
SCOTTISH STATUTORY INSTRUMENTS

2000 No. 110

EDUCATION

The Repayment of Student Loans (Scotland) Regulations 2000

<i>Made</i>	- - - -	<i>10th April 2000</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>13th April 2000</i>
<i>Coming into force.</i>	- -	<i>16th May 2000</i>

The Scottish Ministers, in exercise of the powers conferred upon them by sections 73(f), 73B, and 74(1) of the Education (Scotland) Act 1980(1), hereby make the following Regulations:

PART I
GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the Repayment of Student Loans (Scotland) Regulations 2000 and shall come into force on 16th May 2000.

Interpretation

2. In these Regulations—

“the Act” means the Education (Scotland) Act 1980(2);

“the Board” means the Commissioners of Inland Revenue;

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

“Collection Regulations” means the Education (Student Loans) (Repayment) Regulations 2000(3);

(1) 1980 c. 44. Section 73(f) was amended by section 29(1) of the Teaching and Higher Education Act 1998 (c. 30). Section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(2) 1980 c. 44.

(3) S.I. 2000/944.

“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(4), 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(5);

“Loan Regulations” means the Education (Student Loans) (Scotland) Regulations 1999(6);

“repayment” means a repayment of a student loan;

“Scottish Ministers” includes any person exercising functions on their behalf pursuant to arrangements made under section 73A(3) of the Act(7);

“student loan” means the total outstanding principal, interest, penalties and charges owed by a borrower to the Scottish Ministers pursuant to these or any other regulations made under section 73 of the Act, excluding any interest, penalties or charges payable under Part III or IV of the Collection Regulations;

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

Revocation

3. Regulation 16 of the Loan Regulations is hereby revoked.

PART II

PROVISIONS APPLICABLE TO ALL REPAYMENTS

Application of Regulations

4. These Regulations apply to repayments of all student loans.

Period and manner of repayment

5. Subject to regulation 7 and Part III, where the Scottish Ministers—
 - (a) have not determined that repayments of student loans made under the Act shall be collected by the Board under Parts III and IV of the Collection Regulations; or
 - (b) having so determined, are, by virtue of regulation 11(8) of those Regulations, not required to give notices under paragraph 11(5)(a) or (b) of those Regulations,

they may require the borrower to repay his student loan in such manner and over such period of time as in all the circumstances seems appropriate.

Application of payments received

6. Any repayment received by the Scottish Ministers shall be applied by them in reduction or in satisfaction of—

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

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

(6) S.I. 1999/1001; as amended by S.I. 1999/1131.

(7) 1980 c. 44. Section 73A was inserted by section 29(2) of the Teaching and Higher Education Act 1998 (c. 30). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

- (a) first, any outstanding interest payable by the borrower by virtue of regulation 15 of the Loan Regulations or regulation 12(3) of these Regulations; and
- (b) second, any outstanding principal of the relevant student loan, which shall be reduced or satisfied from the date of receipt.

Time for repayments

7.—(1) A borrower may repay all or any part of his student loan to the Scottish Ministers at any time.

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

(3) A borrower—

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

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

Cancellation

8.—(1) Subject to paragraph (4) where a borrower is not in breach of any obligation to repay his student loan or in breach of any obligation to repay any other loan mentioned in paragraph (2) and the Scottish Ministers are satisfied that he—

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

the Scottish Ministers shall cancel his liability to repay his student loan.

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

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

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

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

(5) The cancellation of a borrower's liability to repay his student loan under paragraph (1) shall not affect his liability to make repayments by way of deductions made under Part IV of the Collection

(8) 1990 c. 6.

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

(10) 1998 c. 30.

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

Regulations subject to and in accordance with that Part in respect of any earnings period ending before the date of cancellation.

Refunds

9.—(1) Where the Scottish Ministers have received a repayment either directly from the borrower or by way of deduction from a borrower's emoluments in accordance with Part IV of the Collection Regulations—

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

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

(2) Where the Scottish Ministers are considered to have received a payment collected under Part III of the Collection Regulations in respect of a year of assessment—

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

the repayment shall be considered to have been received by the Scottish Ministers on the 31st January next following the year of assessment in accordance with paragraph (5)(b), and the Scottish Ministers shall refund to the Board for the account of the borrower any overpayment which results from the receipt.

(3) The Board shall be considered to have received a refund under paragraph (2) on the date on which the amount refunded was considered to have been received by the Scottish Ministers in accordance with paragraph (5).

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

(5) For the purposes of this regulation, a repayment shall be considered to have been paid by the borrower and received by the Scottish Ministers as follows—

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

PART III

REPAYMENTS BY OVERSEAS RESIDENTS

Interpretation

10. In this Part—

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

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

Notice of overseas residence

11.—(1) A borrower shall notify the Scottish Ministers of any period of residence outside the United Kingdom which exceeds three months.

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

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

Notice of liability to make repayments

12.—(1) Where the Scottish Ministers are satisfied that—

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

they may serve a notice on the borrower requiring the borrower to repay his student loan in monthly instalments in accordance with regulation 13.

(2) In a notice served under paragraph (1) the Scottish Ministers may require a borrower who has failed to—

- (a) give the notice required by regulation 11(1); or
- (b) provide any information required by the Scottish Ministers under regulation 11(2)

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

(3) When they serve a notice under paragraph (1) the Scottish Ministers may determine that a student loan shall bear interest at three times the rate or rates which would otherwise be applicable during any period—

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

Repayment by instalments

13.—(1) Subject to paragraph (2) a borrower shall not later than the day specified in a notice served under regulation 12 and on the same day of each subsequent month pay the Scottish Ministers an instalment of £246.

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

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

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

- (a) the first £10,000 of such income; and
- (b) income in respect of which the Scottish Ministers are satisfied that repayments will likely be made under Part III or IV of the Collection Regulations.

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

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

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

Application to cease repayment by instalments

14.—(1) A borrower who—

- (a) is required to make repayments in accordance with regulation 13; and
- (b) who has not been required to repay his student loan in full immediately under regulation 13(6),

may apply to the Scottish Ministers for a determination that he shall no longer be required to make such payments.

(2) The Scottish Ministers may determine that a borrower who has applied under paragraph (1) shall not be required to make repayments under this Part from a date specified in their determination, being a date not more than three months earlier and two months later than the date of the determination, if they are satisfied that—

- (a) the borrower is resident in the United Kingdom; and
- (b) he is likely to be resident in the United Kingdom for the year of assessment during which the date specified in his determination will fall.

(3) A determination under paragraph (2) shall have effect until any further notice under regulation 13 is served on the borrower.

St Andrew's House,
Edinburgh
10th April 2000

HENRY McLEISH
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations deal with the repayment of student loans by Scottish domiciled students who started higher education courses in August 1998 or later. Students who began their courses before then, and certain students who began their courses after then (for example gap-year students), remain subject to the previous system of mortgage-style loans for maintenance under the Education (Student Loans) Act 1990 (1990 c. 6).

Repayments will be collected in three main ways:

- (a) by the Inland Revenue through self assessment (Part III of the Education (Student Loans) (Repayment) Regulations 2000 (S.I.2000/944)) (the “Collection Regulations”);
- (b) by the Inland Revenue via employers' deductions through the PAYE system (Part IV of the Collection Regulations);
- (c) by the Scottish Ministers, where borrowers are living and working abroad (Part III of these Regulations).

Collection by the Inland Revenue is triggered by a determination made by the Scottish Ministers in terms of regulation 3(2) of the Collection Regulations. Borrowers may also make voluntary repayments to Scottish Ministers at any time.

Part I of these Regulations contains introductory provisions and revokes current provision in the Education (Student Loans) (Scotland) Regulations 1999 (S.I. 1999/1001) dealing with repayment.

Part II

In the event that Scottish Ministers decide that the Inland Revenue should not collect repayments under Parts III and IV of the Collection Regulations, or in cases where the borrower’s loan does not exceed £120, borrowers may be asked to make repayments directly to the Scottish Ministers (*regulation 5*).

On receipt of payment towards the outstanding loan, Scottish Ministers will firstly apply the repayment to reduce any outstanding interest and secondly the outstanding principal loan (*regulation 6*).

Borrowers may repay their loans before they are required to do so if they wish. Borrowers are not required to make repayments until the 6th April after they have completed or left their courses. Borrowers who have a loan for a Postgraduate Certificate of Education can notify Scottish Ministers that they do not wish to repay the loan at the same time as one made under the mortgage-style repayment system and repayments will be deferred until repayment of the mortgage-style loan is completed (*regulation 7*).

Provided that a borrower has met all his student loan repayment obligations, loans are to be cancelled when the borrower reaches the age of 65, or dies, or if he becomes disabled and because of his disability is permanently unfit for work. Liability to make loan repayments ceases on the date of cancellation. For borrowers in self-assessment who die, loan repayments are collected through annual tax returns, including that for the year in which the borrower dies. For those in self-assessment whose loans are cancelled at age 65 or due to permanent disability, liability to make loan repayments ceases at the tax year in which the loan is cancelled. For borrowers making repayment via their employers, the liability to make repayments ceases on the date of cancellation (*regulation 8*).

If a borrower makes any repayments which exceed the total outstanding balance on his loan, Scottish Ministers must refund the overpayment together with interest. Interest is to be paid from the date of receipt of the overpayment at the same rate that it is charged to loan accounts. Where an amount is received through self-assessment to tax which exceeds the total amount outstanding, the overpayment is to be refunded to the Inland Revenue and the borrower's liability to the Inland Revenue reduced accordingly. Where a borrower has made repayments through his employer in a particular tax year and his income is less than £10,000, he may apply to Scottish Ministers to have those repayments refunded. These types of refund do not attract interest. Repayments made directly to Scottish Ministers will be taken to be received on the date of receipt. Repayments made directly to the Inland Revenue through the self-assessment tax system will be taken to be received on 31st January in the financial year following the financial year to which the repayment relates. Repayments made via employers will be taken to be received in monthly instalments received on the last day of each month in a year to which the repayment relates (*regulation 9*).

Part III of these Regulations deals with borrowers who are not resident in the UK for income tax purposes. Borrowers must tell Scottish Ministers if they are resident overseas for more than three months. They must, on request, provide information about their residence overseas, such as the purpose of their stay and their employment. If a borrower fails to provide Scottish Ministers with required information, they may require the borrower to repay immediately that part of the loan that would have been repaid had the information been provided and may apply a rate of interest to the loan at three times the normal rate of interest until the information is provided (*regulations 11 and 12*).

A borrower who is outside the UK tax system because he is living abroad must make repayments directly to Scottish Ministers and will receive a notification from them to that effect. Repayments will be due at the rate of £246 a month (based on 9% of income over £10,000 at the assumed rate of twice UK national average earnings measured in months each year). However, a borrower may apply to pay a lower monthly instalment equal to 1/12 of 9% of his annual income over £10,000. If a borrower misses one or more repayments, Scottish Ministers may require him to repay the total outstanding loan balance immediately (*regulation 13*).

Provision is made for a borrower who ceases to be resident abroad to be no longer required to make repayments directly to Scottish Ministers (*regulation 14*).