
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 universal credit, jobseeker's allowance and employment and support allowance under section 69ZB of the Social Security Administration (Northern Ireland) Act 1992 ("the Administration Act"), overpayments of tax credits under the Tax Credits Act 2002, administrative penalties, payments on account of benefit and hardship payments are all recoverable amounts for the purpose of 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 will still be recoverable if there has been no revision or supersession of the 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 that person's partner. Regulation 9 makes provision relating to calculating the amount of an overpayment of housing costs in universal credit where a claimant moves from one dwelling to another.

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. Regulations 11 to 14 respectively prescribe limitations on such recovery where the benefit from which deductions are to be made is universal credit, jobseeker's allowance, employment and support allowance and state pension credit. 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 benefits paid to landlords. Regulation 16 allows, where a decision awarding benefit 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 and defines what is and is not to be counted as "earnings". It also specifies that a deduction must not reduce the amount paid to a liable person to below 60 per cent. of that person's net earnings for the relevant period.

Regulation 18 prescribes the details a notice requiring the employee to make deductions from earnings must contain and when it (and a varied notice) takes effect.

Regulation 19 prescribes the amounts (set out in the Schedule) to be deducted by the employer from the amount paid to the liable person each pay-day and allows the employer to deduct an amount not exceeding £1 in respect of administrative costs.

Regulation 20 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.

Changes to legislation: *There are currently no known outstanding effects for the The Social Security (Overpayments and Recovery) Regulations (Northern Ireland) 2016. (See end of Document for details)*

Regulation 21 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) and requires the employer to keep records of amounts paid to the appropriate authority and persons in respect of whom such payments have been made.

Regulation 22 requires the liable person to inform the appropriate authority within 7 days if the liable person leaves the employment of an employer who has received a notice in respect of that person or when the liable person becomes employed or re-employed.

Regulation 23 requires a person to notify the appropriate authority if a notice is received on the assumption that the employer is the employer of a liable person but it transpires that the employer is not. It also requires the employer to notify the appropriate authority if the liable person ceases to be in that employer's employment.

Regulation 24 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 employer and requires the employer to comply with the notice as varied.

Regulation 25 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 26 allows for notices to lapse if the employer no longer has the liable person in that employer's employment.

Regulation 27 makes provision relating to those in the employment of the Crown.

Regulation 28 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. Deductions from earnings orders under the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 must be dealt with first. Where deductions would otherwise fall to be made under notices issued under these Regulations and under other statutory provisions, deductions under other orders 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 29 makes it a criminal offence to fail to comply with certain provisions of Part 6 relating primarily to failures to make or pay deductions or to provide information.

Part 7 makes consequential amendments and revocations.

Regulation 30 amends the Social Fund (Recovery by Deductions from Benefits) Regulations (Northern Ireland) 1988 to add universal credit to the list of benefits from which social fund awards may be recovered by deduction.

Regulation 31 amends the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988 to:

- ensure that overpayments of benefits coming within section 69 of the Administration Act can be recovered by deduction from universal credit and by deduction from earnings in accordance with Part 6 of these Regulations;
- clarify the rules on what sums are deducted in calculating the amount of a recoverable overpayment under those Regulations;
- increase the maximum deduction from benefit in respect of an overpayment which has resulted in a finding or acceptance of guilt for an offence, or in respect of which the individual has accepted an administrative penalty as an alternative to prosecution, from 5 times 5 per cent. of the relevant personal allowance, to 8 times 5 per cent. of that allowance and ensure that where such overpayments are being recovered by deduction from benefit at the same time as third party payments are being made from the benefit under Schedule 8A to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, the total sum deducted will not exceed that amount; and

- ensure that the limitations on deductions from universal credit made under these Regulations apply equally to deductions under those Regulations.

Regulations 32 and 33 amend housing benefit legislation to ensure that overpayments of housing benefit can be recovered from universal credit and that such overpayments can be recovered by deduction from earnings in accordance with Part 6 of these Regulations.

A full impact assessment has not been published for this instrument as it has no impact on the costs of private sector and civil society organisations.

Changes to legislation:

There are currently no known outstanding effects for the The Social Security (Overpayments and Recovery) Regulations (Northern Ireland) 2016.