

2013 No. 384**SOCIAL SECURITY****The Social Security (Overpayments and Recovery)
Regulations 2013***Made - - - - 25th February 2013**Laid before Parliament 4th March 2013**Coming into force in accordance with regulation 1(2) and (3)*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 71(4), (6)(a) and (b), (8) and (9A) to (9C), 71ZA, 71ZB(2)(b) to (5), 71ZC(1) to (3), 71ZD, 71ZF 71ZG(5), 71ZH(5), 74(2), 75(4), (5)(a) and (8) to (10), 78(2) and (3C) to (3E), 115B(4A), 115C(5), 115D(5), 189(1), (4) to (6) and 191 of the Social Security Administration Act 1992(a) (“the Act”) and paragraphs 1(1) and 6(b) of Schedule 6 to the Welfare Reform Act 2012(b).

In accordance with section 173(1)(b) of the Act, the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it.

In relation to provisions in these Regulations relating to housing benefit, in accordance with section 176(1) of the Act(c), consultation has taken place with organisations appearing to the Secretary of State to be representative of the authorities concerned.

PART 1**General****Citation and commencement**

1.—(1) These Regulations may be cited as the Social Security (Overpayments and Recovery) Regulations 2013.

(a) 1992 c. 5. Section 71(8) is amended by section 107 of the Welfare Reform Act 2009 (c. 24). Section 71ZA is inserted by section 75(1) of the Social Security Act 1998 (c. 14) (“the 1998 Act”). Sections 71ZB to 71ZH are inserted by section 105 of the Welfare Reform Act 2012 (c. 5) (“the 2012 Act”) and sections 71(9A) to (9C), 71ZA(2A), 75(8) to (10) and 78(3C) to (3E) are inserted by section 106 of that Act. Section 74(2) is amended by paragraph 7 of Schedule 2 to the 2012 Act. Section 75(5) is amended by section 16 of the Social Security Administration (Fraud) Act 1997 (c. 47). Section 115B is inserted by section 15 of the Social Security Fraud Act 2001 (c. 11) and subsection (4B) of that section is inserted by section 105 of the 2012 Act. Sections 115C and 115D are inserted by section 116 of the 2012 Act. Section 189(1) and (4) to (6) are amended by paragraph 109(a) and (c) to (e) of Schedule 7, and Schedule 8, to the 1998 Act, paragraph 57(1) and (2) of Schedule 3 to the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2) and Schedule 6 to the Tax Credits Act 2002 (c. 21). Section 191 is cited for the definition of “prescribe”.

(b) 2012 c. 5.

(c) Section 176(1) is amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c. 14), paragraph 3(4) of Schedule 13 to the Housing Act 1996 (c. 52) and section 69(6) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

(2) The following provisions of these Regulations come into force on 8th April 2013–

- (a) this Part;
- (b) Part 6 and Schedules 1 and 2;
- (c) regulation 31 except paragraphs (2)(b), (d), (e) and (g), (4)(b) and (7)(b);
- (d) regulation 33(1), (2)(a) and (c) and (3); and
- (e) regulation 34(1), (2)(a) and (c) and (3).

(3) All other provisions of these Regulations come into force on 29th April 2013.

Interpretation

2. In these Regulations–

“the Act” means the Social Security Administration Act 1992;

“the 1995 Act” means the Jobseekers Act 1995(a);

“the 2007 Act” means the Welfare Reform Act 2007(b);

“the 2012 Act” means the Welfare Reform Act 2012(c);

“the UC Regulations” means the Universal Credit Regulations 2013(d);

“the UC etc. Claims and Payments Regulations” means the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013(e);

“assessment period” has the same meaning as in the UC Regulations;

“claimant” means the person who has claimed the benefit concerned;

“couple” has the same meaning as in Part 1 of the 2012 Act(f);

“employment and support allowance” means an allowance under Part 1 of the 2007 Act as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the 2012 Act that remove references to an income-related allowance;

“housing costs” means any amount included in an award of universal credit in respect of rent payments as defined in paragraph 2 of Schedule 1 to the UC Regulations;

“jobseeker’s allowance” means an allowance under the 1995 Act as amended by the provisions of Part 1 of Schedule 14 to the 2012 Act that remove references to an income-based allowance;

“liable person” means the person from whom a recoverable amount is recoverable;

“overpayment” means an amount of–

- (a) universal credit, jobseeker’s allowance or employment and support allowance which may be recovered by the Secretary of State by virtue of section 71ZB(1) of the Act;
- (b) working tax credit or child tax credit which may be recovered under section 29 of the Tax Credits Act 2002(g) as modified by paragraph 10 of the Schedule to the Universal Credit (Transitional Provisions) Regulations 2013(h);

“overpayment period” means the period over which an overpayment accrues;

“partner” means, where the person being referred to is a member of a couple, the other member of the couple;

“recoverable amount” is to be construed in accordance with regulation 3;

“universal credit” means universal credit under Part 1 of the 2012 Act.

(a) 1995 c. 18.

(b) 2007 c. 5.

(c) 2012 c. 5.

(d) S.I.2013/376.

(e) S.I.2013/380.

(f) See section 39 of that Act.

(g) 2002 c. 21.

(h) S.I.2013/386.

PART 2

Recoverability

Recoverable amounts

- 3.—(1) In these Regulations, “recoverable amount” means—
- (a) subject to regulations 7 to 9, the amount of any overpayment; and
 - (b) any other amount recoverable under any provision of the Act specified in paragraph (2).
- (2) Those provisions are(a)—
- (a) section 71ZE(3) (costs of court action etc.);
 - (b) section 71ZG (recovery of payments on account);
 - (c) section 71ZH (recovery of hardship payments);
 - (d) section 115B(4)(recovery of penalties imposed as an alternative to prosecution);
 - (e) section 115C(4) (recovery of civil penalties for incorrect statements); and
 - (f) section 115D(4) (recovery of civil penalties for failure to disclose information).

Persons from whom an overpayment may be recovered

4.—(1) The following paragraphs apply for determining the person from whom an overpayment is recoverable in the circumstances specified in those paragraphs.

(2) Where the payee is a person appointed under regulation 57 of the UC etc. Claims and Payments Regulations or a person to whom the Secretary of State has directed that payment be made in accordance with regulation 58 of those Regulations, then the overpayment is recoverable from the claimant in addition to the payee.

(3) Where the payee is a person to whom universal credit, jobseeker’s allowance or employment and support allowance has been paid pursuant to Schedule 6 to the UC etc. Claims and Payments Regulations (payments to third parties), then, to the extent that the amount paid does not exceed the amount payable to the payee under that Schedule, the overpayment is recoverable from the claimant instead of the payee.

(4) Paragraphs (5) to (7) apply only in relation to overpayments of housing costs.

(5) Where the Secretary of State is satisfied that an overpayment occurred in consequence of any change of dwelling occupied by the claimant as their home, then if the claimant and the payee are not the same person, the overpayment is recoverable from the claimant in addition to the payee.

(6) Where the Secretary of State is satisfied that an overpayment occurred in consequence of a misrepresentation, or a failure to disclose a material fact (in either case, whether fraudulent or otherwise), by any person (“M”), then, if M and the payee are not the same person, the overpayment is recoverable from M instead of the payee.

(7) Where the Secretary of State is satisfied that an overpayment occurred for a reason other than that mentioned in paragraph (5) or (6), then, except where paragraph (2) or (8) applies in relation to the overpayment, if the claimant and the payee are not the same person, the overpayment is recoverable from the claimant instead of the payee.

(8) This paragraph applies where the overpayment occurred due to the amount of the payment exceeding the amount of housing costs for which the claimant is liable.

(a) Sections 71ZE, 71ZG and 71ZH are inserted by section 105 of the Welfare Reform Act 2012. Sections 115C and 115D are inserted by section 116 of that Act.

(9) In this regulation, “payee” means the person to whom the overpayment has been paid.

Circumstances in which a determination need not be reversed, varied, revised or superseded prior to recovery

5. Section 71ZB(3) of the Act (recoverability of an overpayment dependent on reversal, variation, revision or supersession) does not apply where the circumstances of the overpayment do not provide a basis for the decision pursuant to which the payment was made to be revised under section 9 of the Social Security Act 1998(a) or superseded under section 10 of that Act.

PART 3

Prevention of duplication of payments

Duplication and prescribed income

6.—(1) The income prescribed for the purpose of section 71ZB(5) of the Act (duplication of payments: universal credit) is any income which falls to be taken into account in accordance with Chapters 2 and 3 of Part 6 of the UC Regulations.

(2) The date prescribed for the payment of income for the purpose of that subsection is—

- (a) where the payment of income is made in respect of a specific day or period, that day or the first day of that period;
- (b) where the payment of income is not so made, the day or first day of the period to which it is fairly attributable.

PART 4

Calculation of recoverable amount of an overpayment

Diminution of capital

7.—(1) Paragraph (2) applies where—

- (a) there is an overpayment of universal credit which occurred as a consequence of an error relating to the amount of a person’s capital; and
- (b) the overpayment period is 3 months or more.

(2) Where this paragraph applies, the Secretary of State must, for the purpose only of calculating the recoverable amount of that overpayment—

- (a) at the end of the first 3 months of the overpayment period, treat the amount of that capital as having been reduced by the amount of universal credit overpaid during those 3 months;
- (b) at the end of each subsequent period of 3 months, if any, of the overpayment period, treat the amount of that capital as having been further reduced by the amount of universal credit overpaid during the immediately preceding 3 months.

(3) Capital is not to be treated as reduced over any period other than 3 months in any circumstances other than those for which paragraph (2) provides.

(a) 1998 c. 14.

Sums to be deducted

8.—(1) In calculating the recoverable amount of an overpayment of jobseeker's allowance or employment and support allowance, the Secretary of State must deduct the amounts specified in paragraphs (2) and (3).

(2) Any amount which has been offset under regulation 16.

(3) Any additional amount of universal credit which was not payable to the claimant or their partner under the original or any other determination but which should have been determined to be payable in respect of all or part of the overpayment period to the claimant, or to the claimant and their partner jointly—

- (a) on the basis of the claim for universal credit as presented to the Secretary of State;
- (b) on the basis of that claim as it would have appeared if any change of circumstances, except a change of the dwelling which the claimant occupies as their home, had been notified at the time that change occurred;
- (c) where the overpayment arose by virtue of a misrepresentation or a failure to disclose a material fact, on the basis that that misrepresentation or failure had been remedied prior to the award being made; or
- (d) where the overpayment arose by virtue of an error made by, or on behalf of, the Secretary of State, on the basis that that error had not been made.

Sums to be deducted: change of dwelling

9.—(1) This regulation applies where an overpayment of housing costs has occurred in the following circumstances—

- (a) the claimant has moved from the dwelling previously occupied as their home (“dwelling A”) to another dwelling which they occupy as their home (“dwelling B”);
- (b) they have been awarded housing costs in respect of dwelling A to which they are not entitled because they are no longer occupying or treated as occupying dwelling A as their home; and
- (c) housing costs are payable to the same person in respect of the claimant's occupation of dwelling B as it was paid to in respect of dwelling A.

(2) In calculating the recoverable amount of the overpayment, the Secretary of State may, at his or her discretion, deduct an amount equal to the claimant's entitlement to housing costs for the assessment period in respect of dwelling B for the number of assessment periods equal to the number of assessment periods during which the claimant was overpaid housing costs in respect of dwelling A.

(3) Where a sum has been deducted under paragraph (2), an equivalent sum is to be treated as having been paid in respect of the claimant's entitlement to housing costs in respect of dwelling B for the number of assessment periods equal to the number of assessment periods during which the claimant was overpaid housing costs in respect of dwelling A.

PART 5

The process of recovery

Recovery by deduction from benefits

10.—(1) Subject to regulations 11 to 14, the Secretary of State may recover a recoverable amount from a liable person by deduction from the benefits specified in paragraph (2) which are payable to them.

(2) Those benefits are—

- (a) benefits under Parts 2 to 5 of the Social Security Contributions and Benefits Act 1992^(a);
- (b) universal credit;
- (c) jobseeker's allowance;
- (d) employment and support allowance;
- (e) state pension credit payable under the State Pension Credit Act 2002^(b); and
- (f) personal independence payment payable under Part 4 of the 2012 Act.

Recovery by deduction from universal credit

11.—(1) The following paragraphs apply where the recoverable amount falls to be recovered by deduction from universal credit payable to the liable person.

(2) Subject to paragraphs (5) to (9), regulation 10 is to apply to the amount of universal credit to which the liable person is presently entitled to the extent that there may be recovered in any one assessment period—

- (a) in a case to which paragraph (3) applies, an amount equivalent to not more than ►¹40 per cent.◄ of the appropriate universal credit standard allowance;
- (b) in a case to which paragraph (4) applies but paragraph (3) does not apply, an amount equivalent to not more than ►¹25 per cent.◄ of that allowance; and
- (c) in any other case, an amount equivalent to not more than ►¹15 per cent.◄ of that allowance.

¹Words in reg. 11(2)(a)-(c) & reg. 11(6) substituted by reg. 8(2)(a)-(c) & (3) of S.I. 2013/1508 as from 29.7.13.

(3) This paragraph applies where deductions from universal credit are made to recover from the liable person—

- (a) the whole or part of an overpayment in respect of which the liable person has—
 - (i) been found guilty of an offence whether under statute or otherwise;
 - (ii) made an admission after caution of deception or fraud for the purpose of obtaining benefit under the Act or a tax credit under the Tax Credits Act 2002; or
 - (iii) agreed to pay a penalty under section 115A of the Act (penalty as an alternative to prosecution) and the agreement has not been withdrawn; or
- (b) a payment which is recoverable by virtue of section 71ZH of the Act (hardship payments).

(4) This paragraph applies where amounts are deducted from earned income in an award of universal credit by virtue of regulation 22(1)(b) of the UC Regulations (adjustment to take account of income and amount of earnings disregarded).

(5) Paragraph (2) is subject to paragraphs 4 and 5 of Schedule 6 to the UC etc. Claims and Payments Regulations (payments to third parties).

►¹(6) For the purpose of paragraph (2), where the relevant percentage of the appropriate universal credit standard allowance results in a fraction of a penny, that fraction is to be disregarded if it is less than half a penny and otherwise it is to be treated as a penny.◄

(7) No deduction made under paragraph (2) is to be applied so as to reduce the universal credit in respect of an assessment period to less than 1 penny.

(8) The limitations in paragraph (2) do not apply where the deduction falls to be made from any payment of arrears of universal credit other than any arrears caused by

(a) 1992 c. 4.

(b) 2002 c. 21.

the operation of regulation 46 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013(a) (making of payments which have been suspended).

- (9) The limitations in paragraph (2) do not apply where—
- (a) the recoverable amount is an overpayment of housing costs; and
 - (b) the person from whom that amount falls to be recovered is not the claimant.
- (10) In this regulation and in regulation 14, “admission after caution” means—
- (a) in England and Wales, an admission after a caution has been administered in accordance with a Code issued under the Police and Criminal Evidence Act 1984(b);
 - (b) in Scotland, admission after a caution has been administered, such admission being duly witnessed by two persons.

(11) In paragraph (2), “the appropriate universal credit standard allowance” means the appropriate universal credit standard allowance included in the award of universal credit made to the liable person, or to the liable person and their partner as joint claimants(c), by virtue of regulation 36 of the UC Regulations.

Recovery by deduction from jobseeker's allowance

12.—(1) The following paragraphs apply where the recoverable amount falls to be recovered by deduction from jobseeker's allowance payable to the liable person.

(2) Subject to paragraphs (3) and (4), regulation 10 is to apply to the amount of a jobseeker's allowance to which the liable person is presently entitled to the extent that there may be recovered in respect of any benefit week an amount equivalent to 40 per cent. of the age-related amount applicable to the liable person as specified in regulation 49 of the Jobseeker's Allowance Regulations 2013(d).

(3) Paragraph (2) is subject to paragraphs 4 and 5 of Schedule 6 to the UC etc. Claims and Payments Regulations (payments to third parties).

(4) Where the amount deductible under paragraph (2) is not a multiple of five pence, it is to be rounded up to the next higher such multiple.

(5) In paragraph (2), “benefit week” has the same meaning as in regulation 2(1) of the Jobseeker's Allowance Regulations 2013.

Recovery by deduction from employment and support allowance

13.—(1) The following paragraphs apply where the recoverable amount falls to be recovered by deduction from employment and support allowance payable to the liable person.

(2) Subject to paragraphs (3) and (4), regulation 10 is to apply to the amount of an employment and support allowance to which the liable person is presently entitled to the extent that there may be recovered in respect of any one benefit week an amount equivalent to 40 per cent. of the age-related amount applicable to the liable person as specified in regulation 62(1)(b) of the Employment and Support Allowance Regulations 2013(e).

(3) Paragraph (2) is subject to paragraphs 4 and 5 of Schedule 6 to the UC etc. Claims and Payments Regulations (payments to third parties).

(4) Where the amount deductible under paragraph (2) is not a multiple of five pence, it is to be rounded up to the next higher such multiple.

(a) S.I. 2013/381.

(b) 1984 c. 60.

(c) See section 40 of the 2012 Act.

(d) S.I.2013/378.

(e) S.I.2013/379.

(5) In paragraph (2), “benefit week” has the same meaning as in regulation 2 of the Employment and Support Allowance Regulations 2013.

Recovery by deduction from state pension credit

14.—(1) The following paragraphs apply where the recoverable amount falls to be recovered by deduction from state pension credit payable to the liable person.

(2) Subject to paragraphs (4) and (5), regulation 10 is to apply to the amount of state pension credit to which the liable person is presently entitled to the extent that there may be recovered in any one benefit week—

- (a) in a case to which paragraph (3) applies, an amount equivalent to not more than 5 times 5 per cent. of the standard allowance for a single person aged 25 or over under regulation 36 of the UC Regulations; and
- (b) in any other case, an amount equivalent to not more than 3 times 5 per cent. of that allowance.

(3) This paragraph applies where deductions from state pension credit are made to recover from the liable person—

- (a) the whole or part of an overpayment in respect of which the liable person has—
 - (i) been found guilty of an offence whether under statute or otherwise;
 - (ii) made an admission after caution of deception or fraud for the purpose of obtaining universal credit, jobseeker’s allowance or employment and support allowance; or
 - (iii) agreed to pay a penalty under section 115A of the Act (penalty as an alternative to prosecution) and the agreement has not been withdrawn; or
- (b) a payment which is recoverable by virtue of section 71ZH of the Act (hardship payments).

(4) Where the amount deductible under paragraph (2) is not a multiple of five pence, it is to be rounded up to the next higher such multiple.

(5) No deduction made under paragraph (2) is to be applied so as to reduce the state pension credit in respect of a benefit week to less than 10 pence.

(6) In this regulation, “benefit week” has the same meaning as in regulation 2(1) of the State Pension Credit Regulations 2002(a).

Restrictions on recovery of rent and consequent notifications

15.—(1) Paragraph (2) applies where, pursuant to section 71ZC(2)(b) of the Act, an amount of housing costs has been, or falls to be, recovered by deduction from benefit paid to a person (“the landlord”) to discharge (in whole or in part) an obligation owed to the landlord by the person on whose behalf the recoverable amount was paid (“the tenant”).

(2) Where, in respect of the overpayment of that amount, the landlord has—

- (a) been found guilty of an offence whether under statute or otherwise; or
- (b) agreed to pay a penalty under section 115A of the Act (penalty as an alternative to prosecution) and the agreement has not been withdrawn,

that obligation is to be taken to be discharged by the amount of the deduction.

(3) In any case to which paragraph (2) applies or will apply when recovery is made, the Secretary of State must notify both the landlord and the tenant—

(a) S.I.2002/1792.

- (a) that the overpayment that it has recovered or that the Secretary of State has determined to recover (“that sum”) is, or will be, one to which paragraph (2) applies; and
- (b) that the landlord has no right in relation to that sum against the tenant, and that the tenant’s obligation to the landlord is to be taken to be discharged by the amount so recovered.

Offsetting

16.—(1) Paragraph (2) applies where a person has been paid a sum of benefit under a decision (“the original decision”) which is subsequently—

- (a) revised or further revised;
- (b) superseded or further superseded; or
- (c) set aside on an appeal.

(2) Any universal credit, jobseeker’s allowance or employment and support allowance paid in respect of a period covered by the subsequent decision is to be offset against arrears of entitlement to benefit under that decision and, except to the extent that the universal credit, jobseeker’s allowance or employment and support allowance exceeds the arrears, is to be treated as properly paid on account of them.

(3) Where an amount has been deducted under regulation 8 or 9 (sums to be deducted in calculating recoverable overpayments), an equivalent sum is to be offset against any arrears of entitlement under the subsequent decision except to the extent that the sum exceeds the arrears and is to be treated as properly paid on account of them.

(4) No amount may be offset under paragraph (2) which is an overpayment.

(5) In this regulation, “subsequent decision” means the decision referred to in paragraph (1)(a), (b) or (c) which was taken in relation to the original decision.

PART 6

Recovery by deduction from earnings

Interpretation of Part 6

17.—(1) In this Part—

“appropriate authority”, in relation to any recoverable amount, means—

- (a) the Secretary of State; or
- (b) an authority administering housing benefit if the recoverable amount is recoverable by that authority under section 115B(4)(a), 115C or 115D of the Act,

and where a notice has been issued, “the appropriate authority” means the appropriate authority which issued the notice;

“notice” means a notice issued by an appropriate authority requiring an employer to make deductions from earnings to be paid by the employer to a liable person employed by them and to pay corresponding amounts to that appropriate authority in respect of the recovery of a recoverable amount from the liable person;

“pay-day” in relation to a liable person means an occasion on which earnings are paid to them or the day on which such earnings would normally fall to be paid;

“protected earnings proportion”, in relation to a deduction by an employer from a liable person’s net earnings, is 60 per cent. of the liable person’s net earnings during the period to which the deduction relates, as calculated by the liable person’s employer on the relevant pay-day.

(2) In this Part, subject to paragraph (3), “earnings” means any sums payable to a person—

- (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary payable under a contract of service);
- (b) by way of pension which is paid with wages or salary (including an annuity in respect of past service, whether or not rendered to the person paying the annuity, and including periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment); or
- (c) by way of statutory sick pay.

(3) “Earnings” does not include—

- (a) sums payable by any public department of the Government of Northern Ireland or of a territory outside the United Kingdom;
- (b) pay or allowances payable to the liable person as a member of Her Majesty’s forces other than pay or allowances payable by their employer to them as a special member of a reserve force (within the meaning of the Reserve Forces Act 1996**(a)**);
- (c) other pensions, allowances or benefit payable under any enactment relating to social security;
- (d) pension or allowances payable in respect of disablement or disability;
- (e) guaranteed minimum pension within the meaning of the Pension Schemes Act 1993**(b)**;
- (f) working tax credit payable under section 10 of the Tax Credits Act 2002**(c)**;
- (g) sums paid to reimburse expenses wholly and necessarily incurred in the course of the employment.

(4) “Net earnings” means the residue of earnings after deduction of—

- (a) income tax;
- (b) primary Class I contributions under Part 1 of the Social Security Contributions and Benefits Act 1992**(d)**;
- (c) amounts deductible by way of contributions to a superannuation scheme which provides for the payment of annuities or lump sums—
 - (i) to the employee on retirement at a specified age or on becoming incapacitated at some earlier age; or
 - (ii) on the employee’s death or otherwise, to their personal representative, widow, surviving civil partner, relatives or dependants.

(5) Where these Regulations refer to a notice or notification being given or sent, if sent by post to the last known address of the recipient, it is to be treated as having been given or sent on the day on which it is posted.

Exemption from this Part

18. This Part does not impose any obligation on an employer who is carrying on a business which is—

- (a) a new business; or
- (b) an existing micro-business during the exemption period,

and Schedule 1 has effect for the purpose of this regulation.

(a) 1996 c. 14.

(b) 1993 c. 48.

(c) 2002 c. 21.

(d) 1992 c. 4.

Notices

19.—(1) A notice must be given or sent to—

- (a) the liable person; and
- (b) any employer of the liable person who is to make deductions from the liable person's earnings in accordance with the notice.

(2) A notice must specify—

- (a) the full name and address of the liable person;
- (b) the name of the employer at whom the notice is directed;
- (c) where known, the liable person's place of work, the nature of their work and any staff number, pay roll number or similar identifying number;
- (d) the liable person's national insurance number;
- (e) the rate at which deductions are to be made in accordance with regulation 20(3)(a) or as the case may be, (b) or, if applicable, the deduction to be made in accordance with regulation 20(3)(c);
- (f) the protected earnings proportion;
- (g) the address to which amounts deducted from earnings are to be sent if paid by cheque; and
- (h) details of the account into which such amounts are to be transferred if paid by direct credit transfer.

(3) The notice has effect from the next pay-day which falls a minimum of 22 days after the day on which it is given or sent.

(4) References in paragraphs (1) to (3) to a notice include references to a notice as varied in accordance with regulation 25(1).

Amount to be deducted by employer

20.—(1) This regulation applies where an employer has received from an appropriate authority a notice in respect of a liable person in their employment.

(2) Subject to the following provisions of this regulation, the employer must, each pay-day, make a deduction in accordance with paragraph (3) from the net earnings which it would otherwise pay to the liable person on that pay-day.

(3) The amount to be deducted is—

- (a) where the liable person's earnings are payable weekly, the percentage of their earnings specified in column 2 of Table A in Schedule 2 opposite the band in column 1 of that Table within which their net earnings payable on their pay-day fall;
- (b) where the liable person's earnings are payable monthly, the percentage of their earnings specified in column 2 of Table B in that Schedule opposite the band in column 1 of that Table within which their net earnings payable on their pay-day fall; or
- (c) a lower amount calculated in the manner specified by the appropriate authority in the notice.

(4) Where any amount calculated under paragraph (3) includes a fraction of a penny, it is to be rounded to the nearest whole penny with a result of exactly half a penny being rounded down to the nearest whole penny below.

(5) The employer must continue to make deductions in accordance with paragraph (3) unless and until they are notified by the appropriate authority that the notice—

- (a) has been varied in accordance with regulation 25;
- (b) has been discharged under regulation 26; or
- (c) has lapsed under regulation 27.

(6) Where, on any pay-day (“the relevant pay-day”), the employer fails to deduct an amount under paragraph (3) or deducts an amount less than the amount specified in that paragraph, the employer must, on the next available pay-day or pay-days, first deduct the amount required to be deducted under paragraph (3) for that pay-day and then the difference between the amount, if any, which was deducted on the relevant pay-day and the amount which should have been deducted on that pay-day.

(7) Where a deduction made in accordance with paragraph (3) or (6) would reduce the amount paid to the liable person below the protected earnings proportion, the employer must deduct only such amount as will result in the employer paying the liable person an amount equal to the protected earnings proportion.

(8) Where, on any pay-day (“the relevant pay-day”), the employer deducts more than the amount required to be deducted under paragraph (3), the employer must, on the next available pay-day or pay-days, deduct only the amount required to be deducted under paragraph (3) less the difference between the amount which was deducted on the relevant pay-day and the amount which should have been deducted on that pay-day.

(9) Where, on any pay-day, an employer makes a deduction from the earnings of a liable person in accordance with the notice, they may also deduct an additional amount not exceeding £1 in respect of their administrative costs and such deduction for administrative costs may reduce the amount which the employer pays to the liable person on that pay-day below the protected earnings proportion.

Employer to notify liable person of deduction

21.—(1) An employer making a deduction from earnings for the purposes of these Regulations must notify the liable person in writing of—

- (a) the amount of the deduction including any amount deducted for administrative costs under regulation 20(9); and
- (b) how that amount was calculated.

(2) Such notification must be given or sent not later than the pay-day on which the deduction is made or, where that is impracticable, not later than the following pay-day.

Payment by employer to the appropriate authority

22.—(1) Amounts deducted by an employer pursuant to regulation 20 (other than any administrative costs deducted under paragraph (9) of that regulation) must be paid by the employer to the appropriate authority by the 19th day of the month following the month in which the deduction is made.

(2) Such payment may be made—

- (a) by cheque;
- (b) by direct credit transfer; or
- (c) by such other method as the appropriate authority may permit.

(3) The employer must keep a record of every amount paid to an appropriate authority pursuant to paragraph (1) and of the employee in respect of whom each such amount was paid.

Information to be provided by the liable person

23.—(1) A liable person who has been given or sent a notice in accordance with regulation 19(1)(a) must notify the appropriate authority in writing within 7 days of each occasion on which—

- (a) they leave the employment of an employer named in a notice issued by the appropriate authority in respect of them; or

- (b) they become employed or re-employed.
- (2) A notification under paragraph (1)(b) must include the following details—
 - (a) the name and address of their employer or employers if more than one;
 - (b) the amount of their earnings or expected earnings; and
 - (c) their place of work, nature of their work and any staff number, pay roll number or similar identifying number.

Duty of employers and others to notify appropriate authority

24.—(1) In this regulation, “P” means the liable person.

(2) Where a notice is given or sent to a person who is believed to be an employer of P but P is not in that person’s employment, that person must notify the appropriate authority of that fact in writing, at the address specified in the notice, within 10 days after the day on which the notice is given or sent.

(3) In paragraphs (4) and (5), “E” means an employer of P.

(4) Where a notice is given or sent to E but E believes that there is no obligation on them under this Part by virtue of regulation 18 and Schedule 1, E must notify the appropriate authority of that fact in writing, at the address specified in the notice, within 10 days after the day on which the notice is given or sent.

(5) Where E is required to make deductions under a notice and P ceases to be in their employment, E must notify the appropriate authority of that fact in writing, at the address specified in the notice, within 10 days after the day on which P ceased to be in their employment.

Power to vary notices

25.—(1) The appropriate authority may vary a notice so as to—

- (a) decrease any amount to be deducted under regulation 20; or
- (b) with the agreement of the liable person, increase any such amount but only to the extent that such deductions will result in the employer paying the liable person an amount more than, or equal to, the protected earnings proportion.

(2) Where a notice has been varied and a copy of the notice as varied has been given or sent in accordance with regulation 19(1) and (4), any employer who is liable to make deductions under the notice must comply with the notice as varied from the day it takes effect by virtue of regulation 19(3).

Discharge of notices

26.—(1) The appropriate authority must discharge a notice where the recoverable amount is no longer outstanding.

(2) The appropriate authority may discharge a notice where—

- (a) it appears to them to be defective;
- (b) it appears to them that it is ineffective or that some other method of recovering the recoverable amount would be more effective; or
- (c) the liable person agrees with the appropriate authority to pay the recoverable amount by another method.

(3) A notice may be considered to be defective for the purpose of paragraph (2)(a) where it does not comply with the requirements of regulation 19(2) and such failure to comply has made it impracticable for an employer to comply with their obligations under these Regulations.

(4) Notification of the discharge of the notice under paragraph (1) or (2) must be given or sent to the liable person and the employer from whom deductions from the liable person's earnings were being made.

(5) Where a notice is discharged by virtue of paragraph (2)(b) or (c), regulation 22 nevertheless applies in respect of any deductions made in respect of the employment but not yet paid to the appropriate authority.

Lapse of notices

27.—(1) Where a liable person in respect of whom deductions are being made in accordance with a notice ceases to be in the employment of an employer, subject to paragraph (2), the notice is to lapse immediately after the pay-day coinciding with, or, if none, the pay-day following, the termination of the employment.

(2) Where a notice lapses by virtue of paragraph (1), regulation 22 nevertheless applies in respect of any deductions made or to be made in respect of the employment but not yet paid to the appropriate authority.

Crown employment

28. Where a liable person is in the employment of the Crown and a notice is to be sent in respect of that person, then for the purposes of these Regulations—

- (a) the chief officer for the time being of the Department, office or other body in which the liable person is employed is to be treated as having the liable person in their employment (any transfer of the liable person from one Department, office or body to another being treated as a change of employment); and
- (b) any earnings paid by the Crown or a minister of the Crown, or out of the public revenue of the United Kingdom, is to be treated as paid by that chief officer.

Priority as between notices and orders requiring deduction from earnings

29.—(1) In this regulation—

“child support order” means a deduction from earnings order under Part 3 of the Child Support (Collection and Enforcement) Regulations 1992(a);

“other deduction order” means an order, other than a child support order, under any other enactment relating to England and Wales which requires deduction from a person's earnings.

(2) Paragraphs (3) to (10) have effect subject to paragraph (11).

(3) Paragraph (4) applies where an employer would otherwise be obliged, on any pay-day, to make deductions from the earnings which it would otherwise pay to the liable person on that pay-day under two or more notices.

(4) Where this paragraph applies, the employer must make deductions under the notices according to the respective dates on which they were made, disregarding any later notice until deductions have been made under the earlier one.

(5) Paragraph (6) applies where an employer would otherwise be obliged, on any pay-day, to make deductions from the earnings which it would otherwise pay to the liable person on that pay-day, under one or more notices and one or more child support orders.

(6) Where this paragraph applies, the employer must first make deductions under the child support order or orders and then make deductions under the notice or notices.

(a) S.I. 1992/1989.

(7) In England and Wales, paragraph (8) applies where an employer would otherwise be obliged, on any pay-day, to make deductions from the earnings which it would otherwise pay to the liable person on that pay-day, under one or more notices and one or more other deduction orders.

(8) Where this paragraph applies, the employer must—

- (a) in a case where there is at least one other deduction order in effect on the first pay-day in respect of which deductions would otherwise be made under the notice, first make deductions under the other deduction order or orders and then under any notice or notices;
- (b) in any other case, make deductions under the other deduction order and the notices according to the respective dates on which they were made, disregarding any later notice or order until deductions have been made under the earlier one.

(9) In Scotland, paragraph (10) applies where an employer would otherwise be obliged, on any pay-day, to make deductions from the earnings which it would otherwise pay to the liable person on that pay-day, under one or more notices and one or more diligences against earnings.

(10) Where this paragraph applies, the employer must—

- (a) in a case where there is a diligence against earnings in effect on the first pay-day in respect of which deductions would otherwise be made under the notice, first make deductions under any diligence against earnings and then under any notice;
- (b) in any other case, make deductions under any notice and then under any diligence against earnings.

(11) An employer may only make deductions under paragraph (4), (6), (8) or (10) up to the extent that such deductions will result in the employer paying the liable person an amount equal to or greater than the protected earnings proportion.

Offences

30. A person who fails to comply with any of the following provisions of this Part is guilty of an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale—

- (a) regulation 20(2);
- (b) regulation 22(1);
- (c) regulation 22(3);
- (d) regulation 23.

[Regulation 31 makes various amends to S.I.1988/664.]

[Regulation 32 amends regulation 3 of S.I.1988/35.]

[Regulation 33 amends regulations 105 and 106 of S.I.2006/213.]

[Regulation 34 amends regulations 86 and 87 of S.I.2006/214.]

Signed by authority of the Secretary of State for Work and Pensions

25th February 2013

Freud
Parliamentary Under Secretary of State
Department for Work and Pensions

SCHEDULE 1

Regulation 18

EXEMPTION FOR EXISTING MICRO-BUSINESSES AND NEW
BUSINESSES**Micro-businesses**

1. A micro-business is a business that has fewer than 10 employees (see paragraphs 6 to 8).

Existing micro-businesses

2. An existing micro-business is a business that was a micro-business immediately before 8th April 2013.

New businesses

3.—(1) A new business is a business which a person, or a number of persons, (“P”) begins to carry on during the period beginning on 8th April 2013 and ending on 31st March 2014.

(2) But a business is not a new business if—

- (a) P has, at any time during the period of 6 months ending immediately before the date on which P begins to carry on the business, carried on another business consisting of the activities of which the business consists (or most of them); or
- (b) P carries on the business as a result of a transfer (within the meaning of sub-paragraph (3)).

(3) P carries on a business as a result of a transfer if P begins to carry on the business on another person ceasing to carry on the activities of which it consists (or most of them) in consequence of arrangements involving P and the other person.

(4) For this purpose, P is to be taken to begin to carry on a business on another person ceasing to carry on such activities if—

- (a) P begins to carry on the business otherwise than in partnership on such activities ceasing to be carried on by persons in partnership; or
- (b) P is a number of persons in partnership who begin to carry on the business on such activities ceasing to be carried on—
 - (i) by a person, or a number of persons, otherwise than in partnership;
 - (ii) by persons in partnership who do not consist only of all the persons who constitute P; or
 - (iii) partly as mentioned in paragraph (i) and partly as mentioned in paragraph (ii).

(5) P is not to be regarded as beginning to carry on a business for the purposes of sub-paragraph (1) if—

- (a) before P begins to carry on the business, P is a party to arrangements under which P may (at any time during the period beginning on 8th April 2013 and ending on 31st March 2014) carry on, as part of the business, activities carried on by any other person; and
- (b) the business would have been prevented by sub-paragraph (2)(b) from being a new business if—
 - (i) P had begun to carry on the activities when beginning to carry on the business; and
 - (ii) the other person had at that time ceased to carry them on.

(6) “Arrangements” includes an agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

The exemption period: existing micro-businesses

4.—(1) This paragraph defines the exemption period in relation to an existing micro-business.

(2) The exemption period starts on 8th April 2013 and ends on the day after a grace period in relation to the business ends, if the grace period is one in which the business grows (see paragraphs 5 and 6).

(3) The following are grace periods in relation to a business for the purposes of this paragraph—

- (a) the 6-month period that starts with the first day after 8th April 2013 on which the business has 10 or more employees;
- (b) the 6-month period that starts after the end of a grace period (the “earlier grace period”) that is not one in which the business grows, in accordance with sub-paragraph (4) or (5).

(4) If the business has 10 or more employees on the day after the end of the earlier grace period, the next grace period starts on that day.

(5) If the business has fewer than 10 employees on that day, the next grace period starts on the next day on which the business has 10 or more employees.

Grace periods in which business grows

5.—(1) For the purposes of this Schedule, a grace period is one in which a business grows if A is greater than B, where—

- (a) A is the number of days in the grace period when the business has 10 or more employees; and
- (b) B is the number of days in the grace period when the business has fewer than 10 employees.

Number of employees of a business

6. For the purposes of this Schedule, the number of employees of a business is calculated as follows—

$$TH/37.5$$

where TH is the total number of hours per week for which all the employees of the business are contracted to work.

Employees of a business

7. For the purposes of this Schedule, the employees of a business are the persons who are employed for the purposes of the business in connection with any of the activities of which the business consists.

Employees

8.—(1) In this Schedule, “employee” means an individual who has entered into, or works under, a contract of employment.

(2) In sub-paragraph (1) “contract of employment” means a contract of service, whether express or implied, and (if it is express) whether oral or in writing.

Franchises

9. For the purposes of this Schedule, a business that is carried on pursuant to a franchise agreement is treated as part of the business of the franchisor (and not as a separate business carried on by the franchisee).

SCHEDULE 2

Regulation 20(2)

AMOUNTS TO BE DEDUCTED BY EMPLOYERS

TABLE A:

WHERE EARNINGS ARE PAID WEEKLY

<i>AMOUNT OF NET EARNINGS</i>	<i>DEDUCTION (PER CENT. OF NET EARNINGS)</i>
Less than £100	Nil
Exceeding £100 but not exceeding £160	3
Exceeding £160 but not exceeding £220	5
Exceeding £220 but not exceeding £270	7
Exceeding £270 but not exceeding £375	11
Exceeding £375 but not exceeding £520	15
Exceeding £520	20

TABLE B:

WHERE EARNINGS ARE PAID MONTHLY

<i>AMOUNT OF NET EARNINGS</i>	<i>DEDUCTION (PER CENT. OF NET EARNINGS)</i>
Less than £430	Nil
Exceeding £430 but not exceeding £690	3
Exceeding £690 but not exceeding £950	5
Exceeding £950 but not exceeding £1,160	7
Exceeding £1,160 but not exceeding £1,615	11
Exceeding £1,615 but not exceeding £2,240	15
Exceeding £2,240	20

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to recovery of amounts which are recoverable under social security legislation.

Part 1 makes general commencement and interpretation provision (regulations 1 and 2).

Part 2 makes provision relating to recoverability. Regulation 3(1) prescribes that overpayments of both universal credit, jobseeker's allowance and employment and support allowance under section 71ZB of the Social Security Administration Act 1992 ("the Act"), subject to provision as their calculation, and overpayments of tax credits under the Tax Credits Act 2002 (c. 21) are recoverable amounts for the purpose of these Regulations. Civil penalties, administrative penalties, payments on account of benefit and hardship payments are also recoverable amounts under these Regulations. Regulation 4 makes provision as to who certain overpayments are recoverable from where it is necessary to recover from a person instead of, or in addition to, the person to whom it was paid. Regulation 5 makes provision as to when overpayments made under an award will still be recoverable if there has been no revision or supersession of that award.

Part 3 prevents duplication of payment of universal credit where income which would be taken into account in a universal credit claim is paid after the prescribed date for payment of that income.

Part 4 makes provision as to the calculation of the recoverable amount. Regulation 7 makes provision, where an overpayment of universal credit relates to the amount of a person's capital, for the amount of that overpayment to be reduced to take account of diminution in that capital. Regulation 8 allows for the recoverable amount of the benefits to be reduced to take account of any universal credit which should have been paid to the person concerned or their partner. Regulation 9 makes provision relating to calculating the amount of an overpayment of housing costs in universal credit where a claimant changes dwelling.

Part 5 makes provision as to the process of recovery. Regulation 10 allows recovery of recoverable amounts to take place by deduction from certain benefits. Regulation 11 prescribes limitations on such recovery where the benefit to be deducted from is universal credit; regulations 12 to 14 do the same where the benefit to be deducted from is jobseeker's allowance, employment and support allowance and state pension credit respectively. Regulation 15 makes provision confirming when an obligation of a tenant is taken to have been discharged when recovery of an overpayment of housing costs has been obtained by deduction from a landlord's benefit. Regulation 16 allows, where a decision awarding benefit relating to is reversed or varied or revised or superseded, for the offsetting of arrears of entitlement against subsequent payments of universal credit, jobseeker's allowance or employment and support allowance.

Part 6 makes provision for recovery of recoverable amounts by deduction from earnings. Regulation 17 defines certain terms used in that Part. It defines "earnings" for the purpose of the Regulations and the proportion of earnings below which the amount paid to the liable person must not be reduced by virtue of the deduction under regulation 20. That proportion is 60 per cent. of the liable person's net earnings for the relevant period.

Regulation 18 and Schedule 1 provide that Part 6 does not impose any obligation on new businesses and existing micro-businesses. New businesses are those which start business in the period starting on 8th April 2013 and ending on 31st March 2014. An existing micro-business is a business with less than 10 employees on 8th April 2013. Such businesses are exempt from that requirement both for so long as they remain a micro-business and for any grace period (defined in paragraph 4 of Schedule 1) following the date on which they cease to be such a business.

Regulation 19 prescribes what details a notice requiring the employee to make deductions from earnings must contain and when it (and a varied notice) takes effect.

Regulation 20 and Schedule 2 prescribe the amounts to be deducted by the employer from the amount paid to the liable person each pay-day. In addition, paragraph (9) of that regulation allows the employer also to deduct a charge not exceeding £1 in respect of any administrative costs.

Regulation 21 requires the employer to notify the liable person of the amount of the deduction including any deduction in respect of the employer's administrative costs.

Regulation 22 requires the employer to pay the amount of the deduction (excluding any additional deduction for administrative costs) to the appropriate authority which sent the employer the notice by any of the methods set out in paragraph (2) of that regulation. It also requires the employer to keep records of amounts deducted and of persons in respect of whom such deductions have been made.

Regulation 23 requires the liable person to inform the appropriate authority within 7 days if they leave the employment of an employer who has received a notice in respect of them or when they become employed or re-employed.

Regulation 24 requires a person to notify the appropriate authority if a notice is received on the assumption that they are the employer of a liable person but it transpires that they are not or if they think the exemption in regulation 18 applies to them. It also requires the employer to notify the appropriate authority if the liable person ceases to be in their employment.

Regulation 25 allows the appropriate authority to vary notices to decrease or, if agreed, to increase amounts included in them or to substitute a new employer for a previous one and requires the employer to comply with the notice as varied.

Regulation 26 provides for a notice to be discharged in certain circumstances if no further payments are due under it, it is ineffective as a means of recovery or it is defective.

Regulation 27 allows for notices to lapse if the employer no longer has the liable person in their employment.

Regulation 28 makes special provision relating to those in the employment of the Crown.

Regulation 29 makes provision as to priority where employers are obliged to make deductions under more than one notice under these Regulations. In such a case, they are to be dealt with in date order with the earlier order coming first. It also makes provision as to priority where employers are obliged to make deductions under notices issued under these Regulations and other orders requiring deductions to be made from earnings, including diligences against earnings in Scotland. The general rule is that deduction from earnings orders under the Child Support (Collection and Enforcement) Regulations 1992 (S.I.1992/1989) must be dealt with first. Where deductions would otherwise fall to be made under notices issued under these Regulations and either deductions under those other enactments or diligences against earnings, deductions under other orders and diligences are to be made first if in existence on the first pay-day for deductions under the notice. Otherwise, the various notices and orders are to be dealt with in date order.

Regulation 30 makes it a criminal offence to fail to comply with certain provisions of Part 6. These relate primarily to failures to make or pay deductions or to provide information.

Part 7 amends associated legislation. Regulation 31 amends the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 (S.I.1988/664) to ensure that overpayments of benefits coming within section 71 of the Act can be recovered by deduction from universal credit and personal independence payment and by deduction from earnings in accordance with Part 6 of these Regulations. It also

clarifies the rules on what sums are deducted in calculating the amount of a recoverable overpayment under those Regulations. The amendments also ensure that the limitations on deductions from universal credit made under these Regulations apply equally to deductions under those Regulations. Regulation 32 amends the Social Fund (Recovery by Deductions from Benefits) Regulations 1988 (S.I.1988/35) to add universal credit to the list of benefits from which social fund awards may be recovered by deduction.

Part 8 amends housing benefit legislation to ensure both that local authorities can request the Secretary of State to instigate recovery of overpayments of housing benefit by deduction from universal credit and personal independence payment and that they may can recover such overpayments themselves by deduction from earnings in accordance with Part 6 of these Regulations.

An impact assessment has been produced for Part 6 and is available alongside the instrument on www.legislation.gov.uk

An impact assessment has not been produced for the remainder of this instrument as it has no impact on the private sector or civil society organisations.

