

**EXPLANATORY MEMORANDUM TO  
THE EDUCATION (STUDENT LOANS) (REPAYMENT)  
AMENDMENT REGULATIONS 2012**

**2012 No. 836**

**1. Explanatory Memorandum**

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

**2. Purpose of the instrument**

2.1 These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470) (the 2009 Regulations) in relation to the recovery and reporting of student loan repayments by employers under the Real Time Information (RTI) Programme. It brings into force changes required to the reporting of student loan repayments by employers to follow changes being made to tax legislation by Her Majesty's Revenue and Customs (HMRC) to support the phased introduction of RTI.

2.2 These Regulations include some minor amendments to reflect changes to HMRC's Self Assessment provisions relating to a new data-gathering framework and the repeal of tax provisions relating to the trustees, guardians, etc. of incapacitated persons.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 The Income Tax (Pay As You Earn) Regulations (S.I. 2003/2682) (the 2003 Regulations) govern the operation of the Pay As You Earn (PAYE) system under which income tax is deducted at source from employee's pay. Certain other deductions are also made under the PAYE system.

4.2 Under the 2003 Regulations, employers must report to HMRC after the end of each tax year what payments have been made to their employees and the tax deducted. During the year, employees who change employments are given a Form P45 by their former employer and pass this to their new employer so that the new employer has the necessary information to correctly operate PAYE. If no Form P45 is available, the 2003 Regulations set out an alternative procedure involving Form P46. Forms P45 and P46 are also used by employers to notify HMRC of changes in employment.

4.3 Under RTI, employers will be required to report payments to employees and the deduction of tax to HMRC each time a payment is made. This will be done using a new form of return. Each return will be required to contain certain information about the way

that the employee's pay and tax has been calculated and will also be used to report changes in employment.

4.4 HMRC is making the necessary amendments to the 2003 Regulations to give effect to these changes as well as a number of other amendments consequential to the main changes. In particular, they will insert into the 2003 Regulations provisions which deal with the phasing in of RTI for different employers between April 2012 and October 2013. Those changes are set out in the Income Tax (Pay As You Earn) (Amendment) Regulations 2012.

4.5 The collection of National Insurance contributions (NICs) and student loan repayments rely on the PAYE system, as does the income tax construction industry scheme (CIS). Amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (the 2001 Regulations) and the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) (the 2005 Regulations) are being made by HMRC at the same time as these Regulations to reflect the introduction of RTI.

4.6 These Regulations similarly amend the 2009 Regulations to reflect the introduction of RTI. The 2009 Regulations govern the repayment of Income Contingent loans paid to students under section 22 of the Teaching and Higher Education Act 1998 (c.30). The changes made by these Regulations reflect those being made to the tax system from 6th April 2012 so that HMRC's powers to collect student loans from borrowers and through employers are clear and consistent with the tax rules on which they rely.

4.7 In addition, where student loan repayments are being recovered through HMRC's Self Assessment process, the rules follow those relating to income tax. From 6th April 2012, there will be some changes to HMRC's existing data-gathering framework in relation to student loans to apply Schedule 23 to the Finance Act 2011. Regulation 38 is being amended to reflect the repeal of tax provisions relating to the trustees, guardians, etc. of incapacitated persons.

## **5. Territorial Extent and Application**

5.1 This instrument has the same territorial extent and application as the provisions it amends in the 2009 Regulations. The 2009 Regulations extend to England and Wales but they also extend to all of the United Kingdom in so far as they impose any obligation or confer any power on HMRC, an employer or a borrower in relation to repayment under Parts 3 or 4 of those Regulations.

## **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**

*What is being done and why*

7.1 PAYE has been operating in its current form for some 60 years. RTI is being introduced from April 2012 to bring PAYE into the 21<sup>st</sup> century by making it easier for employers, pension providers and HMRC to administer and over time more accurate for some individuals by improving the processes relating to joiners and leavers.

7.2 Under RTI employers and pension providers will tell HMRC about PAYE payments and deductions they make (tax, NICs, Student Loan repayments, etc.) at the time they pay their employees, as opposed to the end of the year as happens now.

7.3 Instead of PAYE being a separate process for employers and pension providers, the RTI process will be integrated within the payroll process. RTI is expected to make the 'leaver' and 'joiner' process smoother which, over time, should mean that those who change jobs frequently will be more likely to pay the right amount of tax at the right time. Payroll software will collect the information and send it to HMRC electronically – with the smallest employers able to download HMRC's free 'Basic PAYE Tools'.

7.4 In addition, RTI will also support the operation of Universal Credit due to commence in October 2013. The Department for Work and Pensions will have access to necessary RTI information to identify earnings of Universal Credit claimants, thereby ensuring the correct payment in line with fluctuations in earnings. This will require up-to-date information about employment and pension income so that claimants' welfare payments can be adjusted to reflect their circumstances. RTI will contribute to the delivery of this.

7.5 The 2009 Regulations are being amended to ensure that RTI employers can collect student loan repayments, along with PAYE and NIC, and report the details to HMRC on each pay day.

7.6 These Regulations include two other non-RTI changes. The first is that HMRC is replacing a number of old individual powers for obtaining data with a new single data-gathering framework with modern safeguards and one set of rules. The new framework applies in relation to all UK taxes for which HMRC is responsible. Most customers will not notice any changes from April 2012 other than that some of the HMRC forms may look different.

7.7 The other non-RTI change relates to the repeal of the definition of incapacitated persons. The repeal of Section 72 of the Taxes Management Act 1970 containing tax provisions relating to the trustees, guardians, etc. of incapacitated persons will mean that those covered by the current definition will in future have the same rights and obligations under tax law as they would if they were not incapacitated. Rights and obligations will not in future be transferred to that person's representative so the representatives will no longer be personally liable under tax law (although their duties under the wider law will of course remain). Those rights and obligations will though be able to be exercised and met by the incapacitated person's representative acting in a representative capacity (i.e. making decisions, signing documents etc. on their behalf).

## **8. Consultation outcome**

8.1 No formal consultation exercise was undertaken in relation to these Regulations as they bring into effect for the collection of student loans tax provisions on which HMRC has widely consulted. The first discussion document was published in July 2010 with a subsequent consultation document published in December 2010. These documents are available at <http://customs.hmrc.gov.uk/RTIConsultationDocuments>.

8.2 HMRC consulted extensively on the policy principle and legislation underlying RTI which were broadly welcomed and the responses to those consultations have been used to inform and develop HMRC's policy. In accordance with the Government's Tax Consultation Framework, a draft of the amendments to the 2003 Regulations was published on the HMRC website for comment from 14th November 2011 to 9th January 2012 together with draft amendments to the 2001 and 2005 Regulations. The draft regulations and accompanying technical note are available here:

[http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageLibrary\\_ConsultationDocuments&propertyType=document&column=1&id=HMCE\\_PROD1\\_031738](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&column=1&id=HMCE_PROD1_031738).

8.3 There was one significant change as a result of HMRC's consultation on RTI. The draft amendments to the 2003 Regulations and 2001 Regulations proposed the introduction of a leaver statement, to be given to employees when they left a job in place of Form P45. Following representations received and discussions held with representative bodies, it was agreed that the introduction of a leaver statement would be deferred and the draft Regulations have been amended accordingly.

8.4 All other consultation responses have been considered and HMRC will provide a written response to each representation.

8.5 The regulations amending the 2003 Regulations, 2001 Regulations and 2005 Regulations also include a number of drafting adjustments to ensure they operate as intended and for the sake of clarity.

## **9. Guidance**

9.1 The RTI scheme is being publicised by HMRC. The effect of these Regulations has been explained to the HMRC Collection of Student Loans Consultation Group which HMRC uses to consult with employers, representative bodies and payroll software providers on matters related to the collection of student loan repayments.

9.2 Extensive guidance on RTI will be published on HMRC's website for employers who join RTI.

## **10. Impact**

10.1 All employers including charities or voluntary bodies will be required to use RTI. It is expected that there will be a reduction in administrative burdens resulting from abolition of some current reporting requirements. However these savings will be partially offset by the new requirements for employers to collect and submit information each time employees are paid.

10.2 The impact of RTI on the public sector is the same as for any other employer.

10.3 Tax Information and Impact Notes covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

## **11. Regulating small business**

11.1 The amendments apply to small business.

11.2 RTI aims to reduce administrative burdens for all employers, including small employers (upon whom the current burden of PAYE currently falls disproportionately). The aim is to achieve this by integrating employee payment and reporting to HMRC into a single payroll process. These Regulations keep student loan collection processes in line with the rest of the PAYE system. The changes concern how repayments are reported to HMRC, with no changes to how student loan repayments are collected.

11.3 Small employers are already required to submit returns to HMRC electronically but those who do not currently use payroll software are expected to find the move to RTI most difficult. However, HMRC's existing free Basic PAYE Tools software will be updated and available for all employers with 9 or fewer employees to use.

11.4 A number of small firms are taking part in the RTI pilot and HMRC's research into employer impacts. The resulting findings will inform the support HMRC needs to offer to small employers to migrate on to RTI.

## **12. Monitoring & review**

12.1 RTI will be piloted from April 2012 and HMRC will monitor and review these regulations alongside that pilot, making amendments where necessary.

## **13. Contact**

13.1 Karen Duncan at the Department for Business Innovation and Skills; Tel 01325 391092 or email [karen.duncan@bis.gsi.gov.uk](mailto:karen.duncan@bis.gsi.gov.uk) who can answer any queries regarding the instrument.