STATUTORY RULES OF NORTHERN IRELAND

2009 No. 128

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

PART 2

Provisions Applicable to all Repayments

Interpretation

6.—(1) In this Part—

"2006 Support Regulations" means the Education (Student Support) Regulations (Northern Ireland) 2006(**1**).

"date of receipt" in relation to a repayment is to be construed in accordance with regulation 12;

"disability–related benefit" means long-term incapacity benefit or short-term incapacity benefit at the higher rate, disability living allowance and industrial injuries benefit, all payable under the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**2**), 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 (Northern Ireland) 1987(**3**);

"end-on course" means—

(a) a full-time first degree course (other than a first degree course for the initial training of teachers) which, disregarding any intervening vacation, a student begins immediately after ceasing to attend a full-time course mentioned in paragraph (2) for which the student received or was entitled to receive an award made under the Students Awards Regulations (Northern Ireland) 1998(**4**) (other than an award within the meaning of the Students Awards Regulations (Northern Ireland) 2003(**5**)), or financial support under Student Support Regulations; and

(b) a full-time honours degree course beginning on or after 1st September 2006 which, disregarding any intervening vacation, a student begins immediately after ceasing to attend a full-time foundation degree course and for which the student received or was entitled to receive any of the financial support referred to in paragraph (a); and

(**1**) S.R. 2006 No. 312, as amended by S.R. 2006 No. 383

(**2**) 1992 c.7, amended by Articles 3 to 5, 7, 8, 10 to 13 of, and Schedules 1 and 2 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)). The IB provisions of the 1992 Act and the amendments of the 1994 Order are repealed by section 58 of and schedule 8 to, and amended by section 28 of and schedule 3 of the Welfare Reform Act (Northern Ireland) 2007 (c.2 (N.I.)) sections 23 and 67 and Schedules 3 and 8 from a date to be appointed (see section 60(1))

(**3**) S.R. 1987 No. 459 (see parts 3 and 4 of Schedule 2); relevant amending Regulations are S.R. 1988 Nos. 146 and 431, S.R. 1989 No. 395, S.R. 1992 No. 6, S.R. 1993 No. 373, S.R. 1994 Nos. 327 and 474, S.R. 1995 No. 67, S.R. 1997 No. 113, S.R. 2000 No. 74, S.R. 2003 Nos. 191 and 413 and S.R. 2007 Nos. 153 and 154

(**4**) S.R. 1998 No. 273

(**5**) S.R. 2003 No. 459, as amended by S.R. 2004 No. 395, S.R. 2005 No. 466, S.R. 2006 No. 378, S.R. 2007 No. 336 and S.R. 2008 No. 254

"Student Support Regulations" means any Regulations made in or in relation to any academic year commencing in or after 1998 pursuant to Article 3 of the Order and which regulate or define the entitlement of a borrower to loans and the extent of any financial support available including Regulations made after the date of these Regulations.

(2) The courses mentioned in this paragraph are a course for the Diploma of Higher Education, and a course for the Higher National Diploma or Higher National Certificate of—

(a) the Business & Technician Education Council; or

(b) the Scottish Qualifications Authority.

Functions of HMRC

7.—(1) HMRC must collect repayments from borrowers in accordance with Parts 3 and 4, 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 and the Department of Finance and Personnel (acting concurrently) may direct, account to the Department for, and pay to it, the sums estimated by HMRC (in the manner so directed) to have been collected by it as repayments in accordance with Parts 3 and 4.

(3) Repayments do not include any interest, penalties or charges payable under Part 3 or 4 and HMRC will 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 of the United Kingdom.

Officers of Revenue and Customs

8. 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 Parts 3 and 4

9.—(1) Section 98 of the 1970 Act (special returns etc) applies for the purposes of repayments under Parts 3 or 4 as if any reference in that section to a provision in the Table is a reference to a provision in those Parts 3 or 4 with the exception of regulations 25, 28, 55 and 56.

(2) Section 99 of the 1970 Act (assisting in the preparation of incorrect returns etc) applies in the case of returns, statements, declarations, accounts, information or documents for the purposes of repayments under Parts 3 or 4 as it applies for the purposes of income tax.

(3) For tax years—

(a) ending on or before 5th April 2008, sections 100 (determination of penalties by officer of HMRC), 100A (provisions supplementary to section 100) and 100B (appeals against policy determinations) of the 1970 Act apply to the penalties set out in regulation 35(3) in connection with repayments under Part 3 as they apply in connection with income tax;

(b) commencing on or after 6th April 2008, where the date on which the return is due to be filed is on or after 6th April 2009, Schedule 24 to the Finance Act 2007(**6**) (penalties for errors) applies in relation to the assessment of penalties and appeals against the assessment of penalties in connection with Part 3 as it applies to penalties in connection with income tax.

(**6**) 2007 c.11. Schedule 24 was amended by the Finance Act 2008 (c.9) Schedule 40

(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 35(3) and (4) in connection with repayment under Part 3 and all penalties under Part 4 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 Part 3 or 4 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 Parts 3 or 4 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 Parts 3 or 4 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 Part 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

10.—(1) Interest and penalties charged under Parts 3 or 4 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 Department will 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 regulation 19 or 20;

(b) second, any outstanding penalties, costs, expenses or charges under Part 5;

(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

11.—(1) A borrower may repay all or any part of a student loan to the Department at any time, by making direct payments to the Department.

(2) A borrower is not required to repay any part of the student loan before the start of the following tax year commencing on 6th April after a borrower ceases to be eligible for financial support under regulations made pursuant to Article 3 of the Order, whether by reason of having completed that course or otherwise.

(3) Subject to paragraphs (7) and (8), the Department 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 Part 3;

(b) the date on and after which a borrower may be required to make repayments by deductions from earnings under Part 4;

(c) the tax year in which the borrower will cease to be required to make repayments under Part 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 Part 4 because of the occurrence of a relevant event.

(4) For the purposes of paragraph (3)(c), a "relevant event" occurs when—

(a) the loan has been repaid in full to the Department;

(b) an amount sufficient to repay the balance owing to the Department is likely to be received by HMRC under Part 4 or by the Department directly from overseas borrowers by 30th April in the tax year immediately following the tax year in which the notice is issued; or

(c) the loan has been cancelled.

(5) For the purposes of paragraph (3)(d), a 'relevant event' occurs when—

(a) the loan has been repaid in full to the Department;

(b) an amount sufficient to repay in full the balance owing to the Department is likely to be received by HMRC under Parts 3 and 4 and by the Department 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 13 and meets the criteria of that regulation.

(6) The Department must not issue a notice under paragraph (3)(c) after the end of the calendar year during which the tax year specified in the notice ends.

(7) Where the Department has notified a borrower and HMRC that repayments under Parts 3 and 4 must no longer be made but at a later date it appears to the Department that the student loan has not been fully repaid, then a further notice may be given in accordance with paragraph (3).

(8) No notice need be given under paragraph (3)(a) or (b) if the borrower's loan does not exceed £120.

(9) Any notice which the Department 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 Department must provide the particulars required in paragraph (3).

(10) Any notice given by the Department pursuant to the Education (Student Loan) (Repayment) Regulations (Northern Ireland) 2000 prior to the coming into operation of these Regulations is to be treated as having been given pursuant to these Regulations.

Date of repayment

12. For the purposes of this Part, repayment will be considered to have been paid by the borrower and received by the Department as follows:—

(a) where an amount is paid by the borrower directly to the Department, or by direct debit under regulation 13, 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 Department that an amount has become payable to it in respect of a tax year under Part 3, a repayment of that amount is considered to have been received by the Department on 31st 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 Part 4, 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 Department 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 Department has given notice under regulation 11(3)(b) that payment should be deducted; and

(iii) days before the date on which the Department has given notice under regulation 11(3)(d) that payment should cease to be deducted.

Direct debit repayment

13.—(1) This regulation will apply if—

(a) the borrower gives notice to the Department of an intention to repay the outstanding balance in accordance with this regulation;

(b) the Department is satisfied that the borrower is likely to repay all of the outstanding balance of the student loan under Part 4 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 Department.

(2) Where this regulation applies, subject to paragraphs (3) and (4), the Department must give notice to HMRC, in accordance with regulation 11(3)(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 Department in the format required by the Department from time to time a standing instruction to the borrower's bank authorising monthly lump sum payments to the Department 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 Department specifies in a notice pursuant to regulation 11(3)(d).

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

(a) is refused on any second presentation by the Department; or

(b) is cancelled or otherwise altered by the borrower without the permission of the Department given under paragraph (6),

then the Department 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 11(3) that deductions from earnings are to recommence unless regulation 11(8) would otherwise apply.

(6) The borrower may, at any time, agree with the Department that repayment in accordance with this regulation will cease, and thereafter the Department must give a notice to HMRC and to the borrower in accordance with regulation 11(3) that repayment through the tax system is to recommence unless regulation 11(8) would otherwise apply.

(7) The Department may suspend or delay the operation of paragraph (5) if and to the extent it appears to the Department expedient to do so, taking into account the causes of the failed payment and the Department 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 11(1).

Cancellation

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

(a) a student loan under the overseas provisions;

(b) a student loan under regulation 13; or

(c) any loan mentioned in paragraph (4).

(2) In this regulation "post-2006 student loan" means any student loan paid under the 2006 Support Regulations or any subsequent regulations made by the Department under Article 3 of the Order and taken out by—

(a) a borrower who takes out a student loan for the first time in respect of an academic year beginning on or after 1st September 2006; or

(b) a borrower who takes out a student loan in respect of a course which satisfies the following conditions—

(i) it begins on or after 1st September 2006;

(ii) it is not an end-on course following on from a course which the borrower began before 1st September 2006; and

(iii) it is not one to which the borrower's status as a student eligible for support under regulations made under Article 3 of the Order has been transferred from another course which the borrower began before 1st September 2006.

(3) The Department must cancel the borrower's liability to repay the student 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;

(c) in the case of post-2006 student loans, the 25th anniversary of the date on which the borrower became liable to repay the student loan; or

(d) in the case of student loans which are not post-2006 student loans, the borrower reaches the age of 65.

(4) For the purposes of paragraph (1) the loans are loans made under the Education (Student Loans) (Northern Ireland) Order 1990(**7**) the Education (Student Loans) Act 1990(**8**), the Education (Scotland) Act 1980(**9**) and Regulations made under it, and the Teaching and Higher Education Act 1998(**10**) and Regulations made under it.

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

(a) in the case of cancellation under paragraph (3)(a), during which the borrower was alive; and

(b) in any other case, preceding the tax year during which the student loan was cancelled.

(6) The cancellation of a borrower's liability to repay the student loan under paragraph (3) does not affect the employer's liability to make deductions under Part 4 subject to and in accordance with that Part in respect of any earnings period ending before the date of cancellation.

Refunds

15.—(1) Where the Department has received a repayment either directly from the borrower or from HMRC under Part 4—

(**7**) 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

(**8**) 1990 c.6: repealed by the Teaching and Higher Education Act 1998 (c.30), Schedule 4

(**9**) 1980 c.44: amended by the Teaching and Higher Education Act 1998 (c.30), section 29; the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6), section 3; and the Self Governing Schools etc (Scotland) Act 1989 (c.39), Schedule 10

(**10**) 1998 c.30

(a) which results in the student loan being repaid in full, or

(b) when the student loan has already been repaid in full,

the Department must refund to the borrower any amount not required to repay the 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 Department is considered to have received a payment from HMRC under Part 3 in respect of a tax year—

(a) which results in the student loan being repaid in full, or

(b) when the student loan has already been repaid in full,

the repayment will be considered to have been received by the Department on 31st January next following the tax year in accordance with regulation 12(b) and the Department must refund to HMRC for the borrower's account any overpayment which results from the receipt.

(3) A refund under paragraph (2) will not carry interest and HMRC will be considered to have received the refund on the date on which the amount refunded was considered to have been received by the Department in accordance with regulation 12.

(4) Where the Department has received a repayment by way of deduction from the borrower's earnings for a tax year in accordance with Part 4 and those earnings do not exceed £15,000, the Department must refund the amount deducted if the borrower applies for a refund.

Interest rate on the loans

16.—(1) Subject to paragraph (2), during any academic year, if the Department determines that student loans will bear interest, loans bear interest at the rate which will result in an annual percentage rate of charge determined in accordance with the Consumer Credit (Total Charge for Credit) Regulations 1980(**11**) equal to 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.

(2) If the rate referred to in paragraph (1) exceeds the rate for the time being specified for the purposes of any exemption conferred by virtue of section 16(5)(b) of the Consumer Credit Act 1974(**12**) student loans bear interest at the rate so specified.

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

(4) The index of prices to which the Department is required by Article 3(8) of the Order to have regard in prescribing the rate of interest which student loans bear is the retail prices all items index mentioned in paragraph (1).

(5) The Department must publish, at least once a year, by whatever means and in whatever media the Department thinks fit, the interest rate determined in accordance with paragraph (1) for any forthcoming academic year, subject to any variation required by virtue of paragraph (2) to be applied.

(6) If, for any academic year, the Department determines not to charge interest on student loans, the Department must publish notice of that fact in the same manner.

(7) If, for any academic year, the Department publishes more than one rate of interest to apply to student loans, any subsequent rate so published will replace any previously published rate as the rate to apply from the date specified in the notice.

(**11**) SI 1980/51, amended by SI 1999/3177; there are other amending instruments but none is relevant
(**12**) 1974 c.39. The Act has been amended, but none are relevant

Information requests

17. If a borrower—

(a) changes home address; or

(b) changes name,

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

Information notices

18.—(1) The Department 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) telephone number and/or 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.

(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 19 and 22.

(4) Where the Department 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

19.—(1) Where a borrower fails to comply with regulation 17, the Department may require the borrower to pay a penalty of £50.

(2) Where a borrower fails to comply with regulation 18(4), the Department may require the borrower to pay a penalty of £50.

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

(5) The Department 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 regulations 19 and 22.

(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 11(3), (4), (5) or (6).

(7) The Department 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

20.—(1) Where the Department incurs reasonable costs or expenses in taking steps to—

(a) serve an Information Notice on a borrower under regulation 18(1);

(b) obtain the information requested in an Information Notice served under regulation 18(1); or,

(c) serve a Penalty Notice on a borrower under regulation 19(5).

the Department may require the 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 student loan from the date on which they are added.

Alteration of relevant time limits

21. Where the Department considers that, having regard to all the circumstances of a particular case, a time limit in regulation 17, 18(4), or 19(4) or (6) should be relaxed, the Department may specify another time limit.

Foreclosure

22. Where a borrower fails to comply with an Information or Penalty Notice or both, the Department may require the borrower to repay the student loan in full immediately.