STATUTORY RULES OF NORTHERN IRELAND

2009 No. 128

EDUCATION

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

Made - - - -	*20th March 2009*
Coming into operation:	
All regulations except regulations 2(2), 11(5)(d), 13, 16 and Part 6	*6th April 2009*
Regulations 2(2), 16 and Part 6	*1st September 2009*
Regulations 11(5)(d) and 13	*21st December 2009*

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**).

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009 and, subject to paragraphs (2) and (3), come into operation on 6th April 2009.

(2) Regulations 2(2), 16 and Part 6 come into operation on 1st September 2009.

(3) Regulations 11(5)(d) and 13 come into operation on 21st December 2009.

(**1**) Formerly known as the Department of Higher 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)
(**3**) S.R. 1999 No. 481*see* Article 5(b) and Schedule 3 Part II

Revocations

2.—(1) The Rules listed in the Schedule are revoked.

(2) Regulations 4(4), 88 and 89 of the Education (Student Support) Regulations (Northern Ireland) 2009(**4**) are revoked.

Interpretation

3. In these Regulations—

"the Order" means the Education (Student Support) (Northern Ireland) Order 1998;

"the 1970 Act" means the Taxes Management Act 1970(**5**);

"the 1988 Act" means the Income and Corporation Taxes Act 1988(**6**);

"the 2003 Act" means the Income Tax (Earnings and Pensions) Act 2003(**7**);

"the 2005 Act" means The Income Tax (Trading and Other Income) Act 2005(**8**);

"the 2007 Act" means the Income Tax Act 2007(**9**);

"academic year" means the period from 1st September in any year to 31st August of the following year, regardless of whether this is, in fact, the period over which a borrower's course runs;

"borrower" means a person to whom the Department has lent money pursuant to regulations made under Article 3 of the Order and who has not received a notice from the Department that it has been repaid or cancelled;

"Department" means the Department for Employment and Learning;

"HMRC" means Her Majesty's Revenue and Customs;

"National Insurance number" means the National Insurance number allocated within the meaning of the Social Security (Contributions) Regulations 2001(**10**);

"overseas provisions" means the requirements of these Regulations in Part 5;

"overseas borrowers" means borrowers making or due to make repayments in accordance with Part 5;

"repayment" means repayment of a student loan;

"student loan" means the total outstanding principal, interest, penalties and charges owed by a borrower to the Department pursuant to these or any other regulations made under Article 3 of the Order excluding any interest, penalties or charges payable under Part 3 or 4;

"the Taxes Acts" has the same meaning as it has in the 1970 Act;

"tax year" –

(a) for the purposes of Part 4 and any provision of Part 2 relating to Part 4 means the period from 6th April to 5th April of the following year;

(b) for the purposes of Part 3 and any provision of Part 2 relating to Part 3 means any year of assessment for the purposes of the 1970 Act; and

(**4**) S.R. 2009 No. 37
(**5**) 1970 c.9
(**6**) 1988 c.1
(**7**) 2003 c.1
(**8**) 2005 c.5
(**9**) 2007 c.3
(**10**) SI 2001/1004

"the tribunal" means the First-tier Tribunal or, where determined by or under the Tribunal Procedure (Upper Tribunal) Rules 2008(**11**), the Upper Tribunal.

Application: general

4. These Regulations apply to repayments of student loans made under the Order.

Service by post or electronic communication

5.—(1) Any notice or other document which is authorised or required to be given, served or issued under these Regulations may be sent by ordinary post, or, if the recipient has previously agreed to receive communications in this format, by an agreed electronic format.

(2) In particular, any notice which the Department may give to HMRC may be transmitted electronically, and for these purposes a notice is transmitted electronically where the content and form of a notice is sent and received by electronic media between computer systems operated by the Department and HMRC respectively.

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(**12**).

"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(**13**), 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(**14**);

"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(**15**) (other than an award within the meaning of the Students

(**11**) SI 2008/2698
(**12**) S.R. 2006 No. 312, as amended by S.R. 2006 No. 383
(**13**) 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))
(**14**) 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
(**15**) S.R. 1998 No. 273

Awards Regulations (Northern Ireland) 2003(**16**)), 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

"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

(**16**) 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

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(**17**) (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.

(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

(**17**) 2007 c.11. Schedule 24 was amended by the Finance Act 2008 (c.9) Schedule 40