

**EXPLANATORY MEMORANDUM TO  
THE SOCIAL SECURITY (RECOVERY) (AMENDMENT) REGULATIONS  
2012**

**2012 No. 645**

1. This explanatory memorandum has been prepared by 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 make changes to provisions concerning the recovery of overpaid social security benefits.

2.2 They make a technical change to regulations concerning the calculation of a recoverable overpayment; they increase the maximum rate for deduction from benefits which can be made to recover an overpayment which has arisen as a result of fraud and align rules for rounding in the calculation of maximum deduction rates.

2.3 Additionally, they correct erroneous cross-references to provisions in earlier legislation concerning the recovery of excess council tax benefit.

**3. Matters of special interest to the Joint Committee on Statutory Instruments.**

None

**4. Legislative Context**

4.1 In October 2010, the Government published a strategy paper - 'Tackling Fraud and Error in the Benefit and Tax Credit Systems'. Part of this strategy focussed on the perceived weaknesses in the regime for recovery of overpayments arising from fraudulent activity and made an unequivocal announcement of the intention to raise the rate of recovery for such debts by some 25%.

4.2 These regulations increase the maximum level of deduction for overpayments where the overpayment is associated with an offence for which the claimant has been prosecuted, or has admitted guilt under caution or accepted an administrative penalty from the current 4 x 5% to 5 x 5% of the scale rate for a single customer aged not less than 25 years.

4.3 To address an unintended inequality that has been highlighted by case law which ruled on whether an offset could be applied to reduce a recoverable

overpayment, this instrument makes minor technical changes to regulations relating to sums to be deducted in calculating recoverable amounts.

## **5. Territorial Extent and Application**

This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

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 Legislation currently allows for a reduction in the amount of a recoverable overpayment or of excess benefit by the additional amount of income-related benefit that would have been payable had all the correct facts been known.

7.2 The Department's view had for a long time been that this should be applied to existing claims for any income-related benefit made by the person who has been overpaid or his partner. However, a change in the DWP's interpretation of the legislation following a review of case law concerning offsets suggests that this applies only to the claimant themselves and not to a partner.

7.3 Applying this interpretation creates inequality between cases where the income-based benefit recipient and contributory-based benefit recipient are the same person as opposed to when they are different members of a couple.

7.4 This instrument addresses that inequality and ensures that the calculation of the overpaid amount or of excess benefit is the same regardless of which member of a couple incurred the overpayment or excess.

7.5 There is no change in policy involved. The regulations ensure that the legislation will work in the way that was always intended.

7.6 These regulations prescribe a maximum level of deduction from an income-related benefit to recover an overpayment. The maximum is set as a percentage of the relevant scale rate for the income-related benefit. The standard maximum is set as a percentage of the relevant scale rate for the income related benefit and is currently 3 x 5% of the scale rate for a single person aged at least 25.

7.7 Where the overpayment is associated with an offence for which the claimant has been prosecuted, or has admitted guilt under caution or accepted an administrative penalty then this maximum is increased to 4 x 5% of the same scale rate.

7.8 Following the publication of the strategy paper - ‘Tackling Fraud and Error in the Benefit and Tax Credit Systems’ in October 2010 ( <http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf> ) the Government unequivocally announced the intention to raise the rate of recovery for such debts by some 25%.

7.9 In line with that announcement, this instrument increases the maximum level of deduction for overpayments where the overpayment is associated with an offence for which the claimant has been prosecuted, or has admitted guilt under caution or accepted an administrative penalty. The increase will be from the current 4 x 5% to 5 x 5% of the scale rate for a single customer aged at least 25.

7.10 The rules for rounding the maximum amount which may be deducted in both fraud and non-fraud cases have been aligned so that they are consistent.

7.11 This measure brings with it a small degree of administrative simplification and will help with the interaction between this deduction and any other third party deductions that may be in place. It ensures that the lower rate is always 3/5 of the higher rate.

7.12 The Regulations correct erroneous cross-references to provisions in earlier legislation relating to recovery of excess benefits from partners of those from whom the excess benefit is recoverable.

- **Consolidation**

7.13 An informal consolidated text will be available to the public free of charge via “The Law Relating to Social Security” (Blue Volumes), on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

## **8. Consultation outcome**

8.1 As set out at paragraph 7.8 above, the Department published a strategy paper, ‘Tackling Fraud and Error in the Benefit and Tax Credit Systems’ on 18 October 2010 ( <http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf> )

8.2 This paper outlined the Government’s intention to ensure more effective recovery of benefit overpayments, and announced the specific intention to raise the maximum rate of deduction from income-related benefits for recovery of overpayments arising from fraudulent activity.

8.3 In November 2010, with the publication of the White Paper “Universal Credit: Welfare that works”, this intention was re-stated. This paper formed the consultation document for this change in respect of both DWP-administered benefits and the changes to Housing Benefit rates. (<http://www.dwp.gov.uk/docs/universal-credit-full-document.pdf> )

8.4 In addition, and with specific regard to the changes to Housing Benefit and Council Tax Benefit regulations, details of the proposed change were submitted to the Practitioners Operational Group.

8.5 The Department has received no response concerning the proposed change and do not intend to consult further. The change will affect only those debtors who have incurred overpayments through fraudulent activity.

8.6 The circumstances which would result in an overpayment being recovered at a higher rate than other overpayments will remain unchanged.

8.7 The further changes provided for by this instrument have not been subject to specific consultation, although the proposals for regulations were considered by the Social Security Advisory Committee on 5 October 2011. The Committee decided that it was not necessary for the proposals to be formally referred to it.

## **9. Guidance**

9.1 Guidance will be issued to staff about all the changes brought about by this instrument, including advice about handling queries. There are no new processes brought about by these changes however there will be changes to the way both recoverable amounts of overpayments and the rate of deduction for overpayment recovery are calculated,

9.2 Similarly, the parallel changes for Housing Benefit and Council Tax Benefit will not in themselves affect existing policies and practices.

9.3 The Department will ensure that organisations that represent claimants such as the Citizens Advice Bureau are notified in advance of the change to assist with any related enquiries they may receive. The Department will also ensure that the increase in the recovery rate will be publicised through Directgov so that claimants, welfare rights advisers and other interested parties are aware of the change.

## **10. Impact**

10.1 These regulations have no direct impact on business or civil society organisations.

10.2 The impact on the public sector is negligible because there are no new processes associated with these changes.

10.3 A full impact assessment has not been published for this instrument.

## **11. Regulating small business**

The legislation does not apply to small business.

**12. Monitoring & review**

The Department will monitor the levels of all overpayments as well as the amounts recovered and written off. Attention will be paid as to whether the increase in deduction rates leads to a greater number of debtors claiming hardship. Additionally, particular attention will be paid to any issues arising as a result of gender, ethnicity or disability when evaluating the reasons customers request a reduced rate of recovery due to the increased rate of deduction.

**13. Contact**

Ady Garrett at the Department for Work and Pensions Tel: 020 7449 5800 or email: [ady.garrett@dwp.gsi.gov.uk](mailto:ady.garrett@dwp.gsi.gov.uk) can answer any queries regarding this instrument.