

**2012 No. 836**

**EDUCATION**

**The Education (Student Loans) (Repayment) (Amendment)  
Regulations 2012**

<i>Made</i> - - - -	<i>13th March 2012</i>
<i>Laid before Parliament</i>	<i>16th March 2012</i>
<i>Coming into force</i> - -	<i>6th April 2012</i>

The Secretary of State for Business, Innovation and Skills makes the following Regulations in exercise of the powers conferred by sections 22(5) and 42(6) of the Teaching and Higher Education Act 1998(a) and by sections 73(f) and 73B(3) of the Education (Scotland) Act 1980(b):

**Citation and commencement**

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

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

2. The Education (Student Loans) (Repayment) Regulations 2009(c) are amended as provided for in regulations 3 to 19.

3. In regulation 2(1) (revocation of previous regulations), for “the Schedule” substitute “Schedule 1”.

4. In regulation 33 (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(d) 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 38 (persons chargeable in a representative capacity), substitute—

“38. 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.”.

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(a) 1998 c.30; section 22(5) was amended by the Income Tax (Earnings and Pensions) Act 2003 (c. 1) Schedule 6.  
(b) 1980 c.44; section 73(f) was amended by the Teaching and Higher Education Act 1998 section 29 and section 73B was inserted by the Teaching and Higher Education Act 1998 section 29 and amended by the Income Tax (Earnings and Pensions) Act 2003 (c. 1) Schedule 6.  
(c) S.I. 2009/470, amended by S.I. 2010/661 and S.I. 2011/784.  
(d) 2011 c. 11; Schedule 23 comes into force on 1st April 2012.

6. In regulation 41 (interpretation), insert in the appropriate places—
- ““non-Real Time Information employer” means an employer other than one within regulation 41A;”;
  - ““Real Time Information employer” has the meaning given in regulation 41A;”.

7. After regulation 41 insert—

**“Real Time Information employers**

**41A.**—(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 59E (exceptions to regulation 59B) 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 43 (commencement of employment) substitute—

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

**43.**—(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 43 insert—

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

**43A.** 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 50 (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 43A 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 43A that the employee has any liability to repay any student loan, the date on which that information is received.”.

**11. In regulation 54 (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 59B or 59E)”;

(b) after paragraph (1) insert—

“(1A) The amount specified in paragraph (1) must be adjusted to take account of errors corrected under regulation 59F(5).”; and

(c) omit paragraph (3).

**12. After regulation 54 insert—**

**“Payments to and recoveries from HMRC for each income tax period by Real Time Information employers: returns under regulation 59F(5)**

**54A.—**(1) This regulation applies if, during any income tax period, a Real Time Information employer makes a return under regulation 59F(5) (returns under regulation 59B and 59E: amendments).

(2) The amount specified in regulation 54(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 54(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 55(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 56 (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 59 (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 59, insert—**

**“Application of regulations 59B to 59F**

**59A.** Regulations 59B to 59F apply only to Real Time Information employers.

### **Real time returns of information about payments of earnings**

**59B.**—(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 59B: notional payments**

**59C.**—(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 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—

- (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 50 (deductions of repayments); or
- (c) 14 days after the end of the income tax month the payment is made in,

whichever is earliest.

### **Relationship between regulation 59B and aggregation of earnings**

**59D.**—(1) Where an employee's earnings are aggregated, the employer or, as the case may be, employers must make such arrangements as are necessary to ensure that the information specified in paragraph (2) in respect of all the aggregated earnings is provided in the information given under regulation 59B relating to one of the employee's employments only.

(2) The information specified in this paragraph is the information specified in paragraph 3 of Schedule 2 (real time returns).

## **Exceptions to regulation 59B**

**59E.**—(1) This regulation applies to an employer who is—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications;
- (b) a partnership, if all partners fall within sub-paragraph (a);
- (c) a company, if all directors and the company secretary fall within sub-paragraph (a); or
- (d) a care and support employer.

(2) An employer to whom this regulation applies may proceed in accordance with this regulation instead of regulation 59B.

(3) An employer must deliver to HMRC the information specified in Schedule 2 in respect of each employee to whom payments of earnings are made in an income tax month.

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

(5) The return required under paragraph (4) must be delivered within 14 days after the end of the income tax period the return relates to.

(6) If payments of earnings have been made to more than one employee in the income tax month, the return under paragraph (4) must include the information required by Schedule 2 in respect of each employee to whom the payment of earnings has been made.

(7) Section 98A of the 1970 Act (special penalties in case of certain returns) applies to returns within paragraph (8).

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

- (a) a return under this regulation which contains information about 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 of earnings is made after the employee's final normal pay day in the tax year; or
  - (ii) the employee is paid at irregular intervals.

(9) In paragraph (1)(c), “company” means a body corporate or unincorporated association but does not include a partnership.

(10) In paragraph (1)(d), “a care and support employer” means an individual (“A”) who employs a person to provide domestic or personal services at or from A’s home where—

- (a) the services are provided to A or a member of the A’s family;
- (b) the recipient of the services has a physical or mental disability, or is elderly or infirm; and
- (c) it is A who delivers the return (and not some other person on A’s behalf).

## **Returns under regulations 59B and 59E: amendments**

**59F.**—(1) This regulation applies where an employer discovers an error in a return made under regulation 59B (real time returns of information about payments of earnings) or 59F (exceptions to regulation 59B) and paragraph (2) or (3) applies.

(2) This paragraph applies where the error relates to the information given in the return in respect of an employee under paragraph 3 of Schedule 2 (real time returns).

(3) This paragraph applies where the error was the omission of details of a payment of earnings to an employee.

(4) The employer must provide the correct information in the first return made after the discovery of the error under regulation 59B or 59E for the tax year in question.

(5) But if the information has not been corrected before 20th April following the end of the tax year in question, the employer must make a return under this paragraph.

(6) A return under paragraph (5)—

(a) must include the following—

- (i) the information specified in paragraph 1 of Schedule 2 (real time returns);
- (ii) the tax year to which the return relates;
- (iii) the value of the adjustment to the information given under paragraph 3 of Schedule 2 in the final return under regulation 59B or 59E containing information in respect of the employee in the tax year in question; and
- (iv) if paragraph (7) applies, the information specified in paragraph 5 of Schedule 2;

(b) must be made as soon as reasonably practicable after the discovery of the error; and

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

(7) This paragraph applies if—

- (a) the error is within paragraph (3);
- (b) the payment of earnings was the first payment of earnings to the employee in the employment; and
- (c) the information specified in paragraph 5 of Schedule 2 has not otherwise been provided.

(8) In the application of paragraphs (5) and (6) to cases within paragraph (3), if no information was given in any returns under regulation 59B or 59E in respect of the employee in the tax year, the value of the adjustments required must be calculated as if there was a final return containing information for the employee in the year and the figure requiring adjustment was zero.

(9) Paragraph (6)(c) does not apply if the employer is one to whom regulation 59E applies but in those circumstances the return must be in such form as HMRC may approve or prescribe.”.

**17.** In regulation 67 (cessation of employment)—

(a) at the end of paragraph (a) omit “or”;

(b) at the end of paragraph (b), for “and” substitute—

“or

(ba) the employer has received information under regulation 43A that the employee has any liability to repay any student loan; and”; and

(c) in paragraph (c), for “(in either case)” substitute “(where any of paragraph (a), (b), or (ba) apply)”.

**18.** In the Schedule, after the word “Schedule” add “1”.

**19.** After Schedule 1 insert—

## “SCHEDULE 2

Regulations 59B and 59E

### Real time returns

#### **Information about the employer and employee**

1. The information specified in paragraphs 2 to 4 and 8 to 14 of Schedule A1(a) (real time returns) to the PAYE Regulations.

#### **Information about payments to the employee, etc**

2. The total amount of repayments deducted in the earnings period in which the return is made.

3. The total amount of repayments deducted for the tax year from the earnings paid to the employee.

4. In a case where the earnings the return relates to will fall to be aggregated with other earnings in the same earnings period, the information required by paragraphs 2 and 3 need only be provided when the final payment of earnings in the earnings period is made.

#### **Information on the commencement of employment**

5. If the return is the first return in respect of the employee in this employment, an indication that student loan deductions are required.”.

13th March 2012

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

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(a) Schedule A1 to the PAYE Regulations was inserted by S.I. 2012/822.

## 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 4 amends regulation 33 of the Principal Regulations which sets out the powers which HM Revenue and Customs (“HMRC”) may exercise for the purposes of establishing the amount of the repayment a borrower may be required to make under Part 3. Regulation 5 amends regulation 38 of the Principal Regulations to remove references to sections 72 and 76 of the Taxes Management Act 1970.

Regulations 6 to 19 amend Part 4 of the Principal Regulations to deal with the way employers report information to HMRC when employees commence and cease employment and about payments of earnings made to employees and repayments deducted from those payments. They also make consequential changes to the provisions dealing with the amount of the repayments for which an employer must account to HMRC in respect of each income tax period and the information employees must receive when they cease employment.

Employers to whom the new reporting requirements apply are referred to in the amendments as Real Time Information employers. Regulations 6 and 7 contain the definitions of “Real Time Information employer” and “non-Real Time Information employer”.

Regulations 8 and 9 set out the information which a new employee must provide to an employer about any liability to repay any student loan. Regulations 10 to 16 set out the information a Real Time Information employer must send to HMRC. In particular, regulation 16 inserts new regulations 59A to 59F into the Principal Regulations which set out the new reporting obligations. Regulation 59B requires Real Time Information employers to provide information to HMRC each time a payment is made to an employee and for this to be done using an approved method of electronic communications. Regulation 59E contains exceptions from the obligation in regulation 59B for certain employers. It allows those employers to report to HMRC at the end of each income tax period and does not require the reporting to be done using an approved method of electronic communications.

Regulation 17 provides that the requirement on employers to state within the P45 that an employee is a borrower also applies to Real Time Information employers.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. The Explanatory Memorandum is published alongside the instrument at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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£5.75

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