

EXPLANATORY MEMORANDUM TO
THE EDUCATION (STUDENT LOANS) (REPAYMENT) (AMENDMENT)
REGULATIONS 2008

2008 No. 546

1. This explanatory memorandum has been prepared by the Department for Innovation, Universities and Skills and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 This Statutory Instrument makes amendments to the Education (Student Loans) (Repayment) Regulations 2000 (“the 2000 Regulations”) and introduces new penalty arrangements for student loan borrowers who make errors in their self-assessment (SA) returns relating to years of assessment beginning on or after 6 April 2008.

3. **Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]**

3.1 None.

4. **Legislative Background**

4.1 A Review of Powers, Deterrents and Safeguards was commissioned by the Paymaster General during the course of the Commissioners for Revenue & Customs Act 2005 through Parliament. The aim of the Review was to modernise and align the powers inherited by Her Majesty’s Revenue and Customs (HMRC). The Review considered the feasibility of creating a new single penalty framework in relation to various HMRC responsibilities, including student loans. The Finance Act 2007 replaces the previous penalty provisions with a single penalty regime.

4.2 These Regulations apply Schedule 24 of the Finance Act 2007 to incorrect SA returns submitted by borrowers in relation to years of assessment beginning on or after 6 April 2008. The existing penalties regime (which applies various sections of the Taxes Management Act 1970) remains in place for borrowers submitting incorrect SA returns for years of assessment ending on or before 5 April 2008.

4.3 There are a number of significant differences between the new regime and the existing regime. For example, under the new regime liability is incurred when the error made is ‘careless or deliberate’. Under the existing regime liability is incurred when the error is made ‘fraudulently or negligently’. Unlike the existing regime, the new regime calculates penalties by pinpointing certain percentages of the ‘potential lost revenue’ for different types of ‘action’ i.e. ‘careless’, ‘deliberate but not concealed’ or ‘deliberate and concealed’.

4.4 The 2000 Regulations have previously been amended by:

- the Education (Student Loans) (Repayment) (Amendment) Regulations 2001 (S.I. 2001/971),
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2002 (S.I.2002/2087),
- the Education (Student Loans) (Repayment) (Amendment) (No. 2) Regulations 2002 (S.I.2002/2859),
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2004 (S.I. 2004/1175),
- the Education (Student Loans) (Repayment) (Amendment)(No 2) Regulations 2004 (S.I. 2004/2752),
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2005 (S.I. 2005/2690),
- the Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745),
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2006 (S.I. 2006/2009),
- the Education (Student Loans) (Repayment) (Amendment) Regulations 2007 (S.I. 2007/1683).

5. Territorial Extent and Application

5.1 The regulations extend to the United Kingdom in so far as that they impose obligations or confer powers on the Board or a borrower in relation to repayments of student loans granted in England, Wales and Scotland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 These Regulations contribute to HMRC's ongoing work to modernise and align penalties across taxes and duties. They amend the Education (Student Loans) (Repayment) Regulations 2000, implementing new penalty arrangements for errors made by student loan borrowers who are required to make annual tax returns for self assessment. From 6 April 2008 the new arrangements, as set out in Schedule 24 of the Finance Act 2007, replace the existing penalty system for incorrect returns, which was based on various parts of the Taxes Management Act 1970. Without these regulations there will be no provision to apply penalties where errors are made by student loan borrowers in SA returns relating to years of assessment beginning on or after 6 April 2008.

7.2 HMRC has undertaken a wide ranging review of civil penalties to consider how best to modernise and align the existing different penalty regimes. As part of this work HMRC consulted on proposals for a single structure for penalties for completing incorrect tax returns, although not specifically about how new penalty arrangements affect student loan borrowers who are required to make SA returns. HMRC will be producing comprehensive guidance on the new arrangements set out in Schedule 24 of the Finance Act 2007 in April 2008.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

8.2 There is no impact on the public sector.

9. Contact

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