

EXPLANATORY MEMORANDUM

The Education (Student Loans) (Repayment) (Amendment) Regulations (Northern Ireland) 2010

2010 No. 91

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Employment and Learning to accompany S.R. which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 3(2) to (5) and 8(4) of the Education (Student Support) (Northern Ireland) Order 1998 (“the Order”) and is subject to negative resolution procedure.
- 1.3 The Rule is due to come into operation on 6th April 2010.

2. Purpose

- 2.1 These Regulations amend the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009 (S.R.2009 No. 128) (“the principal Regulations”). The amendments serve to ensure that the student loan repayment system remains aligned with Her Majesty’s Revenue and Customs (HMRC) Self Assessment and Pay As You Earn (PAYE) processes which are used to collect student loans.
- 2.2 These amendments reflect changes in the HMRC Self Assessment and PAYE processes, including new penalties to be applied to late payments by employers to HMRC and provisions involving loss relief for trading and property losses in computing income.

3. Background

- 3.1 The principal Regulations provide the terms and conditions of income contingent loans taken out by students and are incorporated by reference into the loan contract.
- 3.2 As any repayment of student loan is primarily collected through the UK tax system, the Regulations need to remain aligned with changes being made to that system. This amending Rule reflects changes to the Self Assessment and PAYE system.
- 3.4 Student loan borrowers begin to make repayments once their income is above £15,000 per annum (or equivalent weekly or monthly amount). The Rule also makes changes reflecting provision in the Income Tax Act 2007 allowing for loss relief for trading and property losses in computing income.
- 3.5. Schedule 56 of the Finance Act 2009 introduced new penalties for failing to make payments of tax or other duties to HMRC on time. The new penalties are being implemented gradually by HMRC and are being introduced to late payments of

PAYE tax and National Insurance Contributions (NIC) by employers, in relation to late payments in tax years commencing on or after 6th April 2010. Changes being introduced by regulations 5, 6 and 7 of this Rule mirror those being introduced for late payment of PAYE and NIC by employers.

3.6 This Rule also amends regulations in the principal Regulations which make reference to regulations 202 and 203 of the Income Tax (PAYE) Regulations 2003 (S.I. 2008/782) (PAYE Regulations). These amendments reflect amendments being made to the PAYE Regulations.

3.7 The provisions of Part 5A of the Taxes Management Act 1970 are being applied to determinations made under regulation 57 of the principal Regulations. This is to ensure that the due date for paying amounts determined under regulation 57 is clear.

4. Matters of special interest to the Employment and Learning Committee

4.1 None.

5. Consultation

5.1 There is no statutory requirement to consult on these Regulations as they do not give effect to policy changes but facilitate policy implementation.

6. Position in GB

6.1 The equivalent Statutory Instrument in Great Britain, “The Education (Student Loans) (Repayment) (Amendment) Regulations” will come into force on 6th April 2010. That Instrument also includes amendments to exempt student loans from individual voluntary arrangements. A further statutory Rule amending the Northern Ireland principal Regulations to account for the individual voluntary arrangements provision will follow once the required primary legislative procedures in Northern Ireland have been concluded.

7. Equality Impact

7.1 Consideration has been given to compliance with Section 75 of the Northern Ireland Act 1998. The policy changes have been screened out and therefore not subject to a full Equality Impact Assessment.

8. Regulatory Impact

8.1 The impact on business, charities or voluntary bodies is nil for the majority of employers who continue to make accurate and timely payments to HMRC, and so will not be subject to the new regime. Although it is expected that the penalties will extend to a wider population than the Mandatory Electronic Payment Surcharge for employers, which it replaces, there is no expectation of any increase in the overall total penalties paid. The impact on business, charities or voluntary bodies is nil for all other changes in this Rule.

8.2 The impact on the public sector is nil.

8.3 An Impact Assessment has not been prepared for this Rule.

8.4 An Impact Assessment on late payment penalties was published by HMRC on 14 April 2009 and can be found at <http://www.hmrc.gov.uk/budget2009/interest-penalties-2410.htm>.

9. Regulating small business

9.1 The legislation relating to tax changes applies to small business. Small business will benefit from having a single aligned set of rules in relation to the payment obligations it must meet with HMRC rather than the broad range of penalty regimes that currently apply.

9.2 HMRC sought the views on the impact on small business during its consultation. The structure of the new penalty regime took into account consultation responses and meetings with a range of bodies, including the Federation of Small Business, Forum of Private Business, the Low Income Tax Reform Group and Payroll Alliance. Separate consultation about including student loans in the new late payment penalties for employers took place at meetings with the HMRC Employer Student Subgroup, which includes representation from the Federation of Small Business, the Low Income Tax Reform Group and Payroll Alliance. The new penalties were discussed both before and after the new penalty regime was enacted.

9.3 To exempt small businesses with less than twenty employees would deny them the benefits of simplification that results from aligning the penalty regimes across all of the taxes and duties administered by HMRC. The very small number of small businesses who may need further advice on their payment obligations can access this advice through the HMRC website or by seeking advice from HMRC contact centres.

10. Financial Implications

10.1 The actual costs of implementing this Rule have no financial impact on the Department.

11. Section 24 of the Northern Ireland Act 1998

11.1 The Department sought legal advice regarding compliance with Section 24. The Departmental Solicitors Office advised of nothing contrary to the Department's earlier consideration that this policy change adequately addresses the issues of protecting human rights.

12. Additional information

12.1 John Neill at the Department for Employment and Learning, Tel: 028 90 257712 or email: john.neill@delni.gov.uk can answer any queries regarding this Rule.