

# **Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Bill**

Government Bill

As reported from the Education and Science  
Committee

## **Commentary**

### **Recommendation**

The Education and Science Committee has examined the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

This bill would amend the Student Loan Scheme Act 1992, by introducing two additional exemptions to the rule that borrowers are required to be present in New Zealand for 183 or more consecutive days to qualify for an interest-free loan. It would also make two technical amendments to the exemptions provisions in the Act, and a number of minor or technical amendments.

The additional exemptions would apply to borrowers who were not in New Zealand but were still in the Realm of New Zealand (that is, in Niue, the Cook Islands, Tokelau, or the Ross Dependency),

and to borrowers engaged in full-time study overseas either under a New Zealand Government-approved formal exchange programme or under a formal agreement between a New Zealand tertiary education provider and an overseas tertiary provider. The technical amendments would affect the definition of the countries a borrower could work in to obtain the benefit of the volunteer exemption, and would clarify that a borrower could only obtain the benefit of this exemption if the organisation for which the borrower was working was a “named” organisation at the time the borrower did that work.

Three amendments would make other policy changes. The Commissioner of Inland Revenue would be allowed to increase the standard rate of repayment deductions from 10 to 15 cents in the dollar where borrowers had failed to have correct deductions made or failed to pay any other due amount. Loans that were fully repaid before the borrower had been back in New Zealand for 183 days would be interest-free for the period the borrower was back in New Zealand. The grace period in which a borrower may repay their loan fully without incurring further interest would be increased from 15 to 30 days.

Three other technical amendments are proposed. The period for which borrowers may seek relief on hardship grounds would no longer be limited to the tax year immediately preceding the current tax year. The formula for determining the student loan interest rate would be moved from the Student Loan Scheme (Interest Rates Formulas) Regulations 2006 to the principal Act. World-wide income in an income-contingent assessment would be limited to the period for which a borrower was entitled to an interest-free loan.

We note the assurance of the Inland Revenue Department that it has decided that assessments that were not issued in earlier years because of a computer programming error will not now be issued and the proposed increase repayment deduction rate would not therefore apply to borrowers affected by this error.

### **Overseas study exemption**

We recommend amending clause 14, new section 38AJA. This would extend the overseas study exemption to include borrowers engaged in full-time study overseas where their New Zealand tertiary education provider verified that the study could not be completed in New Zealand, and would count towards a New Zealand qualification at

level eight or above on the New Zealand Register of Quality Assured Qualifications; and would define an overseas tertiary provider.

### **Green Party minority view**

The Green Party is unable to support this bill despite the laudable clauses which allow students from the Pacific and the Ross Dependency to access their tertiary education in this country without additional penalties. However we oppose the clauses which increase the amounts students in arrears will have taken from their earnings, the increase being from 10 cents in the dollar to 15 cents in the dollar.

The Green Party believes the student loan scheme is already a heavy burden on many students on low incomes and students who do not get high-paying jobs after they leave university. We oppose all initiatives which increase that burden. So despite the useful technical amendments in this bill we stand upon our principles in opposition to any increases in the rate of repayment on those already in arrears.

## **Appendix**

### **Committee process**

The Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Bill was referred to the committee on 25 August 2009. The closing date for submissions was 2 October 2009. We received and considered five submissions from interested groups and individuals. We heard two submissions.

We received advice from the Inland Revenue Department and the Ministry of Education.

### **Committee membership**

Allan Peachey (Chairperson)

Catherine Delahunty

Hon Sir Roger Douglas

Jo Goodhew

Colin King

Hon Nanaia Mahuta (from 6 May 2009 to 18 November 2009)

Hon Trevor Mallard

Sue Moroney

David Shearer (from 18 November 2009)

Louise Upston

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~

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*Hon Peter Dunne*

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and Miscellaneous Provisions)  
Amendment Bill**

Government Bill

**Contents**

	Page
1 Title	3
2 Commencement	3
3 Principal Act amended	3
<b>Part 1</b>	
<b>Amendments to principal Act</b>	
4 Interpretation	3
5 Repayment obligation for New Zealand based borrowers	3
6 Employer or PAYE intermediary to make repayment deductions	4
7 New section 20A inserted	4
20A Standard deduction rate may be increased in certain circumstances	4
8 Full interest write-off for certain borrowers	5
9 Full interest write-off ceases if borrower is personally absent from New Zealand for 184 days	5
10 Power of Commissioner to grant exemptions to borrowers who do not satisfy 183-day requirement	6
11 Conditions to charitable organisation exemption	6
12 Conditions to marriage, civil union, or de facto exemption	6
13 New section 38AIA inserted	6
38AIA Conditions to Niue, Cook Islands, Tokelau, and Ross Dependency exemption	7

**Student Loan Scheme (Exemptions and  
Miscellaneous Provisions) Amendment Bill**

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14	New section 38AJA inserted	7
	38AJA Power of Commissioner to grant exemption to borrowers undertaking full-time overseas study	8
15	Terms of full interest write-off	10
16	New section 38AM inserted	10
	38AM Full interest write-off for quick repayment of loan balance	10
17	Late payment penalties	11
18	Power of Commissioner in respect of small amounts	11
19	Borrowers may apply for hardship relief	11
20	Sections 55 to 55B substituted	11
	55 Hardship relief for any tax year prior to current tax year	11
	55A Hardship relief for tax year immediately prior to current tax year may include refund	12
	55B Hardship relief for current tax year or next tax year	12
21	Effect of Commissioner's decision under section 55	13
22	Borrowers must inform Commissioner of change of circumstances and Commissioner may review	13
23	Excess repayments made by residents	14
24	Cancellation of interest if IRD loan balance repaid early	14
25	Objection to decision concerning grant of exemption	14
26	Regulations	14

**Part 2**

**Consequential amendments to, and revocations of,  
other enactments**

*Consequential amendments to other enactment*

27	Amendments to Tax Administration Act 1994	14
28	Annual returns of income not required	14
29	Officers to maintain secrecy	15

*Consequential revocations of other enactments*

30	Student Loan Scheme (Income Amount for Full Interest Write-off) Regulations 2005 revoked	15
31	Student Loan Scheme (Interest Rates Formulas) Regulations 2006 revoked	15
32	Student Loan Scheme (Total Interest Rate) Regulations 2009 revoked	15

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Student Loan Scheme (Exemptions and Miscellaneous Provisions) Amendment Act **2009**.
- 2 Commencement** 5  
(1) **Sections 4, 26(1), 31, and 32** come into force on 1 April 2010.  
(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended** 10  
This Act amends the Student Loan Scheme Act 1992.

**Part 1**  
**Amendments to principal Act**

- 4 Interpretation** 15  
Section 2(1) is amended by repealing the definition of **total interest rate** and substituting the following definition:  
“**total interest rate** means the total interest rate that applies in respect of any tax year, calculated in accordance with the formula—  
$$a\% + 0.74\% = y\%$$
 20  
where—  
a% is the average, rounded to the nearest 2 decimal places, of the monthly average 10-year government bond yield rates published by the Reserve Bank of New Zealand for the 5 years ending in December in the year that precedes the relevant tax year 25  
y% rounded to the nearest 1 decimal place, is the total interest rate for the relevant tax year.
- 5 Repayment obligation for New Zealand based borrowers** 30  
Section 14 is amended by repealing subsection (2) and substituting the following subsections:

- “(2) However, if the borrower was overseas based for part of the relevant tax year, then (in calculating that borrower’s repayment obligation under subsection (1)) only the net income that the borrower derived during the period that the borrower was New Zealand based during that tax year must be taken into account. 5
- “(3) Despite subsections (1) and **(2)**, the repayment obligation for any tax year must not exceed the amount of the IRD loan balance on the last day of that tax year.”
- 6 Employer or PAYE intermediary to make repayment deductions 10**
- (1) Section 19(1) is amended by inserting “, or the Commissioner has given a notice under section **20A**,” after “under section 18”.
- (2) Section 19(2) is amended by inserting “or an increased repayment deduction rate” after “a special deduction rate”. 15
- 7 New section 20A inserted**
- The following section is inserted after section 20:
- “20A Standard deduction rate may be increased in certain circumstances 20**
- “(1) This section applies if—
- “(a) the amount of a borrower’s repayment deductions in the current tax year or in any tax year prior to the current tax year is, or was, less than the amount required under this Act; or 25
- “(b) a borrower has failed to pay any amount that has become due and payable in accordance with this Act.
- “(2) If this section applies, the Commissioner may, in relation to the borrower, issue an increased repayment deduction rate notice that— 30
- “(a) varies the standard deduction rate by increasing it up to a maximum rate of 15 cents in each complete dollar; and
- “(b) specifies the total amount payable by the borrower (which may include any penalties, interest, or other amount that has become due and payable); and 35

- “(c) requires the borrower’s employers to make repayment deductions at the increased rate until those repayment deductions equal the amount specified under **paragraph (b)**.
- “(3) If the Commissioner issues an increased repayment deduction rate notice, the Commissioner must send that notice, together with a notice that complies with section 18(2), directly to the borrower’s employers. 5
- “(4) The increased repayment deduction rate applies until the earlier of the date on which— 10
- “(a) the repayment deductions made in accordance with the increased repayment deduction rate notice equal the amount specified in **subsection (2)(b)**; or
- “(b) the Commissioner notifies the employer otherwise.
- “(5) An increased repayment deduction rate notice issued in relation to a borrower under this section revokes— 15
- “(a) any special repayment deduction rate certificate previously issued to that borrower; and
- “(b) any notice previously given to an employer by that borrower in accordance with section 18. 20
- “(6) The Commissioner must give a borrower a copy of any notice that is given to that borrower’s employers under this section as soon as practicable after it is issued.
- “(7) Nothing in this section limits the application of sections 53 to 55D.” 25

**8 Full interest write-off for certain borrowers**

Section 38AA(1)(b) is amended by omitting “or section 38AJ” and substituting “, 38AJ, or **38AJA**”.

**9 Full interest write-off ceases if borrower is personally absent from New Zealand for 184 days** 30

Section 38AC(5) is amended by omitting “or section 38AJ” and substituting “, 38AJ, or **38AJA**”.

**10 Power of Commissioner to grant exemptions to borrowers who do not satisfy 183-day requirement**

(1) Section 38AE(1)(b) is amended by inserting “that, at the time the borrower did that work, was” after “charitable organisation”.

5

(2) Section 38AE(1) is amended by adding “; or” and also by adding the following paragraph:

“(g) the borrower was personally absent from New Zealand because he or she was in 1 or more of Niue, the Cook Islands, Tokelau, or the Ross Dependency.”

10

(3) Section 38AE is amended by inserting the following subsection after subsection (7):

“(7A) The conditions in **section 38AIA** apply to **subsection (1)(g)**.”

(4) Section 38AE(8) is amended by omitting “(f)” and substituting “(g)”.

15

(5) Section 38AE is amended by adding the following subsection:

“(9) **Subsections (1)(g) and (7A)** apply with effect from 31 March 2009.”

**11 Conditions to charitable organisation exemption**

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Section 38AEA is amended by omitting “recognised by the United Nations as a developing country” in each place where it appears and substituting in each case “listed on the Organisation for Economic Cooperation and Development’s list of countries receiving development assistance”.

25

**12 Conditions to marriage, civil union, or de facto exemption**

Section 38AI(d) is amended by adding “; or” and also by adding the following subparagraph:

“(iv) the applicant’s partner satisfies the conditions in **section 38AJA(2)**.”

30

**13 New section 38AIA inserted**

The following section is inserted after section 38AI:

**“38AIA Conditions to Niue, Cook Islands, Tokelau, and Ross  
Dependency exemption**

“(1) An applicant under **section 38AE(1)(g)** must—

“(a) provide proof that he or she—

“(i) was personally present in 1 or more of New Zealand, Niue, the Cook Islands, Tokelau, or the Ross Dependency for a period of 183 or more consecutive days after 31 March 2009 (a **183-day period**); and

“(ii) was personally present in New Zealand, Niue, the Cook Islands, Tokelau, or the Ross Dependency for the first day of the 183-day period; and

“(iii) was not personally absent from New Zealand, Niue, the Cook Islands, Tokelau, and the Ross Dependency for a period, or periods in the aggregate, of more than 31 days during a period of what would otherwise have been a 183-day period; and

“(b) pay his or her repayment obligation in full when, or before, it falls due each tax year; and

“(c) provide the Commissioner with the information described in section 14A(2), and section 14A(3) and (4) apply accordingly.

“(2) In specifying under section 38AE(2) when, or the basis on which, an applicant under **section 38AE(1)(g)** is treated as being personally present in New Zealand for the purposes of section 38AB, the Commissioner must apply sections 38AC(1) to (4) and 38AD as if references in those sections to ‘New Zealand’ are references to ‘New Zealand (which includes Niue, the Cook Islands, Tokelau, and the Ross Dependency)’, and section 38AK(2)(b) must be interpreted accordingly.”

**14 New section 38AJA inserted**

The following section is inserted after section 38AJ:

**“38AJA Power of Commissioner to grant exemption to  
borrowers undertaking full-time overseas study under  
formal exchange programme or formal agreement**

- ~~“(1) On the application of a borrower who does not satisfy the  
183-day requirement in section 38AB, the Commissioner may,  
if the Commissioner considers that it is fair and reasonable to  
do so, grant an exemption to the 183-day requirement to that  
borrower if the principal reason that the borrower does not sat-  
isfy the 183-day requirement is that the borrower is undertak-  
ing study that—~~ 5
- ~~“(a) the borrower is enrolled in with a New Zealand tertiary  
education provider; and~~
- ~~“(b) if it is completed successfully, will count towards a  
qualification offered by a New Zealand tertiary educa-  
tion provider; and~~ 10
- ~~“(c) is assessed by the NZQA as being equivalent to level  
7 or above on the New Zealand Register of Quality As-  
sured Qualifications developed by the NZQA under sec-  
tion 253(1)(c) of the Education Act 1989; and~~
- ~~“(d) is full-time and undertaken overseas as part of either—~~ 15
- ~~“(i) a formal exchange programme approved by the  
New Zealand Government; or~~
- ~~“(ii) a formal agreement between a New Zealand ter-  
tiary provider and an overseas tertiary provider.~~ 20
- “(1) On the application of a borrower who does not satisfy the 183-  
day requirement in section 38AB, the Commissioner may, if  
the Commissioner considers that it is fair and reasonable to  
do so, grant an exemption to the 183-day requirement to that  
borrower if either **subsection (1A)** or **(1B)** applies. 25
- “(1A) This subsection applies if the principal reason that the bor-  
rower does not satisfy the 183-day requirement is that the bor-  
rower is undertaking study that— 30
- “(a) the borrower is enrolled in with a New Zealand tertiary  
education provider; and
- “(b) if it is completed successfully, will count towards a  
qualification offered by a New Zealand tertiary educa-  
tion provider; and 35
- “(c) is assessed by the NZQA as being equivalent to level  
7 or above on the New Zealand Register of Quality As-

- sured Qualifications developed by the NZQA under section 253(1)(c) of the Education Act 1989; and
- “(d) is full-time and undertaken overseas as part of either—
- “(i) a formal exchange programme approved by the New Zealand Government; or 5
- “(ii) a formal agreement between a New Zealand tertiary education provider and an overseas tertiary provider.
- “(1B) This subsection applies if the principal reason that the borrower does not satisfy the 183-day requirement is that the borrower is undertaking study that— 10
- “(a) the borrower is enrolled in with a New Zealand tertiary education provider; and
- “(b) if it is completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider; and 15
- “(c) is assessed by the NZQA as being equivalent to level 8 or above on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 253(1)(c) of the Education Act 1989; and 20
- “(d) is full-time and undertaken overseas; and
- “(e) cannot be completed in New Zealand.
- “(2) An applicant under **subsection (1)**—
- “(a) ~~must provide the Commissioner with evidence from the applicant’s New Zealand tertiary education provider verifying that the applicant’s study meets the requirements of **subsection (1)(b), (c), and (d)(i) or (ii)**; and~~ 25
- “(a) must provide the Commissioner with evidence from the applicant’s New Zealand tertiary education provider verifying that the applicant’s study meets the requirements of either— 30
- “(i) **subsection (1A)(b), (c), and (d)(i) or (ii)**; or
- “(ii) **subsection (1B)(b) to (e)**; and
- “(b) must supply the Commissioner with all other information, and in the manner, that the Commissioner may reasonably require in order to establish whether the ground for the grant of an exemption under **subsection (1)** applies; and 35

- “(c) must provide the Commissioner with the information specified in section 14A(2), and section 14A(3) and (4) apply accordingly.
- “(3) If the Commissioner grants an exemption under **subsection (1)**, the Commissioner must specify either— 5
- “(a) the start and end dates for the period for which the relevant borrower is treated as being personally present in New Zealand for the purposes of section 38AB; or
- “(b) the conditions that must apply or be met in order for the relevant borrower to be treated as being personally present in New Zealand for the purposes of section 38AB. 10
- ~~“(4) In this section, NZQA means the New Zealand Qualifications Authority established under Part 20 of the Education Act 1989.~~
- “(4) In this section,—
- “NZQA means the New Zealand Qualifications Authority established under Part 20 of the Education Act 1989 15
- “overseas tertiary provider means an institution or organisation that—
- “(a) provides tertiary education or training; and
- “(b) is based in a country other than New Zealand; and 20
- “(c) is registered by an appropriate education authority in that country.
- “(5) This section applies with effect from 31 March 2007.”
- 15 Terms of full interest write-off**
- Section 38AK(2)(a)(ii) is amended by omitting “or section 38AE(2) or section 38AJ(3)” and substituting “, 38AE(2), 38AJ(3), or **38AJA(3)**”.
- 16 New section 38AM inserted**
- The following section is inserted after section 38AL:
- “38AM Full interest write-off for quick repayment of loan balance** 30
- “(1) This section applies to a borrower who—
- “(a) satisfies the 183-day requirement in section 38AB(1) and (2); and
- “(b) fully repays his or her loan balance before the end of the 183-day period. 35

- “(2) The amount of interest calculated on the loan balance of a borrower to whom this section applies must be reduced to zero for the period—
- “(a) beginning on the first day of the 183-day period; and
  - “(b) ending on the day on which the borrower fully repays his or her loan balance. 5
- “(3) This section applies with effect from 31 March 2006.”

**17 Late payment penalties**

Section 44(1)(d) is amended by omitting “.” and substituting “; or”. 10

**18 Power of Commissioner in respect of small amounts**

Section 51(3)(a) is amended by omitting “\$333” and substituting “\$334”.

**19 Borrowers may apply for hardship relief**

Section 54(1) is amended by repealing paragraph (a) and substituting the following paragraph: 15

“(a) hardship relief for any tax year prior to the current tax year.”.

**20 Sections 55 to 55B substituted**

Sections 55 to 55B are repealed and the following sections substituted: 20

**“55 Hardship relief for any tax year prior to current tax year**

“(1) If an application is made under **section 54(1)(a)**, the Commissioner may, for any period the Commissioner considers equitable, retrospectively decrease that borrower’s repayment obligation for any tax year prior to the current tax year if the Commissioner— 25

“(a) is satisfied that payment of that repayment obligation is causing, or would cause, serious hardship to the borrower; or 30

“(b) considers that there are other special reasons that make it fair and reasonable to do so.

“(2) Except as set out in **section 55A**, the Commissioner must not refund any amount that was deducted or paid (if any) to meet

a repayment obligation for any tax year prior to the current tax year.

**“55A Hardship relief for tax year immediately prior to current tax year may include refund**

- “(1) If an application is made under **section 54(1)(a)**, the Commissioner may, for any period the Commissioner considers equitable, refund any amount that was deducted or paid to meet a repayment obligation in the tax year immediately prior to the current tax year if the Commissioner—
- “(a) is satisfied that payment of that repayment obligation is causing, or would cause, serious hardship to the borrower; or
- “(b) considers that there are other special reasons that make it fair and reasonable to do so.
- “(2) If the Commissioner refunds any amount to a borrower under **subsection (1)**, the Commissioner must—
- “(a) retrospectively decrease that borrower’s repayment obligation for the relevant tax year; and
- “(b) refund the whole or part of the portion of the repayment obligation that is the difference in assessment amounts.
- “(3) A refund that is made under this section must be made in the manner required under section 184A of the Tax Administration Act 1994.

**“55B Hardship relief for current tax year or next tax year**

- “(1) If an application is made under section 54(1)(b) or (c), the Commissioner may, for any period the Commissioner considers equitable, reduce any amount that must be deducted or paid in order to meet the repayment obligation assessed or to be assessed for the current tax year or the next tax year if the Commissioner—
- “(a) is satisfied that the amount being deducted or paid, or to be deducted or paid, has caused or will cause serious hardship to the borrower; or
- “(b) considers that there are other special reasons that make it fair and reasonable to do so.

- “(2) If the Commissioner reduces the amount to be deducted or paid by a borrower under **subsection (1)**, the Commissioner must, as appropriate, do 1 of the following:
- “(a) issue to that borrower a special repayment deduction rate certificate that varies the standard deduction rate in accordance with the Commissioner’s decision under **subsection (1)** and, when assessed, reduce that borrower’s repayment obligation accordingly; or 5
  - “(b) reduce the percentage payable by that borrower under section 27(1) in accordance with the Commissioner’s decision under **subsection (1)** and, when assessed, reduce that borrower’s repayment obligation accordingly; or 10
  - “(c) reduce that borrower’s repayment obligation under section 34 in accordance with the Commissioner’s decision under **subsection (1)**. 15
- “(3) If the Commissioner reduces the amount to be deducted from, or paid by, a borrower to zero, section 18 does not apply to that borrower for the period for which that reduction applies.
- “(4) If a borrower has given his or her employer notice in accordance with section 18 and the Commissioner subsequently reduces the amount to be deducted from, or paid by, a borrower to zero, the borrower must give a copy of the special repayment deduction rate certificate to his or her employer as soon as practicable after it is issued. 20 25
- “(5) Section 24F of the Tax Administration Act 1994 applies, with all necessary modifications, to any special repayment deduction rate certificate issued under this section.”
- 21 Effect of Commissioner’s decision under section 55**
- (1) The heading to section 55C is amended by omitting “**section 55**” and substituting “**section 55, 55A, or 55B**”. 30
  - (2) Section 55C(1) is amended by omitting “section 55” and substituting “**section 55, 55A, or 55B**”.
- 22 Borrowers must inform Commissioner of change of circumstances and Commissioner may review** 35
- Section 55D(1)(b) is amended by omitting “section 55” and substituting “**section 55, 55A, or 55B**”.

- 23 Excess repayments made by residents**  
The heading to section 56 is amended by omitting “**residents**” and substituting “**borrowers**”.
- 24 Cancellation of interest if IRD loan balance repaid early**  
Section 60A(1)(b) is amended by omitting “15” and substituting “30”. 5
- 25 Objection to decision concerning grant of exemption**
- (1) Section 65A(a) is amended by omitting “or section 38AJ” and substituting “, 38AJ, or **38AJA**”.
- (2) Section 65A(b) is amended by omitting “section 38AF, 38AG, 38AH, 38AI, or 38AJ(2)” and substituting “section 38AEA, 38AF, 38AG, 38AH, 38AI, **38AIA**, 38AJ(2), or **38AJA(2)**”. 10
- (3) Section 65A(c) is amended by omitting “or section 38AJ(3)(a)” and substituting “, 38AJ(3)(a), or **38AJA(3)(a)**”.
- (4) Section 65A(d) is amended by omitting “or section 38AJ(3)(b)” and substituting “, 38AJ(3)(b), or **38AJA(3)(b)**”. 15
- 26 Regulations**
- (1) Section 87(1)(ab) and (ac) are repealed.
- (2) Section 87(1)(b) is repealed.
- (3) Section 87(4) is amended by omitting “or subsection (1)(ac) or subsection (1)(b) of this section”. 20

## Part 2

### Consequential amendments to, and revocations of, other enactments

- Consequential amendments to other enactment* 25
- 27 Amendments to Tax Administration Act 1994**  
**Sections 28 and 29** amend the Tax Administration Act 1994.
- 28 Annual returns of income not required**
- (1) Section 33A(1)(g) is amended by omitting “; and”.
- (2) Section 33A(1)(h) and (i) are repealed. 30

**Student Loan Scheme (Exemptions and  
Miscellaneous Provisions) Amendment Bill**

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- 29 Officers to maintain secrecy**  
Section 81(4)(g) is amended by omitting “, (2AA),”.
- Consequential revocations of other enactments*
- 30 Student Loan Scheme (Income Amount for Full Interest  
Write-off) Regulations 2005 revoked** 5  
The Student Loan Scheme (Income Amount for Full Interest  
Write-off) Regulations 2005 (SR 2005/345) are revoked.
- 31 Student Loan Scheme (Interest Rates Formulas)  
Regulations 2006 revoked** 10  
The Student Loan Scheme (Interest Rates Formulas) Regula-  
tions 2006 (SR 2006/36) are revoked.
- 32 Student Loan Scheme (Total Interest Rate) Regulations  
2009 revoked** 15  
The Student Loan Scheme (Total Interest Rate) Regulations  
2009 (SR 2009/30) are revoked.

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**Legislative history**

4 August 2009	Introduction (Bill 59–1)
25 August 2009	First reading and referral to Education and Science Committee

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