STATUTORY RULES OF NORTHERN IRELAND

2012 No. 136

EDUCATION

The Education (Student Loans) (Repayment) (Amendment) Regulations (Northern Ireland) 2012

Made - - - -	*21st March 2012*
Coming into operation	*6th April 2012*

The Department for Employment and Learning(**1**) makes the following Regulations in exercise of the powers conferred by Articles 3(2) to (5) and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998(**2**) and now vested in it(**3**).

Citation and Commencement

1. These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) Regulations (Northern Ireland) 2012 and come into operation on 6th April 2012.

Amendment of the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009

2. The Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009(**4**) are amended as provided by regulations 3 to 22.

3. In regulation 2(1) (Revocations), for "the Schedule" substitute "Schedule 1".

4. In regulation 28 (Other returns and information), for paragraph (1) substitute—

> "(1) Sections 20A (power to call for papers of tax accountant), 20BA (orders for the delivery of documents) and 20BB (falsification etc of documents) of the 1970 Act and Schedule 23 to the Finance Act 2011(**5**) apply for the purposes of establishing the amount of the repayment a borrower may be required to make under this Part as they apply for the purposes of establishing the amounts in respect of which a person is chargeable to income tax.".

5. For regulation 33 (Persons chargeable in a representative capacity), substitute—

(**1**) Formerly known as the Department of Higher and Further Education, Training and Employment; *see* S.I. 1999/283 (N.I. 1) and 2001 c.15 (N.I.)
(**2**) S.I. 1998/1760 (N.I. 14) Article 3(3) was amended by the Student Loans (Amendment) Act (Northern Ireland) 2011 c. 2 (N.I.)
(**3**) S.R. 1999 No. 481*see* Article 5(b) and Schedule 3 Part II
(**4**) S.R. 2009 No. 128, amended by S.R. 2010 No. 91 and S.R. 2011 No. 137
(**5**) 2011 c. 11; Schedule 23 comes into force on 1st April 2012.

"**33.** Sections 74 (Personal representatives) and 75 (Receivers appointed by a court) of the 1970 Act apply in the case of repayments due and payable by a borrower under this Part as they apply in the case of income tax chargeable to any person.".

6. In regulation 36 (Interpretation), insert in the appropriate places—

""non-Real Time Information employer" means an employer other than one within regulation 36A;";

""Real Time Information employer" has the meaning given in regulation 36A;".

7. After regulation 36 insert—

"**Real Time Information employers**

36A.—(1) The following are Real Time Information employers—

(a) an employer who has entered into an agreement with HMRC to comply with the provisions of these Regulations which are expressed as relating to Real Time Information employers;

(b) an employer within paragraph (2);

(c) on and after 6th April 2013, employers to whom regulation 54E (exceptions to regulation 54B) applies; and

(d) on and after 6th October 2013, all employers.

(2) An employer is within this paragraph if the employer is a Real Time Information employer for the purposes of paragraph 1(4) of Schedule 4 to the Contributions Regulations.".

8. For regulation 38 (Commencement of employment) substitute—

"**Commencement of employment with a non-Real Time Information employer**

38.—(1) This regulation applies to a borrower who is an employee of—

(a) a non-Real Time Information employer; or

(b) a Real-Time Information employer to whom HMRC have given notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee's employment.

(2) 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.".

9. After regulation 38 insert—

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

38A. An employee who commences employment with a Real Time Information employer must inform their employer whether the employee has any liability to repay any student loan.".

10. In regulation 45 (Deductions of repayments)—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (b) omit "or";

(ii) for the comma at the end of sub-paragraph (c) substitute—

"; or

(d) information under regulation 38A that the employee has any liability to repay any student loan,"; and

(b) in paragraph (2)—

(i) at the end of sub-paragraph (b) omit the word "or";

(ii) for the full stop at the end of sub-paragraph (c) substitute—

"; or

(d) where an employer has received information under regulation 38A that the employee has any liability to repay any student loan, the date on which that information is received.".

11. In regulation 49 (Payment of repayments deducted to HMRC)—

(a) in paragraph (1)—

(i) after "subject to paragraphs (2)" omit ", (3)";

(ii) in sub-paragraph (a), after "month" insert "(and, where required, reported under regulation 54B or 54E)";

(b) after paragraph (1) insert—

"(1A) The amount specified in paragraph (1) must be adjusted to take account of errors corrected under regulation 54F(5).."; and

(c) omit paragraph (3).

12. After regulation 49 insert—

"**Payments to and recoveries from HMRC for each income tax period by Real Time Information employers: returns under regulation 54F(5)**

49A.—(1) This regulation applies if, during any income tax period, a Real Time Information employer makes a return under regulation 54F(5) (Returns under regulation 54B and 54E: amendments).

(2) The amount specified in regulation 49(1) for the final income tax period in the year covered by the return is to be adjusted to take account of the information in the return.

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

(a) by setting it off against the amount the employer is liable to pay under regulation 49(1) for the income tax period in which the return is made; or

(b) from the Commissioners for Her Majesty's Revenue and Customs.".

13. In regulation 50(1) (Notice and certificate when repayments deducted not paid), for "the employer" in the first place it appears substitute "a non-Real Time Information employer".

14. In regulation 51 (Notice of specified amount and certificate when repayments not deducted), after paragraph (2) insert—

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

15. In regulation 54 (Returns by employers), before paragraph (1) insert—

"(A1) This regulation applies to—

(a) a non-Real Time Information employer;

(b) a Real Time Information employer in relation to tax years in which the employer was, for the whole of the tax year, a non-Real Time Information employer; and

(c) a Real Time Information employer to whom HMRC has given a notice requiring a return under this regulation in respect of a tax year.".

16. After regulation 54, insert—

"**Application of regulations 54B to 54F**

54A. Regulations 54B to 54F apply only to Real Time Information employers.

Real time returns of information about payments of earnings

54B.—(1) On or before making a payment of earnings to an employee, an employer must deliver to HMRC the information specified in Schedule 2 (Real time returns) in accordance with this regulation.

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

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

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

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

(6) Section 98A of the 1970 Act (special cases in case of certain returns) applies to returns within paragraph (7).

(7) A return is within this paragraph if it is one of the following—

(a) a return under this regulation which relates to payments of earnings made on the final normal pay day in the tax year 2012-13 for any of the employees in respect of whom information is included in the return; or

(b) a return under this regulation which contains information about the final payment of earnings made to any employee in the tax year 2012-13 where—

(i) the payment is made after the employee's final normal pay day in the tax year; or

(ii) the employee is paid at irregular intervals.

Modification of the requirements of regulation 54B: notional payments

54C.—(1) This regulation applies if an employer makes a payment of earnings to an employee which, for the purposes of tax, is a notional payment within the meaning given by section 710(2) of the 2003 Act.

(2) If the employer is unable to comply with the requirement in regulation 54B(1) to deliver the information required by that regulation on or before making the payment, the employer must instead deliver the information as soon as reasonably practicable after the payment is made and in any event no later than—

(a) the time at which the employer delivers the information required by regulation 67B of the PAYE Regulations in respect of the payment;

(b) the time at which the employer makes a deduction from earnings in respect of the payment in accordance with regulation 45 (Deductions of repayments); or