

2013 No. 607

EDUCATION

**The Education (Student Loans) (Repayment) (Amendment)
Regulations 2013**

<i>Made</i>	- - - -	<i>13th March 2013</i>
<i>Laid before Parliament</i>		<i>14th March 2013</i>
<i>Laid before the National Assembly for Wales</i>		<i>14th March 2013</i>
<i>Coming into force</i>	- -	<i>6th April 2013</i>

The Secretary of State for Business, Innovation and Skills makes the following Regulations in exercise of the powers conferred by sections 22 and 42 of the Teaching and Higher Education Act 1998(a).

The Welsh Ministers make the following Regulations in exercise of the powers conferred on the Secretary of State by sections 22 and 42 of the Teaching and Higher Education Act 1998, now exercisable by them(b).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) Regulations 2013 and come into force on 6 April 2013.

(2) Subject to paragraph (3), these Regulations extend to England and Wales only.

(3) Regulations 8 to 18 extend to all of the United Kingdom in so far as they impose any obligation or confer any power on Her Majesty's Revenue and Customs, an employer or a borrower in relation to repayments under Part 3 or 4 of the Education (Student Loans) (Repayment) Regulations 2009(c).

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

2. The Education (Student Loans) (Repayment) Regulations 2009 are amended in accordance with regulations 3 to 18.

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- (a) 1998 c.30; section 22 was amended by the Learning and Skills Act 2000 (c.21) section 146, the Income Tax (Earnings and Pensions) Act 2003 (c.1) Schedule 6, the Finance Act 2003 (c.14) section 147, the Higher Education Act 2004 (c.8) sections 42, 43 and Schedule 7, the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) section 257 and the Education Act 2011 (c.21) section 76.
- (b) The functions of the Secretary of State under section 22 of the Teaching and Higher Education Act 1998 as regards Wales were transferred to the National Assembly for Wales by section 44 of the Higher Education Act 2004, except for those functions under section 22(2)(a), (c), (j) and (k), 3(e) and (f) and (5). Functions under subsections (2)(a), (c) and (k) were exercisable by the Secretary of State concurrently with the National Assembly for Wales. The section 22 functions which were transferred to, or became exercisable by, the National Assembly for Wales were subsequently transferred to the Welsh Ministers by the Government of Wales Act 2006 (c.32) section 162 and paragraph 30 of Schedule 11.
- (c) S.I. 2009/470, amended by S.I. 2010/661, 2010/1010, 2011/784, 2012/836 and 2012/1309.

3. In regulation 3—

(a) in paragraph (1)—

(i) after the definition of “academic year” insert—

““Access to HE Diploma” means a qualification which is specifically designed to prepare persons for study at university;” and

(ii) after the definition of “borrower” insert—

““designated course” means a course designated by or under the 2011 Support Regulations;

“eligible borrower” means an eligible student under regulation 4 of the 2011 Support Regulations;” and

(b) in paragraph (2), for “2011 Support Regulations or the 2011 Welsh Regulations” substitute “2011 Support Regulations, the 2011 Welsh Regulations or the Further Education Loans Regulations 2012(a)”.

4. In regulation 13, for paragraph (2) substitute—

“(2) Schedule 38 to the Finance Act 2012 (Tax Agents: Dishonest Conduct) applies for the purpose of repayments under Part 3 or 4 as it applies for the purposes of income tax.”

5. In regulation 19—

(a) in paragraph (3)(d), delete “or”; and

(b) in paragraph (3)(e), for “.” substitute—

“; or

(f) in the case of post-2012 student loans for Access to HE Diplomas where a borrower has achieved at least one Access to HE Diploma and the Authority is satisfied that the borrower, who was an eligible borrower, completes a designated course.”

6. In regulation 20—

(a) in paragraph (4), before “Where the Authority” insert “Subject to paragraphs (6), (6A) and (9)”;

(b) in paragraph (6), after “the Authority must” insert “subject to paragraph (6A)”;

(c) after paragraph (6), insert—

“(6A) Where an amount of £5 or less was not required to repay the student loan which is not a post-2012 student loan and which was a repayment above the repayment threshold for the student loan which is not a post-2012 student loan and not above the repayment threshold for a post-2012 student loan, this amount shall be treated as a direct payment to the Authority under regulation 15(1) for the post-2012 student loan and the Authority is not required to give a notice to the borrower.”; and

(d) after paragraph (8), insert—

“(9) On or after 6 April 2016, where a borrower has any liability to repay only a post-2012 student loan and has—

(a) failed to declare whether or not any liability solely relates to a post-2012 student loan under regulation 43(2); or

(b) failed to inform their employer whether or not any liability solely relates to a post-2012 student loan under regulation 43A,

any repayment above the repayment threshold for a student loan which is not a post-2012 student loan and not above the repayment threshold for a post-2012 student loan, shall be treated as a direct payment to the Authority under regulation 15(1).”

(a) S.I. 2012/1818.

7. In regulation 21A—

(a) in paragraph (2)—

- (i) after “Subject to paragraphs” insert “(2A), (2B), (2C),”; and
- (ii) in sub-paragraph (d), for “.” substitute—

“;

- (e) for any period where sub-paragraphs (a), (b), (c) and (d) do not apply to a borrower, the standard interest rate;”; and

(b) after paragraph (2), insert—

“(2A) Subject to paragraphs (2B) and (2C), during any academic year or part of any academic year, where a borrower makes repayments in accordance with regulation 18 or repays all of the outstanding balance of the student loan under regulation 15(1), post-2012 student 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 2010(a) equal to—

- (a) for a borrower to whom Part 3 or 4 applies and also applied for the whole or part of the previous tax year —

- (i) where the interest income the borrower received in the previous tax year is the lower interest threshold or less, the standard interest rate;
- (ii) where the interest income the borrower received in the previous tax year is more than the lower interest threshold but not more than the higher interest threshold, the standard interest rate plus the additional interest rate;
- (iii) where the interest income the borrower received in the previous tax year is more than the higher interest threshold, the standard interest rate plus 3%;

- (b) for a borrower to whom Part 5 applies, where the Authority has determined under regulation 75(1) that the borrower may repay a loan by income-related instalments and the Authority considers that the interest income the borrower is likely to receive in the next 12 month period is—

- (i) the lower interest threshold or less, the standard interest rate;
- (ii) more than the lower interest threshold but not more than the higher interest threshold, the standard interest rate plus the additional interest rate;
- (iii) more than the higher interest threshold, the standard interest rate plus 3%;

- (c) for a borrower to whom Part 5 applies, in any period during which a borrower is required to pay to the Authority a fixed instalment in accordance with a notice served under regulation 73, the standard interest rate plus 3%;

- (d) where sub-paragraphs (a), (b) and (c) do not apply to a borrower, the standard interest rate.

(2B) The interest income applied in paragraph (2A) will be from the tax year in which—

- (a) repayments are made under regulation 18 where—

- (i) a borrower makes repayments under regulation 18 during a tax year;
- (ii) the borrower requests, after the end of the tax year in sub-paragraph (i), that their interest rate is recalculated; and
- (iii) the borrower’s interest income in that tax year is less than the interest income the borrower received in the previous tax year;

- (b) a borrower repays all of the outstanding balance of the student loan under regulation 15(1) where—

(a) S.I. 2010/1011.

- (i) the borrower requests that their interest rate is recalculated after the end of the tax year; and
- (ii) the borrower's interest income in that tax year is less than the interest income the borrower received in the previous tax year.

(2C) Where a borrower repays all of the outstanding balance of the student loan under regulation 15(1) in the tax year specified by regulation 15(2), the post-2012 student 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 2010 equal to the standard interest rate.”

8. In regulation 29—

- (a) in paragraph (7) for “paragraph (8)” substitute “paragraphs (8) and (9)”; and
- (b) after paragraph (8) insert—

“(9) The repayment threshold where a borrower has a post-2012 student loan and a student loan which is not a post-2012 student loan is that set out in paragraph (7)(a), (b) or (c) (as the case may be).”

9. In regulation 33, for paragraph (1), substitute—

“(1) Sections 20BA (orders for the delivery of documents) and 20BB (falsification etc of documents) of the 1970 Act, Schedule 23 to the Finance Act 2011^(a) and Schedule 38 to the Finance Act 2012^(b) 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 amount in respect of which a person is chargeable to income tax.”

10. Omit regulation 41A(1)(c) (but not the “and” after it).

11. In regulation 43(2) after “that Form P46” insert “and in particular on or after 6 April 2016 the borrower must declare whether or not any liability solely relates to a post-2012 student loan”.

12. In regulation 43A after “student loan” insert “and in particular on or after 6 April 2016 the borrower must inform their employer whether or not any liability solely relates to a post-2012 student loan”.

13. In regulation 44—

- (a) in paragraph (2)(a) after “repayment threshold” insert “or default threshold”;
- (b) in paragraph (2)(b) after “repayment threshold” insert “or default threshold”; and
- (c) after paragraph (5) insert—

“(6) The default threshold is applicable until a date specified by HMRC in a notice given under regulation 49(1) to the employer where a borrower has only liability to repay a post-2012 student loan and has—

- (a) failed to declare whether or not liability solely relates to a post-2012 student loan under regulation 43(2); or
- (b) failed to inform their employer whether or not liability solely relates to a post-2012 student loan under regulation 43A.

(7) The default threshold is the repayment threshold for a student loan which is not a post-2012 student loan as set out in regulation 29(7)(b) or (c) (as the case may be).”

14. In regulation 59B, omit paragraphs (6) and (7).

15. After regulation 59B, insert—

(a) 2011 c.11.
(b) 2012 c.14.

“Employees paid in specified circumstances

59BA.—(1) This regulation applies if an employer makes a payment to an employee and all of the circumstances in paragraph (2) apply.

(2) The circumstances are that—

- (a) the payment includes an amount which is a relevant payment for work undertaken by the employee on—
 - (i) the day the payment is made, or
 - (ii) provided that the payment is made before the employee leaves the place of work at the end of the employee’s period of work, the day before the payment is made,
- (b) in respect of the work mentioned in sub-paragraph (a), it was not reasonably practicable for the employer to calculate the payment due before the completion of the work, and
- (c) it is not reasonably practicable for the employer to deliver the information required by regulation 59B(1) on making the payment.

(3) The employer need not deliver the information required by regulation 59B(1) on or before making the payment.

(4) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

(5) Where this regulation applies, the information required under regulation 59B(1) in respect of the relevant payment may be included in a return with the information for any other relevant payment.

Benefits and expenses – returns under regulations 85 to 87 of the PAYE Regulations

59BB.—(1) This paragraph applies if an employer makes a payment of general earnings to an employee which, for the purposes of tax falls to be included in a return under—

- (a) regulations 85 and 86 of the PAYE Regulations (employers: annual return of other earnings (Forms P11D and P9D) – information which must be provided for each employee)(a), or
- (b) regulations 85 and 87 of the PAYE Regulations (employers: annual return of other earnings (Forms P11D and P9D) – information which must also be provided for benefits code employees) or would do if the employee’s employment was subject to the benefits code for the purposes of regulation 85 of the PAYE Regulations.

(2) If the employer is unable to comply with the requirement in regulation 59B(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 14 days after the end of the income tax month the payment is made in.”

16. In regulation 59E—

(a) in paragraph (1)—

- (i) omit the “or” after sub-paragraph (c), and
- (ii) in paragraph (d), for “.” substitute—

“, or

- (e) an employer to whom a direction has been given under regulation 67D (11) of the the PAYE Regulations.”;

(a) Regulation 41 of the Education (Student Loans) (Repayment) Regulations 2009, S.I. 2009/470, defines the PAYE Regulations as the Income Tax (Pay As You Earn) Regulations 2003, S.I. 2003/2682.

(b) after paragraph (2), insert—

“(2A) Before 6 April 2014, a Real Time Information employer to whom this regulation applies may proceed as if the employer were a non-Real Time Information employer and the provisions of these Regulations apply accordingly to such employer.”;

(c) in paragraph (3), substitute “On and after 6 April 2014, the” for “An”; and

(d) omit paragraphs (7) and (8).

17. In regulation 59F—

(a) in paragraph (1), substitute “59E” for “59F”;

(b) omit paragraph (6)(a)(ii); and

(c) in paragraph (6)(c), substitute “approved” for “appropriate”.

18. After regulation 59F, insert—

“Failure to make a return under regulation 59B or 59E

59G.—(1) This regulation applies where an employer does not make a return as required by regulation 59B (Real time returns of information about payments of earnings) or 59E (Exceptions to regulation 59B).

(2) The employer must provide the information in the next return made under regulation 59B or 59E for the tax year in question.

(3) If the information has not been provided before 20 April following the end of the tax year in question, the employer must make a return under this paragraph before 20 May following the tax year in question.

(4) A return under paragraph (3)—

(a) must include the information specified in Schedule 2;

(b) must be made as soon as reasonably practicable after discovery of the failure to make the return, and

(c) must be made by an approved method of electronic communications.

(5) Section 98A of the 1970 Act (special penalties in case of certain returns) applies to returns under paragraph (3).”

13th March 2013

David Willetts
Minister of State for Universities and Science
Department for Business, Innovation and Skills

11th March 2013

Leighton Andrews
Minister for Education and Skills
One of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (“the Principal Regulations”). The Principal Regulations govern the repayment of income-contingent student loans paid to students under section 22 of the Teaching and Higher Education Act 1998(c.30).

Regulations 3 to 18 amend the Principal Regulations.

Regulation 3 adds loans made under the Further Education Loans Regulations 2012 (S.I. 2012/1818) to the definition of post-2012 student loans in the Principal Regulations. Regulations 3 and 5 provide for the cancellation of a borrower’s liability in relation to loans for Access to HE Diplomas.

Regulations 4 and 9 substitute new penalties, for dishonest conduct of tax agents, for those in the Principal Regulations.

Regulation 6 provides for the transfer of small credit balances between two types of loan.

Regulation 7 sets out a default interest rate where other provisions of regulation 21A(2) do not apply and provides interest rates for borrowers where they wish to settle their account in full or repay the remaining balance by direct debit at the end of their loan term.

Regulation 8 sets out the repayment threshold for a borrower who has two types of loan.

Regulation 10 amends the definition of Real Time Information employers to exclude certain employers from becoming Real Time Information employers from 6 April 2013.

Regulations 11 and 12 impose requirements on borrowers to specify which type of loan they have on or after 6 April 2016 and regulation 13 imposes a default repayment threshold where borrowers fail to meet the requirements.

Regulations 14 and 18 amend how penalties are imposed where there is a failure to make returns under regulations 59B or 59E of the Principal Regulations.

Regulation 15 inserts new regulations 59BA and 59BB into the Principal Regulations. New regulations 59BA and 59BB make provision for exceptions from the requirement in regulation 59B to deliver information on or before the making of a payment.

Regulation 16 amends regulation 59E to extend the time limit and the categories of employers who are not required to deliver information to Her Majesty’s Revenue and Customs regarding a payment on or before making the payment to employees. The employers specified in regulation 59E(1), which includes those employers whom Her Majesty’s Revenue and Customs has directed are unable to file using an approved method of electronic communications, are for the tax year 2013-14 entitled to file in accordance with the provisions in the Principal Regulations which do not relate to Real Time Information employers.

Regulation 17 removes the requirement to specify the tax year to which the return relates, as it is unnecessary, and it corrects typographical errors.

A Tax Information and Impact Note covering regulations 10 and 14 to 18 of this Instrument was published on 15th March 2012 alongside the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (S.I. 2012/822). This has been updated as a result of changes to the impacts as a result of the year long Real Time Information pilot and is available on the Her Majesty’s Revenue and Customs’ website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. An impact assessment has not been produced for the regulations which are not covered by the Tax Information and Impact Note because they have no impact on businesses or civil society organisations. The Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.