

2010 No. 661

EDUCATION

**The Education (Student Loans) (Repayment) (Amendment)
Regulations 2010**

<i>Made</i>	- - - -	<i>8th March 2010</i>
<i>Laid before Parliament</i>		<i>10th March 2010</i>
<i>Laid before the National Assembly for Wales</i>		<i>10th March 2010</i>
<i>Coming into force</i>	- -	<i>6th April 2010</i>

These Regulations are made by the Secretary of State for Business, Innovation and Skills in exercise of the powers conferred by sections 22 and 42 of the Teaching and Higher Education Act 1998(a) and by sections 73(f) and 73B of the Education (Scotland) Act 1980(b) and by the Welsh Ministers(c), 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.

Citation and Commencement

- 1.—(1) These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) Regulations 2010 and come into force on 6 April 2010.
- (2) Regulations 5, 6 and 7 apply only in relation to tax years commencing on or after 6 April 2010.

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

2. The Education (Student Loans) (Repayment) Regulations 2009(d) are amended as follows.
3. In regulation 29 for paragraph (4)(h) substitute—
- “(h) deducting the amount of any loss in respect of which relief is given under any of the following—
- (i) section 64 of the 2007 Act (trade loss relief against general income);
 - (ii) section 83 of the 2007 Act (carry-forward trade loss relief);

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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 and 43 and the Apprenticeships, Skills and Children and Learning Act 2009 (c.22) section 257.
- (b) 1980 c.44. Section 73(f) was amended by and section 73B was inserted by the Teaching and Higher Education Act 1998 section 29.
- (c) 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 sub-sections 22(2)(a), (c) and (k) were exercisable concurrently with the National Assembly. The section 22 functions which were transferred to the National Assembly for Wales were subsequently transferred to the Welsh Ministers by the Government of Wales Act 2006 (c.32) section 162 and Schedule 11.
- (d) SI 2009/470

- (iii) section 118 of the 2007 Act (carry-forward property loss relief);
- (iv) section 120 of the 2007 Act (property loss relief against general income);
- (v) section 128(a) of the 2007 Act (in respect of losses in an employment); and.”.

4. In regulation 46 for “subject to paragraphs (2) and (3)” substitute “subject to paragraph (2)”.

5. In regulation 62(4) after “5 (Appeals and Other proceedings)” insert “, 5A (Payment of Tax)”.

6. In regulation 68 for paragraph (3) substitute—

“(3) Schedule 56 to the Finance Act 2009**(b)** (penalty for failure to pay tax) shall apply in relation to the late payment from an employer to HMRC of student loan repayments deducted from an employees’ earnings as if—

- (a) in relation to all regulations in this Part other than regulation 62 payment from an employer to HMRC were a payment of tax falling within item 2 of the table in paragraph 1 of that Schedule;
- (b) in relation to regulation 62 payments from an employer to HMRC were a payment of tax falling within items 17, 23 or 24 of the table in paragraph 1 of that Schedule;
- (c) references to the PAYE Regulations in item 2 of the table in paragraph 1 of that Schedule were references to this Part.”.

7. For regulation 70 substitute—

“To the extent that the provisions of the PAYE Regulations apply by virtue of regulation 42 for the purposes of these Regulations, the PAYE Regulations will apply as if in regulation 210 (penalties and appeals) an employer is not liable to a penalty if the employer has been liable to a penalty for failing to comply with regulation 205 of those Regulations or regulation 90N of the Contributions Regulations in relation to the same tax year.”.

8. In regulation 80—

(a) in paragraph (2)(a)—

- (i) for “section 307 or 310” substitute “section 307, 310 or 310A(c)”;
- (ii) after “before or after the commencement of the bankruptcy;” omit “and”.

(b) After paragraph (2)(b) insert—

“(c) any sum payable to an eligible student by way of student loan which the eligible student receives or is entitled to receive before or after the approval of that person’s individual voluntary arrangement under Part 8 of the Insolvency Act 1986**(d)** will not be treated as part of any arrangement approved under section 258 or 263D of that Act, whether the entitlement arises before or after the approval of the arrangement; and

(d) any debt or liability to which that person is or may become subject in respect of any sum payable to an eligible student by way of student loan will not be included in that person’s individual voluntary arrangement when that person receives or is entitled to receive that sum—

- (i) in the case of an individual voluntary arrangement approved before 6 April 2010, after the approval of that arrangement; or
- (ii) in the case of an individual voluntary arrangement approved on or after 6 April 2010, before or after the approval of that arrangement.”.

(a) Section 128 of the Income Tax Act 2007 (c.3) was amended by the Finance Act 2009 (c.10) section 68(1).

(b) 2009 c.10

(c) Section 310A was inserted into the Insolvency Act 1986 (c.45) by the Enterprise Act 2002 (c.40) section 260.

(d) 1986 c.45. Section 258 was amended by the Insolvency Act 2000 section 3 and Schedule 3. Section 263B was inserted by the Enterprise Act 2002 section 264 and Schedule 22.

- (c) in paragraph (3)(a)—
 - (i) for “Article 280 or 283”, substitute “Article 280, 283 or 283A(a)”;
 - (ii) after “before or after the commencement of the bankruptcy;” omit “and”.
- (d) after paragraph (3)(b) insert—
 - “(c) any sum payable to an eligible student by way of a student loan which the eligible student receives or is entitled to receive before or after the approval of that person’s individual voluntary arrangement under Part 8 of the Insolvency (Northern Ireland) Order 1989(b) will not be treated as part of the individual voluntary arrangement approved under articles 232 or 237D of that Order, whether the entitlement arises before or after the approval of the arrangement; and
 - (d) any debt or liability to which that person is or may become subject in respect of any sum payable to an eligible student by way of a student loan will not be included in that person’s individual voluntary arrangement when that person receives or is entitled to receive that sum—
 - (i) in the case of an individual voluntary arrangement approved before 6 April 2010, after the approval of the arrangement; or
 - (ii) in the case of an individual voluntary arrangement approved on or after 6 April 2010, before or after the approval of the arrangement.”.

8th March 2010

David Lammy
Minister of State for Higher Education and Intellectual Property
Department for Business, Innovation and Skills

7th March 2010

Leighton Andrews
Minister for Children, Education, Lifelong Learning and Skills
One of the Welsh Ministers

(a) Article 283A was inserted into the Insolvency (Northern Ireland) Order 1989 S.I. 1989/2405 (N.I. 19) by the Insolvency (Northern Ireland) Order 2005 S.I. 2005/1455 (N.I. 10) Article 16.

(b) S.I. 1989/2405 (N.I.19); Article 232 was amended the Insolvency (Northern Ireland) Order 2002 (S.I. 2002/3153 (N.I. 6)) Article 5 and Schedule 3. Article 237D was inserted by the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) Article 21 and Schedule 7.

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.

Regulation 3 amends regulation 29(4)(h) of the Principal Regulations so that any loss in respect of which relief is given under sections 83, 118 and 120 of the Income Tax Act 2007 are included in the list of reliefs to be deducted for the purpose of calculating a borrower’s total income under regulation 29(3) of the Principal Regulations.

Regulation 4 rectifies an error in regulation 46 of the Principal Regulations by removing an inaccurate reference to ‘paragraph (3)’ of that regulation.

Regulation 5 applies the provisions of Part 5A of the Taxes Management Act 1970 to a determination made under regulation 62 of the Principal Regulations.

Regulation 6 amends regulation 68 of the Principal Regulations so as to apply certain penalties under Schedule 56 of the Finance Act 2009, which are being introduced from 6 April 2010, to employers who make late payments of student loan repayments to HMRC.

Regulations 6 and 7 remove references in the Principal Regulations to regulations 202 and 203 of the Income Tax (Pay As You Earn) Regulations 2003 (“PAYE Regulations”). These changes mirror amendments being made to the PAYE Regulations.

Regulation 8(a) prevents monies received by a bankrupt in accordance with a student loan being used to benefit the bankrupt’s creditors under an income payments agreement. Regulation 8(b) inserts new provisions into regulation 80 of the Principal Regulations so that student loans made to a borrower who enters an individual voluntary arrangement will be treated in a similar way as they are treated under a bankruptcy in England and Wales.

Paragraphs (c) and (d) of regulation 8 make equivalent provisions for Northern Ireland.

An impact assessment has not been prepared in respect of this instrument as it has no impact on the cost of business, charities or voluntary bodies.