

2011 No. 784

EDUCATION

**The Education (Student Loans) (Repayment) (Amendment)
Regulations 2011**

<i>Made</i>	- - - -	<i>14th March 2011</i>
<i>Laid before Parliament</i>		<i>15th March 2011</i>
<i>Laid before the National Assembly for Wales</i>		<i>15th March 2011</i>
<i>Coming into force</i>		
<i>for the purpose of regulation 8</i>		<i>31st October 2011</i>
<i>for all other purposes</i>		<i>6th April 2011</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) 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 2011 and subject to paragraph (2) come into force on 6 April 2011.

(2) Regulation 8 comes into force on 31 October 2011.

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

2. The Education (Student Loans) (Repayment) Regulations 2009(d) are amended in accordance with regulations 3 to 11.

3. In regulation 3—

(a) after the definition of “repayment” insert—

““repayment threshold” has the meaning given to it in regulation 29 (7);

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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 and the Apprenticeships, Skills, 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) are exercisable by the Secretary of State 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 paragraph 30 of Schedule 11.
- (d) S.I. 2009/470, amended by S.I. 2010/661.

“repayment threshold year” means the period from 6 April to 5 April of the following year;”;

- (b) in the definition of “tax year”—
 - (i) in sub-paragraph (b) before “for the purpose of Part 3” insert “subject to sub-paragraph(c),”;
 - (ii) after sub-paragraph (b) insert—

“(c) for the purposes of regulations 36 and 40(1) and (2) means the period from 6 April to 5 April of the following year”; and
- (c) after the definition of “tax year” insert—

““tax year 2009–10” for the purpose of Part 3 means the tax year beginning on 6 April 2009 (and any corresponding expression in which two years are similarly mentioned is to be read in the same way);”.

4. In regulation 16(3) after “is not” omit “be”.

5. In regulation 20(4) for “£15,000” substitute “the repayment threshold”.

6. In regulation 29—

- (a) in paragraph (4)(a) for “first £15,000” substitute “repayment threshold”;
- (b) in paragraph (4)(b) for “£15,000” substitute “the repayment threshold”; and
- (c) after paragraph (6) insert—

“(7) The repayment threshold is—

 - (a) for any repayment threshold year ending on or before 5 April 2012, an amount of £15,000;
 - (b) for any repayment threshold year ending after 6 April 2012 but before or on 5 April 2016, an amount equal to $X + (X \times Y\%)$ and rounded up to the nearest £5 where—

X is the repayment threshold for the previous repayment threshold year,
Y is the percentage increase between the retail prices all items index published by the Office for National Statistics for the two Marches immediately before the commencement of the previous tax year; and
 - (c) for any repayment threshold year ending on or after 6 April 2016, the amount of the repayment threshold for the previous repayment threshold year;”.

7. For regulation 36 substitute—

“Late payment penalties

36. Schedule 56 to the Finance Act 2009(a) (penalty for failure to make payments on time) applies to repayments which have become payable by a borrower under this Part as it applies to an amount of income tax which—

- (a) is payable in relation to the tax year 2010-11 or any subsequent tax year, and
- (b) falls within—
 - (i) item 1, 12, 18 or 19 of the Table in paragraph 1 of that Schedule, or
 - (ii) insofar as the tax falls within item 1 of that Table, item 17, 23 or 24 of that Table.”.

8. For regulation 39 substitute—

(a) 2009 c.10.

“Interest

39.—(1) Subject to paragraph (2), any repayment due and payable under this Part carries interest at the rate applicable under section 103 of the Finance Act 2009 for the purposes of section 101 of the Finance Act 2009 from whichever of the following days is applicable—

- (a) the last day of the period referred to in regulation 35(2); or
- (b) the date mentioned in regulation 35(3),

until payment, whether or not the applicable day is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882^(a).

(2) In relation to any repayment amount due under this Part and outstanding immediately prior to 31 October 2011—

- (a) section 178 of the Finance Act 1989^(b) for the purposes of section 86 of the 1970 Act has effect up to and including 30 October 2011, and
- (b) sections 101 and 103 of the Finance Act 2009 have effect on and after 31 October 2011.

(3) Sections 90 and 91 of the 1970 Act apply to interest under this regulation as they apply to interest on income tax.

(4) Subject to paragraph (5), a refund by HMRC to a borrower of an overpayment of amounts payable under this Part carries interest at the rate applicable under section 103 of the Finance Act 2009 from the date on which the overpayment arose to the date on which the order for the refund is issued.

(5) In relation to any refund by HMRC where the date of overpayment arose on or before 30 October 2011—

- (a) section 178 of the Finance Act 1989 has effect for any period up to and including 30 October 2011; and
- (b) sections 102 and 103 of the Finance Act 2009 has effect for any period on or after 31 October 2011.”.

9. In regulation 40—

(a) for paragraph (1) substitute—

“(1) Schedule 55 to the Finance Act 2009 (penalty for failure to make returns etc) applies—

- (a) in relation to a return or other document which is required to be made or delivered to Her Majesty’s Revenue and Customs for the tax year 2010-11 or any subsequent tax year,
- (b) which falls within item 1 of the Table in paragraph 1 of that Schedule, and
- (c) which is required to include information under regulation 30,

as it applies to income tax on that same return.”; and

(b) for paragraph (2) substitute—

“(2) The references to liability to tax in Schedule 55 to the Finance Act 2009 are construed as references to the aggregate of the amounts which, if a proper return had been delivered on the filing date, would have been payable—

- (a) by the taxpayer under section 59B of that Act (payment of income tax and capital gains tax); and
- (b) where the taxpayer is a borrower, by way of repayment under regulation 29.”.

10. In regulation 44—

(a) 1882 c.61. Section 92 was amended by the Banking and Financial Dealings Act 1971(c.80) sections 3(1) and 4(4).
(b) 1989 c.26. Section 178 was amended by the Finance Act 1994 (c.9), Schedule 19, Paragraph 44.

- (a) in paragraph (2)(a) for “£15,000” substitute “the repayment threshold”; and
- (b) in paragraph (2)(b) for “£15,000” substitute “the repayment threshold”.

11. After regulation 76(1) insert—

“(1A) On 6 April 2012, and on 6 April of each subsequent year until and including 6 April 2015 each amount in the column entitled “Applicable Threshold” in the table in paragraph (1), shall increase to an amount equal to $X + (X \times Y\%)$ and rounded up to the nearest £5 where—

X is the amount in the amount in the column entitled “Applicable Threshold” immediately before 6 April,

Y is the percentage increase between the retail prices all items index published by the Office for National Statistics for the two Marches immediately before the commencement of the previous repayment threshold year.”.

Savings

12.—(1) Regulation 7 does not apply to repayments payable by a borrower under Part 3 of the Education (Student Loans) (Repayment) Regulations 2009 in relation to the tax year 2009-10 or any previous tax year.

(2) Regulation 9 does not apply to returns which are required to include information or other documents under regulation 30 of the Education (Student Loans) (Repayment) Regulations 2009 in relation to the tax year 2009-10 or any previous tax year.

(3) In this regulation—

- (a) “tax year” means the period from 6 April to 5 April of the following year; and
- (b) “tax year 2009-10” means the tax year beginning on 6th April 2009.

14th March 2011

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

14th March 2011

Leighton Andrews
Minister for Children, Education and Lifelong Learning,
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.

Regulations 3, 5, 6 and 10 introduce a time limited mechanism to vary the £15,000 repayment threshold in the Principal Regulations to maintain its value. Regulation 11 introduces a similar mechanism to vary the Applicable Threshold amounts in the Principal Regulations, which apply to overseas borrowers, to maintain their value

Regulation 4 removes a typographical error in the Principal Regulations.

Regulations 7, 9 and 12 substitute new penalties, for failure to make payment of tax on time and failure to file returns on time, for those in the Principal Regulations.

Regulation 8 substitutes new harmonised interest provisions for repayments and and refunds of overpayments payable under Part 3 of the Principal Regulations

A full impact assessment covering the introduction of the penalty regime entitled “working towards a harmonised regime and meeting the obligations to file returns and pay tax on time” was published on 14 April 2009 and is available at <http://www.hmrc.gov.uk/better-regulation/ia.htm>. The Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.