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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 128**

**The Education (Student Loans) (Repayment)  
Regulations (Northern Ireland) 2009**

**PART 4**

**Deduction of Repayments by Employers**

**Interpretation**

**36.** In this Part—

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

- (a) tax due under the PAYE Regulations;
- (b) earnings-related contributions due under the Contributions Regulations; or
- (c) amounts due under the Income Tax (Construction Industry Scheme) Regulations 2005<sup>(1)</sup>;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 2001<sup>(2)</sup>;

“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 40, such sums as—

- (a) constitute earnings for the purposes of section 3 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(3)</sup> 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 (Northern Ireland) Act 1992<sup>(4)</sup>;

“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;

“Form P46” has the same meaning as in the PAYE Regulations;

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(1) [SI 2005/ 2045](#)

(2) [SI 2001/1004](#). These Regulations have been amended but none are relevant.

(3) [1992 c.7](#), section 3 was amended by paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 ([S.I. 1999/671](#)) and Articles 45 and 46 of the Social Security (Northern Ireland) Order 1998 ([S.I. 1998/1506 \(N.I. 10\)](#))

(4) Section 9 was amended by paragraph 5 of Schedule 10 to the Welfare Reform and Pensions Act 1999 ([c. 30](#)), section 2(2) of the National Insurance Contributions Act 2002 ([c. 19](#)) and paragraph 43 of Schedule 4 to the Pensions Act (Northern Ireland) 2008 ([c. 1](#))

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

“income tax period” means income tax quarter where regulation 49(2) has effect, but otherwise means income tax month;

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

“the PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(5).

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

**37.** Subject to the provisions contained in this Part, 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.

### **Commencement of employment**

**38.** Where at the commencement of employment a borrower is required to complete a Form P46, the borrower must declare any liability to repay any student loan in that Form P46.

### **Amount of repayments**

**39.—(1)** The repayment deducted must be 9% 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) £15,000, 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 £15,000 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 respectively.

(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 Department.

(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**

**40.—(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**

**41.**—(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**

**42.**—(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**

**43.**—(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**

**44.**—(1) Where HMRC has been given notice by the Department under regulation 11(3)(b) that a borrower may be required to make repayments under this Part 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 Department under regulation 11(3)(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 Part 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 paragraph (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**

- 45.**—(1) Every employer who has received—
- (a) a notice under regulation 44(1);
  - (b) a Form P45 containing a statement under regulation 62; or
  - (c) a Form P46 stating that the employee has a student loan which requires repayment,

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 44(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 the employer has received a Form P46 stating that the employee has a student loan which requires repayment, the date on which that Form is first received.

(3) The date referred to in this paragraph is the date specified in the notice given by HMRC under regulation 44(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 Part.

(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 Department as all or part of a student loan.

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

**46.**—(1) Where any employer is required to deduct repayments from a payment under regulation 45 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 45 and is also required to comply with one or more of any of the types of notice or order in paragraph (3), paragraph (4) will apply.

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

- (a) attachment of earnings orders made under the Judgments Enforcement (Northern Ireland) Order 1981(6) or the Magistrates' Courts (Northern Ireland) Order 1981(7);
- (b) deductions of earnings orders made under the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992(8); or
- (c) income support deduction notices made under regulation 20 of the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988(9) ("the Social Security Regulations").

(4) An employer must deduct repayments as if they were amounts requiring deduction pursuant to an attachment of earnings order which—

- (a) was not made to secure the repayment of a judgement debt or payments under an administration order;

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(6) [SI 1981/226 \(N.I. 6\)](#)

(7) [SI 1981/1675 \(N.I. 26\)](#)

(8) [S.R. 1992 No. 390](#)

(9) [S.R. 1988 No. 142](#)

- (b) was the most recent order 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 income support deduction notice under regulation 20 of the Social Security Regulations before deducting a repayment under regulation 45, no repayment must be deducted by the employer.

(6) 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**

**47.**—(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**

**48.**—(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**

**49.**—(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; 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) 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.

(3) Where, before 1st April 2006, the employer has under regulation 7(2) of the Tax Credits (Payment by Employers) Regulations 1999<sup>(10)</sup> or the Working Tax Credit (Payment by Employers) Regulations 2002<sup>(11)</sup> funded the payment of tax credit out of repayments deducted under these Regulations or the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000, the amount requiring payment to HMRC under paragraph (1) or (2) must be reduced by the amount of tax credit which the employer has funded in the income tax period.

(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 (2) by an approved method of electronic communications, payment must be made within 17 days of the end of the relevant income tax period.

#### **Notice and certificate when repayments deducted not paid**

**50.**—(1) This regulation applies where, within 17 days of the end of any income tax period the employer has paid no amount in respect of student loan repayments to HMRC under regulation 49 for that income tax period and HMRC is unaware of the amount, if any, which the employer is liable to pay.

(2) Where this regulation applies, HMRC may give notice to the employer requiring the employer to render a return within 17 days in such form as HMRC may prescribe showing the amount in respect of student loan repayments which the employer is liable to pay to HMRC under regulation 49 in respect of the relevant income tax period.

(3) Where a notice given by HMRC under paragraph (2) extends to two or more consecutive income tax periods, these Regulations have effect as if the consecutive income tax periods were one income tax period.

(4) HMRC may give notice under paragraph (2), even if an amount in respect of student loan repayments has been paid to HMRC by the employer under regulation 54 for an income tax period, if HMRC is not satisfied that the amount paid is the full amount which the employer is liable to pay to HMRC in respect of the income tax period in question.

(5) Upon receipt of a return made by the employer under paragraph (2) HMRC may prepare a certificate showing the amount in respect of student loan repayments which the employer is liable to pay to HMRC in respect of the income tax period in question.

(6) The production of the return made by the employer under paragraph (2) and of the certificate of HMRC under paragraph (5) is sufficient evidence that the amount shown in the certificate is the amount of student loan repayment which the employer is liable to pay to HMRC in respect of the income tax period in question.

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

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<sup>(10)</sup> [SI 1999/3219](#). These Regulations lapsed with effect from 8 April 2003 on the repeal of section 6 of the Tax Credits Act 1999 ([c.10](#)) by the Tax Credits Act 2002 ([c.21](#)) section 60 and Schedule 6

<sup>(11)</sup> [SI 2002/2172](#). These Regulations were revoked by the Tax Credit (Payment by Employers, etc) (Amendment) Regulations 2005 ([SI 2005/2200](#)) regulation 9(2)(a)

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

**51.**—(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 student loan repayments to HMRC under regulation 49 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 student loan repayments or of combined amounts, may to the best of its judgment specify the amount in respect of student 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) Where the employer has paid no amount under regulation 49 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.

(4) HMRC may give a notice under paragraph (2) even if an amount in respect of student loan repayments has been paid to it by the employer under regulation 49 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 will apply to the amount specified.

(5) 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 student 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 55; and
- (b) regulation 55 applies to that inspection and the notice given by HMRC under paragraph (2) is to be disregarded.

(6) Subject to paragraph (7), 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 student loan repayments or to include an amount in respect of student loan repayments which the employer was liable to pay for that income tax period in accordance with regulation 49, and
- (b) may be certified by HMRC.

(7) Paragraph (6) 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.

(8) The production of a certificate under paragraph (6) is sufficient evidence that the employer is liable to pay the amount shown in the certificate to HMRC.

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

(10) 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 49 for any subsequent income tax period.

(11) If the employer renders the return required by regulation 49 after the end of the tax year and pays the total net amount in respect of student loan repayments which the employer is liable to pay, any excess amount paid and not otherwise recovered by set-off in accordance with this regulation is to be repaid.

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

**52.**—(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 49, 50, 51, 54 or 55 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 50(5), 51(6), 54(4), or 55(4), with the modification that summary proceedings for the recovery of the amount in respect of student 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 49, or
- (b) the total amount which the employer is liable to pay HMRC as a combined amount including any amount under regulation 49, 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) will, subject to the provisions of paragraphs (3) and (6), be one cause of action or one matter of complaint.

(6) Nothing in paragraph (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**

**53.**—(1) Subject to paragraph (2), where an employer has not on or before the 14th day after the end of a tax year paid an amount which the employer is liable to pay to HMRC under regulation 49 for that tax year, that amount will carry interest at the rate applicable under section 178 of the Finance Act 1989<sup>(12)</sup> for the purposes of section 86 of the 1970 Act 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 year.

(3) Interest payable under this regulation is recoverable as if it were an amount which the employer was liable to pay under regulation 49.

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(12) 1989 c.26

(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.

### **Returns by employers**

**54.**—(1) Not later than 44 days after the end of the tax year the employer must deliver to HMRC in such form as HMRC may approve or prescribe, a return showing in respect of each employee, in respect of whom the employer was required at any time during the tax year to prepare or maintain a deductions working sheet in accordance with regulation 47—

- (a) such particulars as HMRC may require for the identification of the employee;
- (b) the tax year to which the return relates; and
- (c) the total amount of repayments deducted for the tax year from the earnings paid to the employee.

(2) The return required by paragraph (1) must include—

- (a) a statement and declaration in the form approved or prescribed by HMRC containing a list of all deductions working sheets on which the employer was obliged to keep records in accordance with these Regulations in respect of the tax year; and
- (b) a certificate showing the total amount of repayments deducted for the tax year in respect of each employee.

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

(4) If within 17 days of the end of any tax year an employer has failed to pay to HMRC the total amount of repayments which the employer is liable to pay under regulation 49, HMRC may prepare a certificate showing the amount of repayments remaining unpaid for the tax year in question.

(5) Where an employer fails to make a return in accordance with paragraph (1), the employer is liable—

- (a) to a penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this paragraph has already been imposed; and
- (b) if the failure continues beyond 12 months, without prejudice to any penalty under subparagraph (a), to a penalty not exceeding so much of the amount payable by the employer in accordance with the Regulations for the tax year to which the return relates as remained unpaid at the end of the 22nd April after the end of that tax year.

(6) For the purposes of paragraph (5), the relevant monthly amount in the case of a failure to make a return is—

- (a) £100, where the number of persons in respect of whom particulars should be included in the return is fifty or less;
  - (b) £100 for each fifty such persons, where that number is greater than fifty; and
  - (c) an additional £100 where the number of persons referred to in sub-paragraph (b) is not a multiple of fifty.
- (7) Where a return under this regulation must be made—
- (a) at the same time as—
    - (i) any specified return which must be made in accordance with Regulations made by HMRC under section 684 of the 2003 Act or section 566(1) of the 1988 Act (sub-contractors) to which section 98A of the 1970 Act (penalties) applies; or
    - (ii) any specified return which must be made in accordance with Regulations made by HMRC under paragraph 6 of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 in respect of which section 98A of the 1970 Act has been applied by such Regulations; or
  - (b) if the circumstances are such that a return mentioned in paragraph (a) does not fall to be made, at a time defined by reference to the time for making that return, had it fallen to be made,

and a person has been required to pay a penalty under section 98A(2)(a) of the 1970 Act in respect of the tax return or the National Insurance contributions return or both, that person must not also be required to pay a penalty in respect of any failure to submit the return under this regulation.

- (8) For tax years—
- (a) ending on or before 5th April 2009, where an employer fraudulently or negligently makes an incorrect return under paragraph (1), the employer will be liable to a penalty not exceeding £3000 for each employee in respect of whom incorrect particulars are included in the return;
  - (b) commencing on or after 6th April 2009, where the date on which the return is due to be filed is on or after 6th April 2010, where an employer carelessly or deliberately makes an incorrect return under paragraph (1) penalties as set out in Schedule 24 to the Finance Act 2007 (penalties for errors) will apply as they apply in connection with PAYE.
- (9) A certificate under paragraph (4) that the net amount in respect of student loan repayments remaining unpaid for that year has not been paid to it by the employer is sufficient evidence that the sum shown on the certificate is unpaid and is due to the Crown.
- (10) Any document purporting to be a certificate under paragraph (4) is deemed to be such a certificate until the contrary is proved.

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

**55.**—(1) For the purposes of carrying out inspections of an employer's records in relation to checking their compliance with this Part, Schedule 36 to the Finance Act 2008<sup>(13)</sup> (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 Part;
  - (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 Part;

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- (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 Part.
- (3) Statutory records (as defined in Schedule 36 to the Finance Act 2008) 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 student 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 student 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**

**56.**—(1) For the purposes of obtaining information in relation to checking an employer’s compliance with this Part, 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 Part;
  - (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 student 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 Part;
  - (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 Part.

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

**57.**—(1) This regulation applies where it appears to HMRC that there may be repayments payable by an employer under regulation 49 which—

- (a) have not been paid to HMRC, and
- (b) have not been certified by HMRC under regulation 54.

(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 49 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) 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**

**58.**—(1) Where—

- (a) an employer has not paid an amount of repayments to HMRC under regulation 49;
- (b) HMRC makes a determination of the amount of such repayments under regulation 57; and
- (c) repayments are payable pursuant to that determination,

those repayments will carry interest at the applicable rate under section 178 of the Finance Act 1989 for the purposes of section 86 of the 1970 Act from the 14th day after the end of the tax year 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 49.

#### **Death of employer**

**59.** 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**

**60.**—(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**

**61.** For the purposes of regulations 49 to 53, 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**

**62.** 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 44(1); or
- (b) the employer has received a Form P46 stating that the employee has a student loan which requires repayment; and
- (c) (in either case) the employer has not received a notice from HMRC under regulation 44(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**

**63.**—(1) Subject to paragraph (3), 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 Part, 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) This regulation does not apply where an employer has paid an electronic payment default surcharge to HMRC under regulation 203 of the PAYE Regulations in respect of an incorrect payment.

**Collection and recovery of penalties**

**64.** Section 69 of the 1970 Act (recovery of penalties etc) applies to penalties imposed under this Part as it applies to penalties imposed under that Act, but does not apply to penalties under regulation 54(8)(b)(14).

**Application of the PAYE Regulations**

**65.**—(1) To the extent that the provisions of the PAYE Regulations apply by virtue of regulation 37 for the purposes of these Regulations, the PAYE Regulations will apply with the following modifications—

- (a) in regulation 202 (default notice and appeal), the only ground of appeal is that the employer is not in default;
- (b) in regulation 203 (default surcharge), —
  - (i) “A” is the total amount of repayments payable for the tax year in which the relevant deductions were made to which the specified payment relates; and
  - (ii) “B” is the total amounts deducted from A under regulation 49(3) and (4) of these Regulations.
- (c) 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

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(14) Schedule 24 to the Finance Act 2007 (c.11) makes similar provision to section 69 of the 1970 Act in relation to penalties incurred under regulation 58(8)(b)

Regulations or regulation 90N of the Contributions Regulations in relation to the same tax year.