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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 224**

**The Social Security (Overpayments and Recovery) Regulations (Northern Ireland) 2016**

**PART 5**

**The process of recovery**

**Recovery by deduction from benefits**

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

(2) Those benefits are—

- (a) benefits under Parts 2 to 5 of the Contributions and Benefits Act;
- (b) universal credit;
- (c) jobseeker's allowance;
- (d) employment and support allowance;
- (e) state pension credit payable under the State Pension Credit Act (Northern Ireland) 2002<sup>(1)</sup>;
- (f) personal independence payment payable under Part 5 of the 2015 Order; and
- (g) a state pension under Part 1 of the Pensions Act (Northern Ireland) 2015<sup>(2)</sup>.

**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 40 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 25 per cent. of the appropriate universal credit standard allowance; and
- (c) in any other case, an amount equivalent to not more than 15 per cent. of the appropriate universal credit standard allowance.

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

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(1) 2002 c. 14 (N.I.).

(2) 2015 c. 5 (N.I.).

- (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 Administration Act or a tax credit under the Tax Credits Act 2002, or
  - (iii) agreed to pay a penalty under section 109A of the Administration Act<sup>(3)</sup> (penalty as alternative to prosecution) and the agreement has not been withdrawn; or

- (b) a payment which is recoverable by virtue of section 69ZH of the Administration Act (recovery of hardship payments etc.).

(4) This paragraph applies where amounts are deducted from earned income in an award of universal credit by virtue of regulation 23(1)(b) of the Universal Credit Regulations (deduction of income and work allowance).

(5) Paragraph (2) is subject to paragraphs 4 and 5 of Schedule 5 to the Claims and Payments Regulations (deductions from benefit and direct payment to third parties).

(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 otherwise it is to be treated as a penny.

(7) No deduction under paragraph (2) is to be applied so as to reduce the universal credit in respect of an assessment period to less than one 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 the operation of regulation 45 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016<sup>(4)</sup> (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 regulation 14 “admission after caution” means an admission after a caution has been administered in accordance with a Code issued under the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>(5)</sup>.

(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 that person's partner as joint claimants<sup>(6)</sup> by virtue of regulation 38 of the Universal Credit Regulations (amounts of elements).

### **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

<sup>(3)</sup> Section 109A was inserted by Article 14 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997 and amended by section 13 of the Social Security Fraud Act (Northern Ireland) 2001.

<sup>(4)</sup> [S.R. 2016 No. 221](#).

<sup>(5)</sup> [S.I. 1989/1341 \(N.I. 12\)](#).

<sup>(6)</sup> See Article 46 of the Welfare Reform (Northern Ireland) Order 2015 for the definition of “joint claimants”.

to the liable person as specified in regulation 49 of the Jobseeker's Allowance Regulations (Northern Ireland) 2016 (weekly amounts of jobseeker's allowance)(7).

(3) Paragraph (2) is subject to paragraphs 4 and 5 of Schedule 5 to the Claims and Payments Regulations (deductions from benefit and direct payment to third parties).

(4) Where the amount deductible under paragraph (2) is not a multiple of 5 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(2) of the Jobseeker's Allowance Regulations (Northern Ireland) 2016 (general interpretation).

### **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 (Northern Ireland) 2016(8) (prescribed amounts).

(3) Paragraph (2) is subject to paragraphs 4 and 5 of Schedule 5 to the Claims and Payments Regulations (deductions from benefit and direct payment to third parties).

(4) Where the amount deductible under paragraph (2) is not a multiple of 5 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 of the Employment and Support Allowance Regulations (Northern Ireland) 2016 (interpretation).

### **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 paragraphs (3) applies, an amount equivalent to not more than 25 per cent. of the standard allowance for a single person aged 25 or over under regulation 38 of the Universal Credit Regulations (amounts of elements); and
- (b) in any other case, an amount equivalent to not more than 15 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 109A of the Administration Act (penalty as alternative to prosecution) and the agreement has not been withdrawn; or

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(7) [S.R. 2016 No. 218.](#)

(8) [S.R. 2016 No. 219.](#)

(b) a payment which is recoverable by virtue of section 69ZH of the Administration Act (recovery of hardship payments etc.).

(4) Where the amount deductible under paragraph (2) is not a multiple of 5 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 1(2) of the State Pension Credit Regulations (Northern Ireland) 2003(9) (interpretation).

### **Restrictions on recovery of rent and consequent notifications**

**15.**—(1) Paragraph (2) applies where, pursuant to section 69ZC(2)(b) of the Administration 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 109A of the Administration Act (penalty as 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 Department must notify both the landlord and the tenant that—

- (a) the overpayment that it has recovered or that the Department has determined to recover (“that sum”) is, or will be, one to which paragraph (2) applies; and
- (b) 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 amounts), 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.

(9) [S.R. 2003 No. 28](#); the definition of “benefit week” was substituted by regulation 3(2) of [S.R. 2009 No. 409](#).

