
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first to be made under section 22 of the Teaching and Higher Education Act 1998 dealing with the repayment of student loans. The Regulations apply to students who started higher education courses in September 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.

Repayments will be collected in three ways:

- (a) by the Inland Revenue through self assessment (SA) (Part III)
- (b) by employers (Part IV)
- (c) by the Secretary of State, where borrowers are living and working abroad (Part V).

Borrowers may also make voluntary repayments to the Secretary of State at any time.

Part I of the Regulations sets out miscellaneous provisions, including provision for the collection of loans made under the Education (Scotland) Act 1980 under these Regulations if Scottish Ministers so determine, accounting by the Inland Revenue for repayment of student loans, functions of tax inspectors and collectors, and how provisions of the Taxes Management Act 1970 in relation to penalties will apply to Parts III and IV.

Part II of the Regulations sets out the terms which will apply to all loans regardless of the method of repayment. Repayments made directly to the Secretary of State will be taken to be received on the date of receipt. Repayments payable 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*).

Any interest or penalties incurred by borrowers under these Regulations, whatever their method of loan repayment, will be kept separate from the loan account (*regulation 10*).

Borrowers are not required to make repayments until the 6th April after they have completed or left their courses; and no repayments are due until 6th April 2000. Borrowers may repay their loans before they are required to do so if they wish, without penalty. The Secretary of State must tell borrowers and the Inland Revenue when repayments are due to start and when they should cease. This will be because the loan has been or is likely to have been repaid in full or has been cancelled or, for students whose loan is for a Postgraduate Certificate of Education and who are simultaneously required to repay a mortgage style loan, they have elected to defer repaying their loan whilst they are repaying their mortgage style loan. Borrowers whose loan does not exceed £120 may be asked to make repayments directly to the Secretary of State (*regulation 11*).

Provided that a borrower has met all his student loans 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. Cancellation takes effect on the date on which the Secretary of State cancels the loan. For borrowers in SA who die, loan repayments are collected through annual tax returns, including that for the year in which the borrower dies. For those in SA whose loans are cancelled at age 65 or due to permanent disability, liability to make loan repayments

ceases at the start of the tax year in which the loan is cancelled. For borrowers making repayments via their employers, the liability to make repayments ceases on the date of cancellation (*regulation 12*).

If a borrower makes any repayments which exceed the total outstanding balance on his loan, the Secretary of State 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 the Secretary of State to have those repayments refunded. This type of refund does not attract interest (*regulation 13*).

Part III of the Regulations sets out the terms of repayment which apply to borrowers who are required for tax reasons to submit a self assessment tax return. Various provisions of the Taxes Management Act 1970 dealing with the payment of income tax through self assessment are extended to cover the repayment of student loans. Loan repayments collected through SA are treated in the same way as income tax payments.

The amount of loan repayment to be made by a borrower in SA is 9% of his total annual income over £10,000 including any taxable unearned income, provided this exceeds £2,000. When calculating total income, certain matters are to be left out of account. These include incapacity benefit, benefits in kind, pension schemes, social security benefits and losses set-off against general income (*regulation 15(4)*).

To enable the Inland Revenue to establish the amount of repayment due, they may require a borrower to include relevant information in his tax return or provide documents or accounts with his return. When making an SA return, a borrower must calculate how much student loan is due, taking account of any repayment he has made via his employer. However, there is no provision for a refund if the amount calculated on the return is less than the amount already deducted by the employer, unless the whole balance of the loan has been paid off. Borrowers must keep records supporting the information contained in their returns in the same way as is required for tax purposes (*regulations 16 to 18*).

Borrowers must make loan repayments by 31st January following the tax year to which the repayment relates. There are exceptions where SA returns have been demanded or generated at different times in the tax cycle (*regulation 21(2)*). If a borrower is late making repayments, makes insufficient repayments or fails to make a tax return correctly or on time, he may be liable to pay surcharges, interest on overdue payments and penalties in line with those which apply to the payment of income tax (*regulations 22, 25 and 26*).

Part IV of the Regulations sets out how repayments are to be collected by employers on behalf of employees who are borrowers. Loan repayments are to be collected and accounted for by employers in the same way as income tax deducted from an employee's emoluments. Emoluments has the same meaning as it does for National Insurance contributions purposes, so that employers can calculate student loan repayments on the same sum as NI contributions. Deductions will be made on a non-cumulative basis.

The amount of loan repayment due is 9% of a borrower's annual emoluments over £10,000 or the proportionate part thereof, according to the pay period in question. Employers can either calculate the value of the deduction themselves or they can use tables provided by the Inland Revenue for the purpose (*regulations 28 and 29*).

The rules for aggregating emoluments and for determining earnings periods, where an employee has more than one employment with a single employer, is the same for student loans as it is for national insurance contributions. Where they are satisfied that an employer is avoiding, or reducing the amount of, loan repayments by adopting certain pay practices, the Inland Revenue may give directions to ignore the effect of the practices (*regulations 30 and 31*). Where a borrower works for someone who is not his immediate employer, that person—the principal employer—is required to act in accordance with these Regulations. The immediate employer must provide any information

which may be necessary for the principal employer to be able to comply with the Regulations (*regulation 33*).

The Inland Revenue must send a notice to an employer informing them that they have an employee who has a student loan and instructing them either to start making deductions or to cease making deductions. The notice must include the name and national insurance number of the borrower and the date from which deductions should be made. Notices relating to the cessation of deductions are to follow the same format (*regulation 34*).

Employers must start making deductions on the date specified in the notice, which will be at least 14 days from date of issue of the notice for employers with weekly payrolls, and 42 days from that date for others. Where employers receive a form P45 which indicates that an employee has a student loan, deductions should begin from date of receipt (*regulation 35(1) to (3)*). If an employer makes an under deduction, he may recover the shortfall in the next pay period or periods provided that it is in the same tax year and that he has not in the meantime received notice instructing him to stop making deductions (*regulation 35(6)*). The amount of any additional deduction must not exceed the amount of the ordinary deduction for the relevant pay period. An employer who has made a deduction in accordance with these regulations is not required to repay it to the employee by reason only that the employee has already paid off his loan (*regulation 35(7)*).

In cases where an employee has both a student loan and is subject to an attachment of earnings order or deduction from earnings order, the employer is to treat student loans deductions as if they were made by a priority attachment of earnings order made subsequently to any other such order. Where an attachment of earnings order in respect of Community Charge or Council Tax is required to be deducted before any student loan repayment, or where an employee is subject to an earnings arrestment, current maintenance arrestment or conjoined arrestment order within the meaning of the Debtors (Scotland) Act 1987, the employer is not to deduct any student loan repayments (*regulation 36*).

Employers must record any student loan repayments deducted on a deductions working sheet and on the annual P60 form (*regulations 37 and 38*).

Employers must pay to the Inland Revenue, in accordance with the existing timescale for remittance of tax and national insurance contributions, the amount of any student loan repayments actually deducted (*regulation 39*). The Inland Revenue may recover any student loan repayments which have been or should have been deducted in the same way that they may recover income tax. Similarly, any unpaid loan repayments attract interest at the rate applicable to unpaid income tax (*regulations 40 and 41*).

Annual returns which employers are obliged to submit to the Inland Revenue setting out income tax and national insurance contributions made by employees are also required to include details of any student loan repayments deducted. Penalties apply if an employer fails to submit a return on time, if the return is not a proper record of the deductions which have been made or if the proper deductions have not been made. Where an employer fraudulently or negligently makes an incorrect return in respect of a year of assessment he is liable, after the end of the year in question, to a penalty of up to £3,000 per employee in respect of whom incorrect particulars are included in the return (*regulation 42*).

Employers must make available to the Inland Revenue documents, such as wages sheets, relating to the calculation of employees' emoluments and student loan deductions. Employers must also allow the Inland Revenue access to any records held electronically. Records relating to the emoluments paid to and student loan repayments deducted from employees are required to be held by employers for a minimum of 3 years following the tax year to which they relate. Employers are liable to a penalty if they do not furnish the Inland Revenue with the information they require (*regulation 43*).

Regulation 44 applies provisions of the Taxes Management Act in relation to obtaining information. If the Inland Revenue determine that an employer has not paid over the amount of student loan repayments deducted from an employee, they may serve a notice setting out how much is due.

Employers will be able to appeal against any such notice. Overdue payments will attract interest in the same way as overdue payments of income tax (*regulations 45 and 46*).

On the death of an employer any duties relating to the deduction of student loan repayments transfer to his representative. Where there is a change of employer, the new employer has responsibility for deducting student loan repayments from the date of change of employer (*regulations 47 and 48*). Where a borrower ceases working for an employer, the employer must record on his P45 form the fact that the employee is a student loan borrower (*regulation 50*).

Where an employer fraudulently or negligently makes an incorrect deduction or makes or receives an incorrect payment in a year of assessment he may be liable, after the end of the year in question, to a penalty of up to £3,000 per employee in respect of whom incorrect deductions or payments have been made (*regulation 51*).

Part V of the Regulations deals with borrowers who are not resident in the UK for income tax purposes. Borrowers must tell the Secretary of State 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 the Secretary of State with required information, the Secretary of State may require the borrower to repay immediately that part of the loan that would have been repaid had the information been provided and apply a rate of interest to the loan at three times the normal rate of interest until the information is provided (*regulations 54 and 55*).

A borrower who is outside the UK tax system because he is living abroad must make repayments directly to the Secretary of State and will receive a notification from the Secretary of State 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, the Secretary of State may require him to repay the total outstanding loan balance immediately (*regulation 56*).

Provision is made for a borrower who ceases to be resident abroad to be no longer required to make repayments directly to the Secretary of State (*regulation 57*).

A full regulatory impact assessment of the effect that these Regulations will have on the costs of business is available from John Gorman, Student Support 2, DFEE, Sanctuary Buildings, Great Smith Street, London SW1P 3BT. Requests to be made either in writing or by e.mail (john.gorman@dfee.gov.uk).