

**2004 No. 1175**

**EDUCATION, ENGLAND AND WALES**

**EDUCATION, SCOTLAND**

**The Education (Student Loans) (Repayment) (Amendment)  
Regulations 2004**

<i>Made</i> - - - -	<i>20th April 2004</i>
<i>Laid before Parliament</i>	<i>26th April 2004</i>
<i>Coming into force</i> - -	<i>17th May 2004</i>

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

1. These Regulations may be cited as the Education (Student Loans) (Repayment) (Amendment) Regulations 2004 and shall come into force on 17th May 2004.

2. The Education (Student Loans) (Repayment) Regulations 2000(c) shall be amended as follows.

3. In regulation 27—

(a) insert the following definition as the first definition—

““the 2003 Act” means the Income Tax (Earnings and Pensions) Act 2003(d);”;

(b) omit the definition of “the Income Tax Regulations”; and

(c) at the end insert—

““the PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(e).”.

4. For regulation 28 substitute the following—

“28. Subject to the provisions contained in this Part, repayments by a borrower who is an employee shall be made, accounted for and recovered in like manner as income tax

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(a) 1998 c.30; section 22 was amended by sections 146 and 153 of, and Schedule 11 to, the Learning and Skills Act 2000 (c.21), by section 722 of, and paragraph 236 of Schedule 6 to, the Income Tax (Earnings and Pensions) Act 2003 (c.1) and by section 147 of the Finance Act 2003 (c.14). Section 42 was amended by section 148 of, and Schedule 12 to, the Education Act 2002 (c.32).

(b) 1980 c.44; section 73(f) was amended by the Teaching and Higher Education Act 1998, section 29(1); section 73B was inserted by the same Act, section 29(2) and was amended by section 722 of, and paragraph 149 of Schedule 6 to, the Income Tax (Earnings and Pensions) Act 2003(c.1).

(c) S.I. 2000/944.

(d) 2003 c.1.

(e) S.I. 2003/2682.

deducted from the emoluments of an office or employment by virtue of regulations under section 684 of the 2003 Act.”

**5.** For paragraph (1) of regulation 32 substitute the following—

“(1) Where—

- (a) an employer has made an election under regulation 98(1) of the PAYE Regulations (Multiple PAYE schemes), and
- (b) no improper purpose notice has been issued under regulation 99(1) of those Regulations (Multiple PAYE schemes: election made for improper purpose ineffective), or if one has been issued it has been withdrawn under regulation 99(5),

he shall be treated as having made an election for the purposes of these Regulations.”

**6.** In regulation 33(3) substitute “section 691 of the 2003 Act” for “section 203E of the 1988 Act”.

**7.** In regulation 35(a)—

- (a) in paragraph (1) substitute “regulation 40 of the PAYE Regulations, which contains a statement under regulation 50 of these Regulations” for “regulation 25 of the Income Tax Regulations (form P45), which contains a statement under regulation 50 of those Regulations”; and
- (b) in paragraph (2)(b) substitute “regulation 40 of the PAYE Regulations” for “regulation 25 of the Income Tax Regulations”.

**8.** In regulation 38(1) substitute “regulation 67 of the PAYE Regulations” for “regulation 39 of the Income Tax Regulations”.

**9.** In regulation 39—

- (a) in paragraph (1) substitute “paragraphs (1A), (2), (2A) and (3)” for “paragraphs (2) and (3)”;
- (b) after paragraph (1) insert the following paragraph—

“(1A) Where the employer makes a payment in accordance with paragraph (1) by an approved method of electronic communications, he shall make the payment within 17 days of the end of the income tax month.”;
- (c) in paragraph (2) substitute “paragraphs (2A) and (3)” for “paragraph (3)”;
- (d) after paragraph (2) insert the following paragraph—

“(2A) Where an employer makes a payment in accordance with paragraph (2) by an approved method of electronic communications, he shall make the payment within 17 days of the end of the income tax quarter.”.

**10.** In regulation 39A(1)(b) substitute “17 days” for “14 days”.

**11.** In regulation 39B(1)(c) substitute “17 days” for “14 days”.

**12.** In regulation 40(d)—

- (a) in paragraph (1) substitute “section 684 of the 2003 Act” for “section 203 of the 1988 Act”; and

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(a) Regulation 35 was amended by S.I. 2002/2087.

(b) Regulation 39A was inserted by S.I. 2001/971.

(c) Regulation 39B was inserted by S.I.2001/971.

(d) Regulation 40 was amended by S.I.2001/971.

- (b) in paragraph (1A) substitute “regulation 84 of the PAYE Regulations” for “paragraphs (1) to (5) of regulation 54 of the Income Tax (Employments) Regulations 1993 (being regulations made under section 203 of the 1988 Act)”.

**13.** In regulation 41—

- (a) insert at the start of paragraph (1) “Subject to paragraph (1A)”;
- (b) after paragraph (1) insert the following paragraph—

“(1A) Where payment is made by an approved method of electronic communications, the interest payable under paragraph (1) shall be calculated as if the date in paragraph (1) was the 17th day after the year of assessment.”.

**14.** In regulation 42(a)—

- (a) in paragraph (4) substitute “17 days” for “14 days”;
- (b) in paragraph (5)(b) substitute “22nd April” for “19th April”; and
- (c) in paragraph (7) substitute “section 684 of the 2003 Act or section” for “section 203(2) (PAYE) or”.

**15.** In regulation 43(5)(b) substitute “regulation 26 of the PAYE Regulations” for “regulation 21 of the Income Tax Regulations”.

**16.** In regulation 50 substitute “regulation 36(2)(a) of the PAYE Regulations” for “regulation 23(1) of the Income Tax Regulations”.

**17.** In regulation 51—

- (a) insert at the start of paragraph (1) “Subject to paragraph (3),”; and
- (b) after paragraph (2) add the following paragraph—

“(3) This regulation shall not apply where an employer has paid an electronic payment default surcharge to the Board in respect of an incorrect payment.”.

**18.** There shall be inserted after regulation 52 the following regulations—

**52A.** In the application of regulation 202 of the PAYE Regulations (default notice and appeal) for the purposes of these Regulations the only ground for appeal shall be that the employer is not in default.

**52B.** In the application of regulation 203 of the PAYE Regulations (default surcharge) for the purposes of these Regulations—

“A” is the total amount of repayments payable for the year of assessment in which were made the relevant deductions to which the specified payment relates; and

“B” is the total of the amounts deducted from A under regulations 39(3) and 39(4) of these Regulations.

**52C.** In the application of regulation 210 of the PAYE Regulations (penalties and appeals) for the purposes of these Regulations an employer shall not be liable to a penalty as a result of this regulation if the employer has been liable to a penalty for failing to comply with regulation 205 of the PAYE Regulations or regulation 90N of the Social Security (Contributions) Regulations 2001(c) in relation to the same year of assessment.”.

*Alan Johnson*  
Minister of State

Department for Education and Skills

20th April 2004

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(a) Regulation 42 was amended by S.I. 2001/971.  
(b) Regulation 43 was amended by S.I. 2002/2087.  
(c) S.I. 2001/1004. Regulation 90N was inserted by S.I. 2004/770.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into force on 17th May 2004, amend the Education (Student Loans) (Repayment) Regulations 2000 (“the principal Regulations”). The amendments are made to apply new provisions for the payment of student loan repayments and the filing of the annual return to the Board of the Inland Revenue by an approved method of electronic communications.

Regulation 28 is amended to apply the provisions of regulations made under section 684 of the Income Tax (Earnings and Pensions) Act 2003 to student loan repayments (*regulation 4*).

Regulation 32 of the principal Regulations is amended to provide that an employer is only to be treated as having made a multiple employer election if he makes an election under regulation 98(1) of the Income Tax (Pay As You Earn) Regulations 2003 (“the PAYE Regulations”) and no improper purpose notice has been issued under regulation 99 of those Regulations, or if one has, it has been withdrawn (*regulation 5*).

Regulation 39 is amended to extend the due date for payment of student loan repayments by three days, where payment is made by an approved method of electronic communications (*regulation 9*).

Regulations 39A and 39B are amended to extend the date when recovery proceedings under those regulations may be commenced by three days, to allow for the extended due dates in regulation 39 (*regulations 10 and 11*).

Regulation 41 is amended to provide that where payment is made by an approved method of electronic communications, the interest payable shall be calculated as if the date from which it accrued was 17 days after the end of the tax year (*regulation 13*).

Regulation 42(4) is amended to extend the date when recovery proceedings may be commenced by three days, to allow for the extended due dates under regulation 39. Regulation 42(5) is amended to provide that where an employer has failed to file a return for more than twelve months, the penalty he shall pay shall not exceed the amount of unpaid student loan repayments as at the 22nd of April of the year of assessment to which the return relates (*regulation 14*).

Regulation 51 of the principal Regulations is amended to provide that an employer who has paid an electronic default surcharge in respect of an incorrect payment shall not pay a penalty under this regulation (*regulation 17*).

Regulation 18 inserts three new regulations into the principal Regulations. Regulation 52A provides that the only ground of appeal in relation to an appeal against an electronic payment default notice shall be that the employer is not in default.

Regulation 52B provides the correct elements of the calculation of the surcharge payable in the case of an employer who is in default under the electronic payment provisions.

Regulation 52C provides that an employer who has paid an electronic filing penalty under the PAYE Regulations or the Social Security (Contributions) Regulations 2001 shall not be required to pay a penalty under that regulation.

A number of other amendments are made to the principal Regulations to reflect the repeal of section 203 of the Income and Corporation Taxes Act 1988, the enactment of section 684 of the Income Tax (Earnings and Pensions) Act 2003 and the making of the PAYE Regulations (*regulations 3, 6, 7, 8, 12, 15 and 16*).

These Regulations do not impose any new costs on business.

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