of the income tax period specified is, or includes, the full amount of



postgraduate master's degree loan repayments which the employer is liable to pay to HMRC for that period, but does not satisfy HMRC of this, then—

- (a) the employer may require HMRC to inspect the employer's documents and records as if an officer of Revenue and Customs had called upon the employer to produce those documents and records in accordance with regulation 77; and
- (b) regulation 77 applies to that inspection and the notice given by HMRC under paragraph (2) is to be disregarded.

(7) Subject to paragraph (8), if the specified amount, or any part of it, is unpaid on the expiration of the period of seven days allowed in the notice, the amount unpaid—

- (a) is deemed to be an amount in respect of postgraduate master's degree loan repayments or to include an amount in respect of postgraduate master's degree loan repayments which the employer was liable to pay for that income tax period in accordance with regulation 64, and
- (b) may be certified by HMRC.

(8) Paragraph (7) does not apply if during the period allowed in the notice—

- (a) the full amount which the employer is liable to pay to HMRC for that income tax period is paid; or
- (b) the employer satisfies HMRC that no amount, or no further amount, is due for that income tax period.

(9) The production of a certificate under paragraph (7) is sufficient evidence that the employer is liable to pay the amount shown in the certificate to HMRC.

(10) Any document purporting to be a certificate under paragraph (7) is deemed to be such a certificate until the contrary is proved.

(11) Despite any other provision of this regulation, if an employer pays any amount certified by HMRC under this regulation and that amount exceeds the amount which the employer would have been liable to pay in respect of that income tax period apart from this regulation, the employer is entitled to set off such excess payment against any amount which the employer is liable to pay to HMRC under regulation 64 for any subsequent income tax period.

### **Recovery of payments deducted through the income tax system**

**67.**—(1) The provisions of the Taxes Acts and of any Regulations under section 684 of the 2003 Act relating to the recovery of tax apply to the recovery of any amount which the employer is liable to pay to HMRC under regulation 64, 66 or 77 as if that amount had been tax charged by way of an assessment on the employer as employment income under the 2003 Act.

(2) Without prejudice to paragraph (1), regulation 84 of the PAYE Regulations applies to the amount shown in a certificate under regulation 66(7) or 77(4) with the modification that summary proceedings for the recovery of the amount in respect of postgraduate master's degree loan repayments or a combined amount, or such part of it as remains unpaid, together with any interest payable on such amount, may be brought at any time before the expiry of 12 months after the date of the certificate.

(3) In the application of any provisions referred to in paragraph (1) to any proceedings under this regulation which limit the amount which is recoverable in those proceedings, any other element of a combined amount which may by virtue of paragraphs (4) to (6) be included as part of the cause of action or matter of complaint in those proceedings is to be disregarded.

(4) Proceedings may be brought for the recovery of—

- (a) the total amount which the employer is liable to pay to HMRC under regulation 64; or
- (b) the total amount which the employer is liable to pay HMRC as a combined amount including any amount under regulation 64, without specifying the respective amounts of

any component of a combined amount or distinguishing the amounts which the employer is liable to pay in respect of each employee and without specifying the employees in question.

(5) For the purposes of—

- (a) proceedings under section 66 or 67 of the 1970 Act (including proceedings under either section as applied by the provisions of this regulation); and
- (b) summary proceedings (including, in Scotland, proceedings in the sheriff court),

the total amount specified in paragraph (4) is, subject to the provisions of paragraphs (3) and (6), one cause of action or one matter of complaint.

(6) Nothing in paragraphs (4) or (5) prevents the bringing of separate proceedings for the recovery of each of the several amounts referred to in paragraph (4) which the employer is liable to pay to HMRC for any income tax period in respect of each of the employer's employees.

### **Interest on unpaid repayments**

**68.**—(1) Subject to paragraph (2), where an employer has not on or before the 14th day after the end of an income tax period paid an amount which the employer is liable to pay to HMRC under regulation 64 for that period, that amount will carry interest at the rate applicable under section 103 of the Finance Act 2009 for the purposes of section 101 of the Finance Act 2009 from that date until payment.

(2) Where payment is made by an approved method of electronic communications, the interest payable under paragraph (1) must be calculated as if the date in paragraph (1) was the 17th day after the end of the tax period.

(3) Interest payable under this regulation is recoverable as if it were an amount which the employer was liable to pay under regulation 64.

(4) An amount to which paragraph (1) applies carries 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.

(5) A certificate of HMRC that to the best of its knowledge and belief, any amount of interest payable under this regulation has not been paid to it by the employer, is sufficient evidence that the amount of interest shown on the certificate is unpaid and is due to the Crown.

(6) Any document purporting to be a certificate under paragraph (5) is deemed to be such a certificate until the contrary is proved.

(7) 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 component of the combined amount the interest relates and paragraphs (5) and (6) will apply to that certificate.

(8) 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 must be repaid to the employer.

### **Real time returns of information about payments of earnings**

**69.**—(1) On or before making a payment of earnings to an employee, an employer must deliver to HMRC the information specified in Schedule 3 (real time returns) in accordance with this regulation.

(2) The information must be included in a return.

(3) Subject to paragraph (4), if payments of earnings are made to more than one employee at the same time, the return under paragraph (2) must include information required by Schedule 3 in respect of each employee to whom a payment of earnings is made at that time.

(4) If payments of earnings are made to more than one employee at the same time but the employer operates more than one payroll, the employer must make a return in respect of each payroll.

(5) The return is to be made using an approved method of electronic communications.

### **Employees paid in specified circumstances**

**70.**—(1) This regulation applies if an employer makes a payment to an employee and all of the circumstances in paragraph (2) apply.

(2) The circumstances are that—

(a) the payment includes an amount which is a relevant payment for work undertaken by the employee on—

(i) the day the payment is made; or

(ii) provided that the payment is made before the employee leaves the place of work at the end of the employee's period of work, the day before the payment is made,

(b) in respect of the work mentioned in sub-paragraph (a), it was not reasonably practicable for the employer to calculate the payment due before the completion of the work; and

(c) it is not reasonably practicable for the employer to deliver the information required by regulation 69(1) on making the payment.

(3) The employer need not deliver the information required by regulation 69(1) on or before making the payment.

(4) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

(5) Where this regulation applies, the information required under regulation 69(1) in respect of the relevant payment may be included in a return with the information for any other relevant payment.

### **Benefits and expenses – returns under regulations 85 to 87 of the PAYE Regulations**

**71.**—(1) This paragraph applies if an employer makes a payment of general earnings to an employee which, for the purposes of tax falls to be included in a return under—

(a) regulations 85 and 86 of the PAYE Regulations (employers: annual return of other earnings (Form P11D) – information which must be provided for each employee); or

(b) regulations 85 and 87 of the PAYE Regulations (employers: annual return of other earnings (Form P11D) – information which must also be provided for benefits code employees) or would do if the employee's employment was subject to the benefits code for the purposes of regulation 85 of the PAYE Regulations.

(2) If the employer is unable to comply with the requirement in regulation 69(1) to deliver the information required by that regulation on or before making the payment, the employer must instead deliver the information as soon as reasonably practicable after the payment is made and in any event no later than 14 days after the end of the income tax month the payment is made in.

### **Modification of the requirements of regulation 69: notional payments**

**72.**—(1) This regulation applies if an employer makes a payment of earnings to an employee which, for the purposes of tax, is a notional payment within the meaning given by section 710(2) of the 2003 Act.

(2) If the employer is unable to comply with the requirement in regulation 69(1) to deliver the information required by that regulation on or before making the payment, the employer must instead deliver the information as soon as reasonably practicable after the payment is made and in any event no later than—

- (a) the time at which the employer delivers the information required by regulation 67B of the PAYE Regulations in respect of the payment;
  - (b) the time at which the employer makes a deduction from earnings in respect of the payment in accordance with regulation 60 (deductions of repayments); or
  - (c) 14 days after the end of the income tax month the payment is made in,
- whichever is earliest.

### **Relationship between regulation 69 and aggregation of earnings**

73.—(1) Where an employee's earnings are aggregated, the employer or, as the case may be, employers must make such arrangements as are necessary to ensure that the information specified in paragraph (2) in respect of all the aggregated earnings is provided in the information given under regulation 69 relating to one of the employee's employments only.

(2) The information specified in this paragraph is the information specified in paragraph 3 of Schedule 3 (real time returns).

### **Exceptions to regulation 69**

74.—(1) This regulation applies to an employer who is—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications;
- (b) a partnership, if all partners fall within sub-paragraph (a);
- (c) a company, if all directors and the company secretary fall within sub-paragraph (a);
- (d) a care and support employer ; or
- (e) an employer to whom a direction has been given under regulation 67D (11) of the PAYE Regulations, but this is subject to paragraph (3).

(2) An employer to whom this regulation applies may proceed in accordance with this regulation instead of 69.

(3) This regulation does not apply if a Real Time Information employer within paragraph (1) makes a return using an approved method of electronic communications.

(4) The employer must deliver to HMRC the information specified in Schedule 3 in respect of each employee to whom payments of earnings are made in an income tax quarter.

(5) The information must be included in a return.

(6) The return required under paragraph (5) must be delivered within 14 days after the end of the income tax quarter the return relates to.

(7) If payments of earnings have been made to more than one employee in the income tax quarter, the return under paragraph (5) must include the information required by Schedule 3 in respect of each employee to whom the payment of earnings has been made.

(8) In paragraph (1)(c), "company" means a body corporate or unincorporated association but does not include a partnership.

(9) In paragraph (1)(d), "a care and support employer" means an individual ("A") who employs a person to provide domestic or personal services at or from A's home where—

- (a) the services are provided to A or a member of the A's family;
- (b) the recipient of the services has a physical or mental disability, or is elderly or infirm; and
- (c) it is A who delivers the return (and not some other person on A's behalf).

### **Returns under regulations 69 and 74: amendments**

**75.**—(1) This regulation applies where there is an inaccuracy in a return, whether careless or deliberate, made under regulation 69 (real time returns of information about payments of earnings) or 74 (exceptions to regulation 69) and paragraph (2) or (3) applies.

(2) This regulation applies where the inaccuracy relates to the information given in the return in respect of an employee under paragraph 3 of Schedule 3 (real time returns).

(3) This regulation applies where the inaccuracy was the omission of details of a payment of earnings to an employee.

(4) When the employer becomes aware of an inaccuracy in a return submitted under regulation 69 or 74, the employer must provide the correct information in the next return for the tax year in question.

(5) But if the information has not been corrected before 20th April following the end of the tax year in question, the employer must make a return under this regulation.

(6) A return under paragraph (5)—

(a) must include the following—

(i) the information specified in paragraph 1 of Schedule 3 (real time return);

(ii) the value of the adjustment to the information given under paragraph 3 of Schedule 3 in the final return under regulation 69 or 74 containing information in respect of the employee in the tax year in question; and

(iii) if paragraph (7) applies, the information specified in paragraph 5 of Schedule 3;

(b) must be made as soon as reasonably practicable after the employer becomes aware of the inaccuracy; and

(c) must be made by an approved method of electronic communications.

(7) This regulation applies if—

(a) the inaccuracy is within paragraph (3);

(b) the payment of earnings was the first payment of earnings to the employee in the employment; and

(c) the information specified in paragraph 5 of Schedule 3 has not otherwise been provided.

(8) In the application of paragraphs (5) and (6) to cases within paragraph (3), if no information was given in any returns under regulation 69 or 74 in respect of the employee in the tax year, the value of the adjustments required must be calculated as if there was a final return containing information for the employee in the year and the figure requiring adjustment was zero.

(9) Paragraph (6)(c) does not apply if the employer is one to whom regulation 74 applies but in those circumstances the return must be in such form as HMRC may approve or prescribe.

### **Failure to make a return under regulation 69 or 74**

**76.**—(1) This regulation applies where an employer does not make a return as required by regulation 69 (Real time returns of information about payments of earnings) or 74 (Exceptions to regulation 69).

(2) The employer must provide the information in the next return made under regulation 69 or 74 for the tax year in question.

(3) If the information has not been provided before 20 April following the end of the tax year in question, the employer must make a return under this paragraph.

(4) A return under paragraph (3)—

- (a) must include the information specified in Schedule 3;
- (b) must be made as soon as reasonably practicable after discovery of the failure to make the return; and
- (c) must be made by an approved method of electronic communications.

### **Inspection of employers' records**

77.—(1) For the purposes of carrying out inspections of an employer's records in relation to checking their compliance with this Chapter, Schedule 36 to the Finance Act 2008(61) (information and inspection powers) applies as it applies in relation to checking a person's tax position (as defined in that Schedule) subject to the modifications in paragraph (2).

(2) The modifications are—

- (a) any reference to any provision of the Taxes Acts is to be treated as a reference to this Chapter;
- (b) the reference to information relating to the conduct of a pending appeal relating to tax is to be treated as a reference to information relating to the conduct of a pending appeal relating to compliance with this Chapter;
- (c) paragraph 21 is omitted; and
- (d) any reference to "statutory records" includes all documents and records relating to the repayments requiring deduction under this Chapter.

(3) Statutory records (as defined in Schedule 36) must be retained by the employer for not less than 3 years after the end of the tax year to which they relate.

(4) HMRC may, in relation to each inspection, prepare a certificate showing—

- (a) the amount in respect of postgraduate master's degree loan repayments which it appears from the documents and records produced that the employer is liable to pay HMRC for the years or income tax periods covered by the inspection; and
- (b) any amount in respect of such postgraduate master's degree loan repayments which has not been paid to HMRC.

(5) A certificate under paragraph (4) is sufficient evidence that the employer is liable to pay the amount shown in the certificate pursuant to paragraph (4)(b) to HMRC in respect of the years or income tax periods shown in the certificate.

(6) Any document purporting to be a certificate under paragraph (4) is deemed to be such a certificate until the contrary is proved.

### **Powers to obtain information**

78.—(1) For the purposes of obtaining information in relation to checking an employer's compliance with this Chapter, Schedule 36 to the Finance Act 2008 (information and inspection powers) applies as it applies in relation to checking a person's tax position (as defined in that Schedule) subject to the modifications in paragraph (2).

(2) The modifications are—

- (a) any reference to any provision of the Taxes Acts is to be treated as a reference to this Chapter;
- (b) any reference to prejudice to the assessment or collection of tax is to be treated as a reference to prejudice to the assessment or collection of postgraduate master's degree loan repayments;

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(61) 2008 c.9.

- (c) the reference to information relating to the conduct of a pending appeal relating to tax is to be treated as a reference to information relating to the conduct of a pending appeal relating to compliance with this Chapter;
- (d) paragraphs 21, 35(4)(b), 36 and 37(2) are omitted; and
- (e) a reference to “statutory records” includes all documents and records relating to the repayments requiring deduction under this Chapter.

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

**79.**—(1) This regulation applies where it appears to HMRC that there may be repayments payable by an employer under regulation 64 which have not been paid to HMRC.

(2) Where this regulation applies, HMRC may determine the amount of those repayments to the best of its judgement and must serve notice of the determination on the employer.

(3) A determination under this regulation may—

- (a) cover the repayments payable by the employer under regulation 64 for any one or more tax periods in a tax year; and
- (b) extend to the whole of the repayments or 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 specified, named employees.

(4) The provisions of Parts 4 (Assessment and Claims), 5 (Appeals and Other proceedings), 5A (Payment of Tax) and 6 (Collection and Recovery) of the 1970 Act apply to a determination under this regulation, with any necessary modification—

- (a) as if the determination were an assessment for the purposes of that Act; and
- (b) as if the amount of repayments determined was income tax charged on the employer.

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

**80.**—(1) Where—

- (a) an employer has not paid an amount of repayments to HMRC under regulation 64;
- (b) HMRC makes a determination of the amount of such repayments under regulation 79; and
- (c) repayments are payable pursuant to that determination,

those repayments carry interest at the applicable rate under section 103 of the Finance Act 2009 for the purposes of section 101 of the Finance Act 2009 from the 14th day after the end of the income tax period in which they are payable until payment.

(2) Interest payable under this regulation is recoverable as if it were an amount which the employer is liable to pay under regulation 64.

### **Death of employer**

**81.** If an employer dies, anything which that employer would have been liable to do under these Regulations must be done by the employer’s personal representative, or in the case of an employer who paid earnings on behalf of another, by the person succeeding that employer, or if not succeeded, by the person on whose behalf that employer paid earnings.

### **Succession to a business**

**82.**—(1) This regulation applies where there has been a change in the employer from whom the employee receives earnings in respect of the employment in any trade, business concern or

undertaking or in connection with any property, or from whom an employee receives an annuity other than a pension.

(2) Subject to paragraph (3), where this regulation applies in relation to any matter arising after the change of employer, the subsequent employer is liable to do anything that the previous employer would have been liable to do if there had been no change of employer.

(3) No subsequent employer is liable for the payment of repayments deducted from an employee's earnings before the change of employer unless those repayments are also deductible from earnings paid to the employee after the change of employer.

### **Payment by cheque**

**83.** For the purposes of regulations 64 to 68, where—

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

the payment will be treated as paid on the day on which the cheque was received by HMRC and references in those regulations to “pay”, “paid”, “unpaid” and “overpaid” are to be interpreted on this basis.

### **Cessation of employment**

**84.** Where an employer completes a Form P45, the employer must state in it that the employee is a borrower if, on the date of the Form P45—

- (a) the employer has received notice that the employee is a borrower as described in regulation 59(1);
- (b) the employer has received a Form P46 stating that the employee has a postgraduate master's degree loan which requires repayment; or
- (c) the employer has received information under regulation 53 that the employee has any liability to repay any postgraduate master's degree loan; and
- (d) (where any of paragraph (a), (b), or (c) apply) the employer has not received a notice from HMRC under regulation 59(3) requiring the employer not to make deductions from the employee's earnings on and after a date before the date on which the person ceased to be an employee.

### **Penalties**

**85.—(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 tax year,

in pursuance of this Chapter, the employer is liable to a penalty not exceeding £3000 for each employee for whom incorrect deductions or payments are made.

(2) A penalty under paragraph (1) must not be imposed before the end of the relevant tax year; and no more than one penalty per employee under that paragraph may be imposed in relation to any tax year.

(3) Schedule 56 to the Finance Act 2009 (penalty for failure to pay tax) applies in relation to the late payment from an employer to HMRC of postgraduate master's degree loan repayments deducted from an employees' earnings as if—



- (a) in relation to all regulations in this Chapter other than regulation 79, payment from an employer to HMRC were a payment of tax falling within item 2 of the table in paragraph 1 of that Schedule;
  - (b) in relation to regulation 79, payments from an employer to HMRC were payments of tax falling within items 17, 23 or 24 of the table in paragraph 1 of that Schedule;
  - (c) references to the PAYE Regulations in item 2 of the table in paragraph 1 of that Schedule were references to this Chapter.
- (4) Where a Real Time Information employer—
- (a) carelessly or deliberately makes an incorrect return under regulations 69 or 74; and
  - (b) the return contains an inaccuracy which amounts to, or leads to—
    - (i) an understatement of liability under this Chapter to make payments to HMRC; or
    - (ii) false or inflated claim for the recovery of payments made to HMRC under this Chapter,

penalties as set out in Schedule 24 to the Finance Act 2007 (penalties for error) apply as they apply in connection with a return for the purposes of the PAYE Regulations.

### **Collection and recovery of penalties**

**86.** Section 69 of the 1970 Act (recovery of penalties etc) applies to penalties imposed under this Chapter as it applies to penalties imposed under that Act.

### **Application of the PAYE Regulations**

**87.** To the extent that the provisions of the PAYE Regulations apply by virtue of regulation 52 for the purposes of these Regulations, the PAYE Regulations apply as if in regulation 210 (penalties and appeals) an employer is not liable to a penalty if the employer has been liable to a penalty for failing to comply with regulation 205 of those Regulations or regulation 90N of the Contributions Regulations in relation to the same tax year.

## **CHAPTER 5**

### **Interpretation**

**88.** In this Chapter—

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

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

### **Notice of overseas residence**

**89.**—(1) A borrower must notify the Authority of any period of residence outside the United Kingdom which exceeds 3 months.

(2) A borrower must provide such information about the borrower’s income during any such period of residence as the Authority may require.

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

**90.**—(1) Subject to regulation 92, where the Authority is satisfied that a borrower is resident outside the United Kingdom, it may serve a notice on the borrower requiring the borrower to make repayments on any postgraduate master’s degree loan in accordance with regulation 91.

(2) In a notice served under paragraph (1), the Authority may require a borrower, if the borrower has failed—

- (a) to give the notice required by regulation 89(1); or
- (b) to provide any information required by the authority under regulation 89(2),

to repay immediately such part of a postgraduate master's degree loan as will reduce the amount outstanding to the amount which the Authority considers would have been outstanding if the borrower had given the notice or provided the information required.

### **Repayment by fixed instalments**

**91.** A borrower must pay to the Authority a fixed instalment calculated in accordance with regulation 93—

- (a) no later than the day specified in a notice served under regulation 90; and
- (b) no later than the same day of each subsequent month.

### **Repayment by income-related instalments**

**92.—(1)** Where the Authority is satisfied that a borrower to whom regulation 90 applies has complied with a requirement to provide information under regulation 89, the Authority may determine that the borrower may repay a loan by income-related instalments in accordance with this regulation.

(2) The first such instalment must be paid on a date determined by the Authority, being a date not more than 2 months later than the date of the determination and subsequent instalments must be paid on the same date in each subsequent month for up to 12 months.

(3) The Authority must determine the amount of each instalment and must ensure that the total amount of all instalments paid in the period up to 12 months from the date of the first instalment referred to in paragraph (2) must not exceed the relevant amount.

(4) The relevant amount is 6% of the gross income which the Authority considers the borrower is likely to receive in the next 12 month period following the date of the determination referred to in paragraph (2), disregarding—

- (a) income up to the applicable threshold, calculated in accordance with regulation 93; and
- (b) income in respect of which the Authority is satisfied that repayments are likely to be made under Chapters 3 or 4 of this Part.

(5) The repayment under paragraph (4) is additional to and concurrent with any repayment due by the borrower under the student support regulations.

(6) The amount of each instalment must be stated in the determination.

(7) At the end of the period referred to in paragraph (2), the borrower must pay fixed instalments under regulation 91, subject to a further determination under paragraph (1).

(8) At any time during the period referred to in paragraph (2), the Authority may make a re-determination under paragraph (1).

### **Calculation of fixed instalment and applicable threshold**

**93.—(1)** The fixed instalment in regulation 91 and the applicable threshold in regulation 92 are to be determined by reference to the most recent price level index for the borrower's country of residence and in accordance with the following tables—

<i>Band</i>	<i>Price level index</i>	<i>Fixed instalment for Postgraduate master's degree loans</i>
A	0<30	£40.20
B	30<50	£80.40
C	50<70	£120.60
D	70<90	£160.80
E	90<110	£201.00
F	110<130	£241.20
G	130+	£281.40

<i>Band</i>	<i>Price level index</i>	<i>Applicable threshold for postgraduate master's degree loans</i>
A	0<30	£4,200
B	30<50	£8,400
C	50<70	£12,600
D	70<90	£16,800
E	90<110	£21,000
F	110<130	£25,200
G	130+	£29,400

(2) The price level index for the United Kingdom is 100.

(3) Price level indices are to be calculated using the most recent provisional comparative price level indices measured in gross domestic product produced by the World Bank's Development Indicators.

(4) Subject to paragraph (5), where a price level index cannot be calculated under paragraph (3), the applicable threshold and fixed instalment are those for band A.

(5) The Authority may determine that the applicable threshold or fixed instalment for a borrower is to be that for a country other than the borrower's present country of residence.

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

**94.**—(1) A borrower who—

- (a) is required to make repayments under this Chapter; and
- (b) who has not been required to repay a postgraduate master's degree loan in full immediately under regulation 95,

may apply to the Authority for a determination that the borrower is no longer required to make such repayments.

(2) Where the Authority is satisfied that—

- (a) the borrower is resident in the United Kingdom; and
- (b) the borrower is likely to be resident in the United Kingdom for the tax year during which the date specified in the determination relating to that borrower will fall,

the Authority may determine that a borrower who has applied under paragraph (1) is not to be required to make repayments under this Chapter from a date specified in the determination, being a date not more than 2 months later than the date of the determination.

(3) A determination under paragraph (2) has effect until the borrower again becomes liable to repay the loan under regulation 91 or 92.

### **Foreclosure**

**95.** If a borrower does not pay an instalment or other amount when it is due, the Authority may require the borrower to repay the loan in full immediately.

### **Costs and expenses of the Authority**

- 96.** Where the Authority incurs reasonable costs or expenses in taking steps—
- (a) resulting from a borrower's failure to comply with regulation 89, 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 90(1) in any of the circumstances set out in regulation 90(2); or
  - (c) to recover the outstanding balance of the loan in full under regulation 95,

the Authority may require reimbursement of those costs or expenses by the borrower and may add them to the borrower's loan account and they will form part of the principal of the loan from the date on which they are added.

## **CHAPTER 6**

### **Effect of borrower insolvency on postgraduate master's degree loans**

- 97.—(1)** In England and Wales—
- (a) any sum payable to student by way of a postgraduate master's degree loan under these Regulations which the student receives or is entitled to receive after the commencement of that person's bankruptcy, is not to be treated as part of the bankrupt's estate or claimed for the bankrupt's estate under section 307, 310 or 310A of the Insolvency Act 1986<sup>(62)</sup> whether the entitlement arises before or after the commencement of the bankruptcy;
  - (b) any debt or liability to which that person is or may become subject in respect of any sum payable to an eligible student by way of a postgraduate master's degree loan is not to be included in that person's bankruptcy debts when the person receives or is entitled to receive that sum before or after the commencement of the bankruptcy;
  - (c) any sum payable to a student by way of postgraduate master's degree loan which the student receives or is entitled to receive before or after the approval of that person's individual voluntary arrangement under Part 8 of the Insolvency Act 1986 is not to be treated as part of any arrangement approved under section 258 or 263D of that Act, whether the entitlement arises before or after the approval of the arrangement; and
  - (d) any debt or liability to which that person is or may become subject in respect of any sum payable to a student by way of postgraduate master's degree loan is not to be included in

<sup>(62)</sup> 1986 c.45; Section 307 was amended by the Enterprise Act 2002 (c.40), section 261. Section 310 was amended by the Pensions Act 1995 (c. 26), section 122 and Schedule 3, paragraph 15, the Welfare Reform and Pensions Act 1999 (c.30) section 18 and Schedule 2, paragraph 2 and the Enterprise Act 2002, sections 259 and 278 and Schedule 26.

that person's individual voluntary arrangement when that person receives or is entitled to receive that sum before or after the approval of that arrangement.

(2) In Northern Ireland—

- (a) any sum payable to a student by way of a postgraduate master's degree loan under these Regulations which the student receives or is entitled to receive after the commencement of that person's bankruptcy, is not to be treated as part of the bankrupt's estate or claimed for the bankrupt's estate under Article 280, 283 or 283A of the Insolvency (Northern Ireland) Order 1989<sup>(63)</sup> whether the entitlement arises before or after the commencement of the bankruptcy;
- (b) any debt or liability to which that person is or may become subject in respect of any sum payable to a student by way of a postgraduate master's degree loan is not to be included in that person's bankruptcy debts when the person receives or is entitled to receive that sum before or after the commencement of the bankruptcy;
- (c) any sum payable to a student by way of a postgraduate master's degree loan which the student receives or is entitled to receive before or after the approval of that person's individual voluntary arrangement under Part 8 of the Insolvency (Northern Ireland) Order 1989 is not to be treated as part of the individual voluntary arrangement approved under articles 232 or 237D of that Order, whether the entitlement arises before or after the approval of the arrangement; and
- (d) any debt or liability to which that person is or may become subject in respect of any sum payable to a student by way of a postgraduate master's degree loan is not to be included in that person's individual voluntary arrangement when that person receives or is entitled to receive that sum before or after the approval of the arrangement.

24th May 2016

*Joseph Johnson*  
Minister of State for Universities and Science  
Department for Business, Innovation and Skills

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(63) [SI 1989/2405 \(NI. 19\)](#); Article 280 was amended by the Insolvency (Northern Ireland) Order 2005 ([SI 2005/1455 \(NI. 10\)](#)). Article 283 was amended by the Pensions (Northern Ireland) Order 1995 ([SI 1995/3213 \(NI. 22\)](#)) Schedule 1, paragraph 11, the Welfare Reform and Pensions (Northern Ireland) Order 1999 ([SI 1999/3147 \(NI. 11\)](#)) and the Insolvency (Northern Ireland) Order 2005 Articles 15 and 31 and Schedule 9.

SCHEDULE 1

Regulations 3 and 8

ELIGIBLE STUDENTS

PART 1

Interpretation

1.—(1) For the purposes of this Schedule—

“EEA frontier self-employed person” means an EEA national who—

- (a) is a self-employed person in England; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA frontier worker” means an EEA national who—

- (a) is a worker in England; and
- (b) resides in Switzerland or the territory of an EEA State other than the United Kingdom and returns to the national’s residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“EEA migrant worker” means an EEA national who is a worker, other than an EEA frontier worker, in the United Kingdom;

“EEA national” means a national of an EEA State other than the United Kingdom;

“EEA self-employed person” means an EEA national who is a self-employed person, other than an EEA frontier self-employed person, in the United Kingdom;

“employed person” means an employed person within the meaning of Annex 1 to the Swiss Agreement;

“European Economic Area” means the area comprised by the EEA States;

unless otherwise indicated, “family member” means—

- (a) in relation to an EEA frontier worker, an EEA migrant worker, an EEA frontier self-employed person or an EEA self-employed person—
  - (i) that person’s spouse or civil partner;
  - (ii) direct descendants of the person or of the person’s spouse or civil partner who are—
    - (aa) under the age of 21, or
    - (bb) dependents of the person or the person’s spouse or civil partner; or
  - (iii) dependent direct relatives in the ascending line of that person or that of the person’s spouse or civil partner;
- (b) in relation to a Swiss employed person, a Swiss frontier employed person, a Swiss frontier self-employed person or a Swiss self-employed person—
  - (i) that person’s spouse or civil partner; or
  - (ii) that person’s child or the child of that person’s spouse or civil partner;
- (c) in relation to an EU national who falls within article 7(1)(c) of Directive 2004/38 —
  - (i) that person’s spouse or civil partner; or
  - (ii) direct descendants of the person or of the person’s spouse or civil partner who are—

- (aa) under the age of 21; or
- (bb) dependants of the person or the person's spouse or civil partner;
- (d) in relation to an EU national who falls within article 7(1)(b) of Directive 2004/38—
  - (i) that person's spouse or civil partner;
  - (ii) direct descendants of the person or of the person's spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the person or the person's spouse or civil partner; or
  - (iii) dependent direct relatives in the person's ascending line or that of the person's spouse or civil partner;
- (e) in relation to a United Kingdom national, for the purposes of paragraph 9—
  - (i) the person's spouse or civil partner; or
  - (ii) direct descendants of the person or the person's spouse or civil partner who are—
    - (aa) under the age of 21; or
    - (bb) dependants of the person or the person's spouse or civil partner;

“self-employed person” means—

- (a) in relation to an EEA national, a person who is self-employed within the meaning of article 7 of Directive 2004/38 or the EEA Agreement, as the case may be; or
- (b) in relation to a Swiss national, a person who is a self-employed person within the meaning of Annex 1 to the Swiss Agreement;

“settled” has the meaning given by section 33(2A) of the Immigration Act 1971<sup>(64)</sup>;

“Swiss Agreement” means the Agreement between the EU and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons signed at Luxembourg on 21st June 1999<sup>(65)</sup> and which came into force on 1st June 2002;

“Swiss employed person” means a Swiss national who is an employed person, other than a Swiss frontier employed person, in the United Kingdom;

“Swiss frontier employed person” means a Swiss national who—

- (a) is an employed person in England; and
- (b) resides in Switzerland or in the territory of an EEA State other than the United Kingdom and returns to the national's residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss frontier self-employed person” means a Swiss national who—

- (a) is a self-employed person in England; and
- (b) resides in Switzerland or in the territory of an EEA State, other than the United Kingdom, and returns to the national's residence in Switzerland or that EEA State, as the case may be, daily or at least once a week;

“Swiss self-employed person” means a Swiss national who is a self-employed person, other than a Swiss frontier self-employed person, in the United Kingdom;

“worker” means a worker within the meaning of article 7 of Directive 2004/38 or the EEA Agreement as the case may be.

(2) For the purposes of this Schedule, “parent” means a parent, guardian or any other person having parental responsibility and “child” is to be construed accordingly.

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<sup>(64)</sup> Section 33(2A) was inserted by paragraph 7 or Schedule 4 to the British Nationality Act 1981 (c.61).

<sup>(65)</sup> Cm. 4904.

*Status: This is the original version (as it was originally made).*

(3) For the purposes of this Schedule, a person is not to be treated as ordinarily resident in a place unless that person lawfully resides in that place.

(4) For the purposes of this Schedule, a person who is ordinarily resident in England, Wales, Scotland, Northern Ireland or the Islands, as a result of having moved from another of those areas for the purpose of undertaking—

- (a) the designated course; or
- (b) a course which, disregarding any intervening vacation, the person undertook immediately before undertaking the designated course,

is to be considered to be ordinarily resident in the place from which the person moved.

(5) For the purposes of this Schedule, a person (“A”) is to be treated as ordinarily resident in England, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area, Switzerland and Turkey if A would have been so resident but for the fact that—

- (a) A;
- (b) A’s spouse or civil partner; or
- (c) in the case of a dependent direct relative in the ascending line, A’s child or child’s spouse or civil partner,

is or was temporarily employed outside the area in question.

(6) For the purposes of sub-paragraph (5), temporary employment outside of England, the United Kingdom and Islands, the territory comprising the European Economic Area and Switzerland or the territory comprising the European Economic Area, Switzerland and Turkey includes—

- (a) in the case of members of the regular naval, military or air forces of the Crown, any period which they serve outside the United Kingdom as members of such forces; and
- (b) in the case of members of the regular armed forces of an EEA State or Switzerland, any period which they serve outside of the territory comprising the European Economic Area and Switzerland as members of such forces; and
- (c) in the case of members of the regular armed forces of Turkey, any period which they serve outside of the territory comprising the European Economic Area, Switzerland and Turkey as members of such forces.

(7) For the purposes of this Schedule an area which —

- (a) was previously not part of the EU or the European Economic Area; but
- (b) at any time before or after these Regulations come into force has become part of one or other or both of these areas,

is to be considered to have always been a part of the European Economic Area.

(8) For the purposes of this Schedule, an eligible prisoner is to be considered ordinarily resident in the part of the United Kingdom where the prisoner resided prior to sentencing.

## PART 2

### Categories

#### Persons who are settled in the United Kingdom

2.—(1) A person who on the first day of the first academic year of the course—

- (a) is settled in the United Kingdom other than by reason of having acquired the right of permanent residence;



- (b) is ordinarily resident in England;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose residence in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(5).

**3.** A person who—

- (a) is settled in the United Kingdom by virtue of having acquired the right of permanent residence;
- (b) is ordinarily resident in England on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Refugees and their family members

**4.—(1)** A person who—

- (a) is a refugee;
- (b) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since the person was recognised as a refugee; and
- (c) is ordinarily resident in England on the first day of the first academic year of the course.

(2) A person who—

- (a) is the spouse or civil partner of a refugee;
- (b) was the spouse or civil partner of the refugee on the date on which the refugee made the application for asylum;
- (c) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or remain in the United Kingdom; and
- (d) is ordinarily resident in England on the first day of the first academic year of the course.

(3) A person who—

- (a) is the child of a refugee or the child of the spouse or civil partner of a refugee;
- (b) on the date on which the refugee made the application for asylum, was the child of the refugee or the child of a person who was the spouse or civil partner of the refugee on that date;
- (c) was under 18 on the date on which the refugee made the application for asylum;
- (d) is ordinarily resident in the United Kingdom and Islands and has not ceased to be so resident since being given leave to enter or remain in the United Kingdom; and
- (e) is ordinarily resident in England on the first day of the first academic year of the course.

Persons granted humanitarian protection and their family members

**5.—(1)** A person granted humanitarian protection who—

*Status: This is the original version (as it was originally made).*

- (a) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (b) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (2) A person who—
- (a) is the spouse or civil partner of a person granted humanitarian protection;
  - (b) was the spouse or civil partner of the person granted humanitarian protection on the date on which that person applied for asylum (the “asylum application date”);
  - (c) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (d) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.
- (3) A person who—
- (a) is the child of a person granted humanitarian protection or the child of the spouse or civil partner of a person granted humanitarian protection;
  - (b) on the asylum application date, was the child of that person or the child of a person who was the spouse or civil partner of the person granted humanitarian protection on that date;
  - (c) was under 18 on the asylum application date;
  - (d) is ordinarily resident in the United Kingdom on the first day of the first academic year of the course; and
  - (e) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course.

Workers, employed persons, self-employed persons and their family members

**6.—(1) A person who—**

- (a) is—
  - (i) an EEA migrant worker or an EEA self-employed person;
  - (ii) a Swiss employed person or a Swiss self-employed person;
  - (iii) a family member of a person mentioned in paragraph (i) or (ii);
  - (iv) an EEA frontier worker or an EEA frontier self-employed person;
  - (v) a Swiss frontier employed person or a Swiss frontier self-employed person; or
  - (vi) a family member of a person mentioned in paragraph (iv) or (v);
- (b) subject to sub-paragraph (2), is ordinarily resident in England on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course.

(2) Paragraph (b) of sub-paragraph (1) does not apply where the person applying for support falls within paragraph (a)(iv), (v) or (vi) of sub-paragraph (1).

**7. A person who—**

- (a) is ordinarily resident in England on the first day of the first academic year of the course;
- (b) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and

- (c) is entitled to support by virtue of Article 12 of [Council Regulation \(EEC\) No. 1612/68](#) on the freedom of movement of workers<sup>(66)</sup>, as extended by the EEA Agreement.

Persons who are settled in the United Kingdom and have exercised a right of residence elsewhere

**8.—(1)** A person who—

- (a) is settled in the United Kingdom;
- (b) was ordinarily resident in England and settled in the United Kingdom immediately before leaving the United Kingdom and who has exercised a right of residence;
- (c) is ordinarily resident in the United Kingdom on the day on which the first term of the first academic year actually begins;
- (d) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (e) in a case where the person's ordinary residence referred to in paragraph (d) was wholly or mainly for the purposes of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (d).

(2) For the purposes of this paragraph, a person has exercised a right of residence if that person is a United Kingdom national, a family member of a United Kingdom national for the purposes of Article 7 of Directive 2004/38 (or corresponding purposes under the EEA Agreement or Swiss Agreement) or a person who has a right of permanent residence who in each case has exercised a right under Article 7 of Directive 2004/38 or any equivalent right under the EEA Agreement or Swiss Agreement in a state other than the United Kingdom or, in the case of a person who is settled in the United Kingdom and has a right of permanent residence, if the person goes to the state within the territory comprising the European Economic Area and Switzerland of which the person is a national or of which the person in relation to whom the person is a family member is a national.

EU nationals

**9.—(1)** A person who—

- (a) is either—
  - (i) an EU national on the first day of the first academic year of the course; or
  - (ii) a family member of a such a person;
- (b) is attending or undertaking a designated course in England;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) subject to sub-paragraph (2), whose ordinary residence in the territory comprising the European Economic Area and Switzerland has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.

(2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the territory comprising the European Economic Area and Switzerland in accordance with paragraph 1(4).

(3) Where a state accedes to the EU after the first day of the first academic year of the course and a person is a national of that state or the family member of a national of that state, the requirement

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<sup>(66)</sup> OJ No L257, 19.10.1968, p2 (OJ/SE 1968 (II) p475).

in paragraph (a) of sub-paragraph (1) to be an EU national on the first day of the first academic year of the course is treated as being satisfied.

**10.—(1) A person who—**

- (a) is an EU national other than a United Kingdom national on the first day of the first academic year of the course;
- (b) is ordinarily resident in England on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period immediately preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving higher education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately prior to the period of ordinary residence referred to in paragraph (c).

(2) Where a state accedes to the EU after the first day of the first academic year of the course and a person is a national of that state, the requirement in paragraph (a) of sub-paragraph (1) to be an EU national other than a United Kingdom national on the first day of the first academic year of the course is treated as being satisfied.

Children of Swiss nationals

**11. A person who—**

- (a) is the child of a Swiss national who is entitled to support in the United Kingdom by virtue of article 3(6) of Annex 1 to the Swiss Agreement;
- (b) is ordinarily resident in England on the first day of the first academic year of the course;
- (c) has been ordinarily resident in the territory comprising the European Economic Area and Switzerland throughout the three-year period preceding the first day of the first academic year of the course; and
- (d) in a case where the person's ordinary residence referred to in paragraph (c) was wholly or mainly for the purpose of receiving full-time education, was ordinarily resident in the territory comprising the European Economic Area and Switzerland immediately before the period of ordinary residence referred to in paragraph (c).

Children of Turkish workers

**12. A person who—**

- (a) is the child of a Turkish worker;
- (b) is ordinarily resident in England on the first day of the first academic year of the course; and
- (c) has been ordinarily resident in the territory comprising the European Economic Area, Switzerland and Turkey throughout the three-year period preceding the first day of the first academic year of the course.

Long Residence

**13.—(1) A person who on the first day of the first academic year of the course—**

- (a) is either—
  - (i) under the age of 18 and has lived in the United Kingdom throughout the seven-year period preceding the first day of the first academic year of the course; or
  - (ii) aged 18 years old or above and, preceding the first day of the first academic year of the course, has lived in the United Kingdom throughout either—

- (aa) half their life; or
  - (bb) a period of twenty-two years;
  - (b) is ordinarily resident in England;
  - (c) has been ordinarily resident in the United Kingdom and Islands throughout the three-year period preceding the first day of the first academic year of the course; and
  - (d) subject to sub-paragraph (2), whose residence is in the United Kingdom and Islands has not during any part of the period referred to in paragraph (c) been wholly or mainly for the purpose of receiving full-time education.
- (2) Paragraph (d) of sub-paragraph (1) does not apply to a person who is treated as being ordinarily resident in the United Kingdom and Islands in accordance with paragraph 1(4).

## SCHEDULE 2

Regulations 15 and 18

### INFORMATION

1. Every applicant and eligible student must, as soon as reasonably practicable after being requested to do so, provide the Secretary of State with such information as the Secretary of State considers the Secretary of State requires for the purposes of these Regulations.
2. Every applicant and eligible student must forthwith inform the Secretary of State and provide the Secretary of State with particulars if any of the following occurs—
  - (a) the applicant or student withdraws, is suspended, abandons or is expelled from their course;
  - (b) the applicant or student transfers to any other course at the same or at a different institution;
  - (c) the applicant or student is absent from the course;
  - (d) the month for the start or completion of the course changes;
  - (e) the applicant or student's home or term-time address or telephone number changes;
  - (f) the applicant or student becomes, or ceases to be, a prisoner or eligible prisoner.
3. Information provided to the Secretary of State pursuant to these Regulations must be in the format that the Secretary of State requires and, if the Secretary of State requires the information to be signed by the person providing it, an electronic signature in such form as the Secretary of State may specify satisfies such a requirement.

## SCHEDULE 3

Regulations 69, 73, 74, 75 and 76

### REAL TIME RETURNS

#### Information about the employer and employee

1. The information specified in paragraphs 2 to 4 and 8 to 14 of Schedule A1 (real time returns) to the PAYE Regulations.
2. The total amount of repayments deducted in the earnings period in which the return is made.
3. The total amount of repayments deducted for the tax year from the earnings paid to the employee.

*Status: This is the original version (as it was originally made).*

4. In a case where the earnings the return relates to falls to be aggregated with other earnings in the same earnings period, the information required by paragraphs 2 and 3 need only be provided when the final payment of earnings in the earnings period is made.

5. If the return is the first return in respect of the employee in this employment, an indication that postgraduate master's degree loan deductions are required.

## EXPLANATORY NOTE

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

These Regulations provide the making of loans to eligible students for postgraduate master's degree courses which begin on or after 1st August 2016 and set out the repayment terms of such a loan. With the exception of regulation 97(1), which applies to Wales, and regulation 97(2), which extends to Northern Ireland, these Regulations apply in relation to England only; however these Regulations extend to all of the United Kingdom in so far as they impose any obligation, or confer any power, on HMRC, an employer or a borrower in relation to repayments under chapters 3 or 4 of Part 2 or on any other person in relation to the retention or production of information or records.

Part 1 sets out the loan terms. Regulation 3 sets out who can be considered an eligible student for the purposes of a postgraduate master's degree loan. Regulation 4 sets out which courses are deemed designated courses for which an eligible student can receive a loan. Regulation 5 sets out when a student ceases to be considered an eligible student. Regulation 6 recognises that an eligible student may transfer to another course in certain circumstances. Regulations 7 and 8 set out the circumstances in which a student may qualify for a postgraduate master's degree loan after the designated course has started. Regulations 9 to 11 deal with the formalities of how an eligible student applies for a loan, including the application deadlines. Regulations 12 and 13 provide that the maximum loan amount an eligible student can receive is £10,000, other than in the case of an eligible prisoner, where the maximum amount is the value of the fees of the designated course. Regulation 13 gives the Secretary of State the power to pay any loan in instalments and provides that payments are made directly to the student's bank account, other than in the case of an eligible prisoner where the payment is made to the institution to which the prisoner is liable to make payment for the fees or to a third party. Regulation 14 gives the Secretary of State the power to make payment of the loan conditional upon the student providing the Secretary of State with a national insurance number. Regulation 15 places an obligation on the Secretary of State to cease further loan payments if he receives notice of a student's lack of attendance on the course, other than where the Secretary of State believes it appropriate to consider making such payments during the student's absence. However, if the student recommences the full course, the Secretary of State may decide to recommence further payments. Regulation 16 sets out how loan entitlement amounts change when an eligible student becomes an eligible prisoner and vice versa. Regulation 17 sets out how the Secretary of State can recover any overpayments of a postgraduate master's degree loan. Regulation 18 deals with information requirements.

Part 2 sets out the repayment terms of the loan, and how this is managed by an employer and HMRC. Regulations 22 to 24 set out the functions of HMRC in relation to monies collected by it and how the penalty regime set out in the Taxes Management Act 1970 will be applied to the repayments system. Regulation 25 sets out how repayments made by borrowers will be applied to outstanding penalties, charges, costs, interest and principal. Regulation 26 sets out that a borrower may repay all or any part of the loan at any time, however, a borrower is not required to repay any part of the

postgraduate master's degree loan before the start of the following tax year commencing on 6<sup>th</sup> April after a borrower ceases to be an eligible student, and no borrower is required to repay any part of the loan until on or after 6th April 2019. A borrower's liability to repay a loan will end only if the loan is cancelled, repaid in full, or if other specified events occur. Regulation 27 provides that repayments made directly to the Secretary of State or by direct debit are credited to the 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. Regulation 28 provides that a borrower may repay through direct debit at the end of 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 29 sets out that loans are cancelled when a borrower dies, is permanently disabled, or as of the 30th anniversary of the date on which the borrower became liable to repay the loan. Regulation 30 provides that if a borrower repays more than is owed to the Secretary of State, any over-payment is repaid with interest. Regulation 31 sets out that the interest rate is the retail price index plus 3%. Regulations 32 to 37 provide that the Secretary of State may require the borrower to provide personal details, and may apply penalties to the borrower if the borrower fails to comply with these requirements. In addition to specific penalties for failing to comply, if the Secretary of State incurs any costs in obtaining information which the borrower is required to provide, he can recover such costs by adding them to the balance of the loan (regulation 35). The Secretary of State has the power to require the borrower to repay the loan in full immediately if the borrower fails to comply with the information obligations or to pay penalties.

Chapter 3 deals with repayment of loans through the self-assessment system for borrowers required to submit a self-assessment tax return. Regulation 38 provides that provisions of the Taxes Management Act 1970 dealing with payment of income tax through self-assessment are extended to cover repayment of loans, and loan repayments through self-assessment are treated like income tax. Regulation 39 provides that a borrower repays 6% of the borrower's total income per annum on income over £21,000, although certain exclusions and reliefs are applied to the calculation of the borrower's income for these purposes. Regulations 40 and 41 sets out HMRC has the power to require the borrower to disclose information about the loan in the borrower's annual return. Regulations 42 and 43 contain provisions regarding the storing and treatment of returns. Regulation 44 deals with assessments, claims and appeals. Regulation 45 deals with how a repayment must be made. Regulations 46 to 50 deal with interest and penalty payments.

Chapter 4 deals with how borrowers who are employees repay student loans through their employers. Regulation 54 sets out that an employer must deduct 6% of the borrower's total income per annum on income over £21,000. Regulations 55 and 56 set out how the employer must calculate earnings and earnings periods as set out in the Social Security (Contributions) Regulations 2001. Regulations 57 and 58 sets out provisions relating to the situation where there are multiple employers or intermediate employers. Regulations 59, 60 and 62 set out how an employer must make the deduction of repayments. Regulation 61 gives the employer directions as to how deductions from the employee's earnings rank against other deductions that the employer may be made to make. Regulation 63 provides where an employer is required to give a certificate of earnings to the employee, the employer must note on the certificate the amount of deductions regarding the loan made by the employer. Regulations 64 to 66 set out how the employer must make the repayments. Regulation 67 provides that 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. Regulation 68 sets out that where an employer has not made the due payments, HMRC must charge interest at the rate applicable under the Finance Act 2009. Regulations 69, 71 and 73 set out the information that an employer must give HMRC. Regulation 70 sets out an exception to Regulation 69 in circumstances where the employer pays the employee on the date that employee does the work, and Regulation 74 provides exceptions to Regulation 69 for certain types of business. Regulation 72 deals with situations where the employer makes payments to an employee which are deemed notional payments under the Income Tax (Earnings & Pensions) Act

2003. Regulation 75 sets out the procedure an employer must follow if the employer discovers an inaccuracy in the details it has submitted in relation to an employee. Regulation 76 provides that an employer must make a return in the following tax year, where the employer has omitted to make a return in one year. Regulations 77 and 78 provide that the inspection powers of the Finance Act 2008, with modifications, also apply to the inspection of an employer's records under these Regulations. Regulations 79 and 80 provide that where HMRC thinks that employer has underpaid, it may demand the full payment and charge interest. Regulation 81 sets out that where an employer dies, anything which that employer was liable to do must be done by the employer's personal representative, or by the person succeeding that employer. Regulation 82 sets out that no subsequent employer is liable for the payment of repayments deducted from an employee's earnings before the change of employer, unless those repayments are also deductible from earnings paid to the employee after the change of employer. Regulation 83 provides that payments made by cheque are treated as paid on the date of receipt. Regulation 84 provides that where an employee leaves employment, and the employer has notice that the employee is a borrower, the employer must state on the P45 that the employee is a borrower. Regulation 85 provides that 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 for each incorrect deduction or payment. Regulation 86 applies the provisions regarding recovery of penalties of the Taxes Management Act 1970 to the penalties set out in chapter 4.

Chapter 5 provides for repayment by borrowers who are not resident in the UK for income tax purposes. Regulation 89 provides that a borrower must notify the Secretary of State for any period of residence outside the UK in excess of 3 months. Under regulation 90 the Secretary of State has the power to require any such borrower to repay the loan in fixed instalments calculated in accordance with Regulation 93, and if the borrower does not make such a payment when due, the Secretary of State can demand the full repayment of the loan immediately (Regulation 95).

Regulation 97 provides that in relation to borrowers in England & Wales, and Northern Ireland sums by way of postgraduate master's degree loans which are received by the borrower, or to which the borrower is entitled, after the borrower is declared bankrupt, do not form part of the bankrupt's estate for the purposes of the bankruptcy.

An impact assessment of the effect that these Regulations will have on the costs of business, the voluntary sector and the public sector will be available from the Higher Education Policy Team, Department for Business, Innovation and Skills, 1 Victoria Street, London, SW1H 0ET before the end of the Parliamentary praying period for this instrument and will be published alongside this instrument and its Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).