
EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, which revoke and replace the Education (Student Loans) Regulations (Northern Ireland) 1997 and the Education (Student Loans) (Amendment) Regulations (Northern Ireland) 1998, come into operation on 1st March 1998.

They are made under the Education (Student Loans) (Northern Ireland) Order 1990 (“the Order”) which has been amended by the Education (Student Loans) (Northern Ireland) Order 1998. The amendments to the Order are aimed at facilitating the sale of student loans to the private sector, and have made necessary a number of changes to the regulations made under it. Matters which were governed by regulations made under the Order from time to time, such as the interest loans bear, the time and manner of repayment, and the deferment and cancellation of a borrower’s liability, are now required to be governed by the terms of the relevant loan agreements, which are required to be prescribed by regulation. Accordingly the Regulations now prescribe the key terms which all loan agreements are required to include (regulation 7 and Schedule 2).

The key terms of all agreements entered into before 1st March 1998 will be replaced by the terms set out in Parts I and II of Schedule 2. The terms in Part II are transitional provisions to ensure that the agreements will operate properly after 1st March 1998, although they were entered into on a different legal basis before that date. The key terms of loan agreements entered into on or after 1st March 1998 will be those set out in Part I only.

The effect of the terms of loan agreements prescribed in Schedule 2 is in substance the same as the effect of the 1997 Regulations, with minor changes. The interest loans bear (the inflation rate), the time and manner of repayment (60 or 84 months depending on the number of loans made), and the right to deferment (when income falls below 85% of average earnings) and cancellation (after the borrower reaches a certain age or after a number of years), remain substantially unchanged.

However, the rights and duties of disabled borrowers are no longer the subject of broad discretions found in the former regulation 10 of the 1997 Regulations, but are set out as contractual terms in some detail. Disabled borrowers in receipt of disability related benefits may be entitled to an extended 10 year repayment schedule (paragraph 6 of Schedule 2), to disregard part of or reduce their gross income for the purposes of determining entitlement to defer repayment (definition of “gross income” in paragraph 1 of Schedule 2), to defer repayment for three years rather than one (paragraph 11 of Schedule 2), and to cancellation of the loan altogether in the case of disability rendering the borrower permanently unfit for work (paragraph 12(c) of Schedule 2).

The Regulations continue to prescribe conditions of eligibility for a student loan (regulation 4), but several conditions found in the 1997 Regulations have not been included in the Regulations. These include the condition that a certificate of eligibility be provided to the loans administrator, and that the borrower agree to notify the lender in certain cases and to repay the loan by direct debit. The lender will continue to require students to demonstrate their eligibility by means of a certificate of eligibility, but in some cases by other means as well. Students will continue to be required to agree to notify the lender as before and to pay by direct debit in most cases. These matters will be addressed by terms of loan agreements, some of which being key terms are prescribed in Schedule 2. See for example the requirement to pay by direct debit unless the lender otherwise agrees (paragraph 14 of Schedule 2).

The conditions of eligibility set out in Schedule 1 have been redrafted but the effect of them, as modified by the Education (Student Loans) (Amendment) Regulations (Northern Ireland) 1998, has not been changed. They require, in summary, settlement in the United Kingdom within the meaning

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of the Immigration Act 1971 and residence in the United Kingdom for three years, or refugee status, or the grant of exceptional leave to remain in the United Kingdom and residence in the United Kingdom for three years, or European Economic Area migrant worker status and residence in the EEA for three years, or the status of a spouse or child of an EEA migrant worker and residence in the EEA for three years.

There have been other minor drafting changes, but no other changes of substance from the 1997 Regulations. In particular the maximum amounts of loans (regulation 6), and the duties of governing bodies of higher education institutions (regulation 8), remain unchanged.