EXPLANATORY MEMORANDUM

The Education (Student Loans) (Repayment) (Amendment) Regulations (Northern Ireland) 2011

2011 No. 137

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the Statutory Rule (details above) 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 the negative resolution procedure.

1.3 The Rule is due to come into operation on 6th April 2011.

2. Purpose

2.1 The Rule is to amend the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009 ("the principal Regulations"). The amending Regulations will implement new penalties for failures by employers to file returns and make payments of tax on time and revise existing penalty structures for late filing and late payment with an aligned set of penalties that will be more effective, more proportionate and more likely to influence behaviour. These amendments are required to reflect new UK wide tax legislation and are being introduce across all taxes administered by HMRC. These amendments must, therefore, be in place for the start of the new tax year.

2.2 It will implement provision made in the Student Loans (Amendment) Act (Northern Ireland) 2011 to exempt income-contingent repayment and mortgage style loans from Individual Voluntary Arrangements (IVAs) in Northern Ireland for Northern Ireland domiciled student loan borrowers.

2.3 It also amends the principal Regulations to enable the current £15,000 repayment threshold to increase in April 2012, 2013, 2014, and 2015 in line with inflation by reference to the March Retail Price Index Rate which falls 13 months earlier. As HMRC can currently only operate one repayment threshold, this inflationary increase from April 2012-2015 inclusive has been agreed by all Devolved Administrations. The equivalent thresholds which are in place overseas will also be increased accordingly.

3. Background

3.1 The principal Regulations provide the statutory framework for the collection and repayment system for income-contingent repayment (ICR) student loans. For most borrowers, repayment is through the tax system, involving employers and Her Majesty's Revenue and Customs (HMRC). Loan accounts are administered by the Student Loans Company (SLC), which receives information from HMRC about repayments made through the tax system. Borrowers who move overseas repay directly to the SLC; and any borrower may make additional repayments directly to SLC.

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 Instrument reflects changes to the Self Assessment system.

3.3 Schedules 55 and 56 of the Finance Act (FA) 2009 introduced new penalties for failing to file returns and make payments of tax or other duties to HMRC on time and are being implemented in stages by HMRC. This Instrument makes changes to replace two sections of the Taxes Management Act (TMA) 1970; Section 93 penalties for failure to make returns for income tax, and Section 59C for surcharges on unpaid income tax for tax periods 2010-11 onwards.

3.4 This Instrument also sets out new penalty provision for failing to make payments of income tax on time for tax years 2010-11 or any subsequent year.

3.5 The current interest provisions at Regulation 39 for late payment of income tax and the surcharges for late payment of income tax at Regulation 36 will only remain in force until midnight on 30 October 2011. With effect from 31 October, references to Section 178 of the FA 1989 are replaced by references to Sections 101 to 103 of the FA 2009. Interest on late payment of income tax and late payment of the new penalty provisions under Regulation 36 will attract interest under Section 103 of FA 2009, in accordance with the changes being made to Regulation 39 to reflect changes being made to HMRC income tax provisions.

3.6 Student loan borrowers begin to make repayments once their income is above £15,000 per annum (or equivalent weekly or monthly amount). The current threshold has been set at £15,000 since 2005. From April 2012, this figure will be uprated by inflation.

3.7 The provision to exclude student loans from IVAs will ensure consistency of treatment of student loans in respect of IVAs and bankruptcy. Student loans are paid out of and subsidised by public funds, so it is not considered appropriate to allow borrowers to reduce or limit their liability to repay by entering into IVAs. Student loan repayments are linked directly to a borrower's income, so the debt will only be repaid when the borrower earns more than the income threshold.

4. Consultation

4.1 There is no statutory requirement to consult on these Regulations as they bring into effect provisions relating to primary legislation for which appropriate consultation has already taken place.

5. Equality Impact

5.1 A preliminary Equality Impact Assessment has been carried out and it is the Department's view that the proposals do not have an adverse impact on the Section 75 categories.

6. Regulatory Impact

6.1 The impact on business, charities or voluntary bodies is nil for the majority of individuals who continue to make accurate and timely payments to HMRC, and so will not be subject to the new regime. The impact on business, charities or voluntary bodies is nil for all other changes in this Instrument.

6.2 The impact on the public sector is nil.

6.3 An Impact Assessment has not been prepared for the uprating of the repayment threshold.

6.4 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 .

7. Regulating small business

7.1 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.

7.2 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 income tax, changes to the existing penalties for failing to make returns for income tax and the new interest charges for late payment of the new late payment penalties took place at meetings with HMRC Employer Student Loans Subgroup. This includes representation from the Federation of Small Business, the Low Income Tax Reform Group and the accountancy profession.

7.3 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.

8. Financial Implications

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

9. Section 24 of the Northern Ireland Act 1998

9.1 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.

10. EU Implications

10.1 None.

11. Parity or Replicatory Measure

11.1 The provision regarding IVAs within this Rule is included in England's broadly equivalent Statutory Instrument "The Education (Student Loans) (Repayment) (Amendment) Regulations 2010" (S.I. 2010, No. 661) which came into force on 6th April 2010. The remaining provisions will be included in the equivalent Statutory Instrument "The Education (Student Loans) (Repayment) Regulations 2009 (Amendment) Regulations 2011 will come into force on 6th April 2011

11.2 This instrument has the same territorial extent and application as the provisions it amends in the Education (Student Loans) (Repayment) Regulations 2009. Those Regulations extend to England and Wales but they also extend to all of the United Kingdom in so far as it imposes any obligation or confers any power on HMRC, an employer or a borrower in relation to repayments under Parts 3 or 4 of the Education (Student Loans) (Repayment) Regulations 2009.

12. Additional Information

12.1 Contact John Neill at the Department for Employment and Learning, Tel: 02890 257712 or email: john.neill@delni.gov.uk .