

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (OVERPAYMENTS AND RECOVERY)
REGULATIONS (NORTHERN IRELAND) 2016

S.R. 2016 No. 224

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Social Development (Northern Ireland) (“The Department”) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations set out the processes governing the calculation and recovery of overpayments of Universal Credit, certain Tax Credits and contributory Jobseeker’s Allowance and Employment and Support Allowance where the claim for those latter two benefits was made on or after the introduction of Universal Credit.
- 2.2 It also sets out the rules for recovery of certain court costs, payments on account, hardship payments and administrative penalties.
- 2.3 It also introduces Direct Earnings Attachments (DEA) which will allow the Department to recover certain debts directly from a person’s earnings.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 [Section 87 of the Northern Ireland Act 1998](#) places a statutory duty on the Minister for Social Development and the Secretary of State for Work and Pensions to consult with one another with a view to securing a single social security system for the United Kingdom. Section 88 of the 1998 Act makes provision for financial adjustments to support the maintenance of these parity arrangements.
- 4.2 Underpinning the parity principle is the argument that, as people in Northern Ireland pay the same rates of income tax and National Insurance contributions as people in Great Britain, they are entitled to the same rights and benefits paid at the same rates.
- 4.3 [The Welfare Reform Act 2012](#) introduced a number of reforms including Universal Credit, Personal Independence Payment, the Jobseeker’s Allowance Claimant Commitment and a cap on the amount of benefits working age people can receive..
- 4.4 On 17 November 2015 “[A Fresh Start: The Stormont Agreement and Implementation Plan](#)” was agreed by the main political parties in Northern Ireland. Included in this

agreement was the approach agreed by the Executive and HM Government to implementing welfare reform in Northern Ireland. [The Northern Ireland \(Welfare Reform\) Act 2015](#) provides a power for Her Majesty to legislate on social security, child support and certain matters related to employment and training in Northern Ireland by Order in Council. Any such Order in Council may then confer power on the Secretary of State or a Northern Ireland department to make further provision regarding these matters by regulations or order. [The Welfare Reform \(Northern Ireland\) Order 2015](#) (“the 2015 Order”) was made on 9 December 2015 and regulations stemming from the Order, to implement in Northern Ireland an equivalent to the various welfare reforms set out in the Welfare Reform Act 2012, are now being brought forward.

- 4.5 The 2015 Order introduces Universal Credit, which replaces a range of DSD, HMRC and Northern Ireland Housing Executive (NIHE) administered benefits. The 2015 Order allows for the recovery of a range of social security related payments and overpayments (“debts”) from Universal Credit. These Regulations set out the detail of how these debts are calculated, who they can be recovered from, how they can be recovered and limitations on the rates of recovery where that recovery is made by direct deduction from a claimant’s benefit.
- 4.6 The 2015 Order for the first time empowers the Department to recover debt by attachment of earnings. These Regulations set out the circumstances in which a Direct Earnings Attachment (DEA) notice can be issued, the type of earnings from which a deduction can be taken, the responsibilities of employers and the relevant rates of deduction where a DEA is in place.
- 4.7 These changes restore parity between social security systems in Northern Ireland and Great Britain as the instrument makes broadly the equivalent changes for Northern Ireland that were made in Great Britain by the [Social Security \(Overpayments and Recovery\) Regulations 2013, SI 2013/384](#)

5. Extent and Territorial Application

- 5.1 The extent of this instrument is to Northern Ireland only.
- 5.2 The territorial application of this instrument is Northern Ireland.
- 5.3 These regulations replicate for Northern Ireland the legislation that applies to Great Britain.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The 2015 Order introduces Universal Credit, a new benefit that replaces a range of social security benefits, as well as Housing Benefit and Tax Credits. These benefits are currently administered by the Northern Ireland Social Security Agency (NISSA), the NIHE or HM Revenue and Customs (HMRC), which have different overpayment recovery tests. The introduction of Universal Credit means a new single overpayment recovery test is needed. For consistency across all working age benefits, it has been

decided that this test would also be used for overpayments of contribution-based Jobseeker's Allowance and contributory Employment and Support Allowance.

- 7.2 The policy objective is based on the simplification underpinning Universal Credit and on the concept that whilst the Department must take responsibility for its mistakes, that does not give people the right to keep taxpayers' money to which they are not entitled. This means that any payments of Universal Credit, Jobseeker's Allowance and Employment and Support Allowance which are made in excess of entitlement will be recoverable overpayments, including those arising from official error. This is a clear and simple starting point. The new overpayment recovery test is intended to be fairer to claimants and fairer to the taxpayer.
- 7.3 Currently the Department recovers debts via deductions from ongoing benefit entitlement. However, for those who are no longer in receipt of benefit, recovery relies heavily on a debtor's compliance with repayment. If a debtor chooses not to pay the money they owe, the only option is to take court action, which is often cost prohibitive. The new Direct Earnings Attachment (DEA) will allow overpayments to now be recovered from earnings, and will act as an incentive to debtors to make arrangements to repay their debts and, if they still refuse to repay, will provide the Department with an alternative means to make recovery.
- 7.4 Enabling social security legislation to give the Department the ability to make DEAs on its own authority without reference to the Courts will potentially make recovery from a debtor's earnings a relatively simple, administratively attractive option. It will increase debt recovery particularly from those who will not come to a voluntary agreement to repay their debt; it will also reduce the associated costs in such cases. It will also be available as an elective repayment choice for anyone who wants to use it.
- 7.5 As part of the Stormont House Agreement it was agreed that Civil Penalties would not be brought forward in Northern Ireland and there is therefore no equivalent provision for civil penalties in the Welfare Reform (Northern Ireland) Order 2015. These regulations therefore have no specific provisions equivalent to the provisions in the corresponding GB instrument (SI 2013/384) relating to the recovery of civil penalties.

Consolidation

- 7.6 This instrument will be informally consolidated in the NI equivalent of the GB Law Relating to Social Security (or "Blue Volumes"), as the legislation applies only to Northern Ireland. It will be available to the public at no cost via the internet at: <https://www.dsdni.gov.uk/services/law-relating-social-security>

8. Consultation outcome

- 8.1 A formal consultation on these regulations had not been undertaken as the regulations introduce measures outlined in the Welfare Reform Bill (Northern Ireland) 2012. The Department consulted on the implications of the wider reforms as part of the Welfare Reform Bill consultation process, including a public consultation on the equality impact assessment. The Department has also discussed informally with stakeholders to ensure that the operational implications are fully understood and that processes are in place to ensure that the change is implemented correctly in Northern Ireland.

9. Guidance

- 9.1 Before these Regulations come into force detailed guidance on both regulatory and operational changes will be provided to staff and decision makers within the NI Social Security Agency (NISSA). Procedures will be updated, staff trained and notification letters amended before these regulations are brought into operation.
- 9.2 After these Regulations are laid changes will be made to the Decision Makers Guide (DMG) which is also available free on the DSD internet at:
<https://www.dsdni.gov.uk/articles/decision-makers-guide>.

10. Impact

- 10.1 Overall there will be no impact on business. Any increased administration costs will be offset by employers being able to charge the employee an additional amount not exceeding £1 for each deduction from earnings (DEA) that applies. There is no impact on charities or voluntary bodies.
- 10.2 The Northern Ireland Executive published Impact Assessments alongside the Northern Ireland Assembly Bill (www.dsdni.gov.uk/articles/welfare-changes-impactassessments) which included the impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 This instrument provides for the exemption of small businesses (defined as having fewer than 10 employees), from the requirement to implement DEAs.

12. Monitoring & review

- 12.1 The operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from the Department's offices and correspondence from members of the public.

13. Contact

- 13.1 Anne McCleary at the Department for Social Development can direct any queries regarding the instrument. Telephone: 028 90819973 or email:
caroline.banks@dsdni.gov.uk.