
STATUTORY INSTRUMENTS

2013 No. 384

**The Social Security (Overpayments
and Recovery) Regulations 2013**

PART 1

General

Citation and commencement

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

(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(1);

“the 2007 Act” means the Welfare Reform Act 2007(2);

“the 2012 Act” means the Welfare Reform Act 2012(3);

“the UC Regulations” means the Universal Credit Regulations 2013(4);

“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(5);

“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(6);

(1) 1995 c.18.

(2) 2007 c.5.

(3) 2012 c.5.

(4) S.I.2013/376.

(5) S.I.2013/380.

(6) See section 39 of that Act.

“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(7) as modified by paragraph 10 of the Schedule to the Universal Credit (Transitional Provisions) Regulations 2013(8);

“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.

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(9)—

- (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.

(7) 2002 c.21.

(8) S.I.2013/386.

(9) 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.

(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.

(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(10) 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.

(10) 1998 c.14.

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.

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⁽¹¹⁾;
- (b) universal credit;
- (c) jobseeker's allowance;
- (d) employment and support allowance;
- (e) state pension credit payable under the State Pension Credit Act 2002⁽¹²⁾; 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 8 times 5 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 5 times 5 per cent. of that allowance; and
- (c) 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 universal credit are made to recover from the liable person—

⁽¹¹⁾ 1992 c.4.

⁽¹²⁾ 2002 c.21.

- (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).

(6) 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.

(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 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 **(13)**(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**(14)**;
- (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**(15)**, 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**(16)**.

(13) [S.I.2013/381](#).

(14) [1984 c. 60](#).

(15) See section 40 of the 2012 Act.

(16) [S.I.2013/378](#).

(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⁽¹⁷⁾.

(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 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.

(17) [S.I.2013/379](#).

(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(18).

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) 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⁽¹⁹⁾);
- (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 ⁽²⁰⁾;
- (f) working tax credit payable under section 10 of the Tax Credits Act 2002⁽²¹⁾;

(19) 1996 c.14.
(20) 1993 c.48.
(21) 2002 c.21.

- (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(22);
 - (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.

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⁽²³⁾;

“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.

(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.

(23) [S.I.1992/1989](#).

(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.

PART 7

Amendments to associated legislation

Amendments to the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988

31.—(1) The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988⁽²⁴⁾ are amended as follows.

(2) In regulation 1(2) (interpretation)—

(a) before the definition of “the Act” insert—

““the 2012 Act” means the Welfare Reform Act 2012⁽²⁵⁾”;

(b) before the definition of “the 2012 Act” insert—

““the 1995 Act” means the Jobseekers Act 1995⁽²⁶⁾”;

“the 2007 Act” means the Welfare Reform Act 2007⁽²⁷⁾”;

(c) in the definition of “benefit”⁽²⁸⁾, after “state pension credit,” insert “personal independence payment”;

(d) after the definition of “disabled person’s tax credit”⁽²⁹⁾ insert—

““employment and support allowance” means, for the purposes of Parts 3 to 6, employment and support allowance under Part 1 of the 2007 Act as that Part has effect apart from the amendments made by Schedule 3, and Part 1 of Schedule 14, to the 2012 Act that remove references to an income-related allowance”;

(e) after the definition of “Income Support Regulations” insert—

““jobseeker’s allowance” means, for the purposes of Parts 3 to 6, jobseeker’s allowance under the 1995 Act as that Act has effect apart from the amendments made by Part 1 of Schedule 14 to the 2012 Act that remove references to an income-based allowance”;

(24) S.I.1988/664.

(25) 2012 c.5.

(26) 1995 c.18.

(27) 2007 c.5.

(28) That definition is amended by S.I.1988/1725, 1996/1345, 1999/2571, 2000/1483, 2002/3019 and 2008/1554.

(29) That definition is inserted by S.I.1991/2742.

- (f) after the definition of “Jobseeker’s Allowance Regulations”⁽³⁰⁾ insert—
 ““personal independence payment” means the allowance under Part 4 of the 2012 Act;”;
- (g) after the definition of “tax credit”⁽³¹⁾ insert—
 ““universal credit” means universal credit under Part 1 of the 2012 Act;”.
- (3) In regulation 5(2) (offsetting prior payment against subsequent award), in Case 2, after “another benefit” insert “or, as the case may be, universal credit”.
- (4) In regulation 8 (duplication and prescribed payments)—
 (a) in paragraph (1) after sub-paragraph (a) insert—
 “(aa) any personal independence payment;”;
- (b) in paragraph (2), after “income support,” insert “universal credit.”
- (5) At the beginning of regulation 11 (recovery of overpayments by automated or other direct credit transfer) insert—
 “(A1) This regulation applies only in respect of payments of benefit to which section 71 of the Administration Act applies.”.
- (6) For regulation 13(1) substitute—
 “(1) Subject to paragraphs (1C) and (2), in calculating an amount recoverable under section 71(1) of the Administration Act or under regulation 11 (“the overpayment”), the adjudicating authority must deduct—
 (a) any amount which has been offset under Part 3;
 (b) any additional amount of a benefit specified in paragraph (1A) which was not payable 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 their partner—
 (i) on the basis of the claim as presented to the adjudicating authority; or
 (ii) on the basis that any misrepresentation or failure to disclose a material fact had been remedied prior to the award being made.
 (1A) The specified benefits are—
 (a) universal credit;
 (b) income support;
 (c) state pension credit;
 (d) income-based jobseeker’s allowance; and
 (e) income-related employment and support allowance.
 (1B) In paragraph (1), “overpayment period” means the period over which the overpayment accrued.
 (1C) No other deduction is to be made in respect of any other entitlement to benefit which may be, or might have been, determined to exist.”.
- (7) In regulation 15 (recovery by deduction from benefits)—
 (a) after sub-paragraph (2)(f) add—
 “(g) personal independence payment.”;
- (b) after sub-paragraph (2)(g) add—

⁽³⁰⁾ That definition is inserted by [S.I.1996/1345](#).

⁽³¹⁾ That definition is inserted by [S.I.1999/2571](#).

- “(h) universal credit.”.
- (8) In regulation 16 (limitations on deductions from prescribed benefits)—
- (a) after paragraph (2) insert—
- “(2A) Paragraphs (3) to (7) do not apply where paragraph (7A) applies.”;
- (b) after paragraph (7) insert—
- “(7A) This paragraph applies where the benefit from which the deduction is to be made under regulation 15 is universal credit.
- (7B) Where paragraph (7A) applies, regulation 11 of the Social Security (Overpayments and Recovery) Regulations 2013 applies in relation to those deductions as it applies to deductions from universal credit for the recovery of recoverable amounts under those Regulations.”.
- (9) After regulation 29 insert—

“PART 8A

Recovery by deduction from earnings: other cases

Recovery by deduction from earnings: other cases

29A.—(1) Any amount which is recoverable by virtue of section 71(1) or (4), 71ZA or 78(1) of the Administration Act may be recovered by the Secretary of State by deduction from the earnings of the person from whom it is recoverable.

(2) Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013 applies in relation to recovery by deduction from the earnings of a person specified in paragraph (1) by the Secretary of State as it applies to recovery by deduction from the earnings of persons of recoverable amounts under that Part of those Regulations by an appropriate authority.”.

Amendment of the Social Fund (Recovery by Deductions from Benefits) Regulations 1988

32. In regulation 3 of the Social Fund (Recovery by Deductions from Benefits) Regulations 1988(**32**) (benefits from which an award may be recovered), before paragraph (a) insert—

“(za) universal credit under Part 1 of the Welfare Reform Act 2012;”.

PART 8

Amendment of provisions relating to recovery of overpaid housing benefit

Amendment of the Housing Benefit Regulations 2006

33.—(1) The Housing Benefit Regulations 2006(**33**) are amended as follows.

(2) In regulation 105 (recovery of overpayments from prescribed benefits—

(a) after paragraph (1)(f) add—

“(g) personal independence payment.”;

(32) [S.I.1988/35](#) as amended by [S.I.1995/829](#), [1996/1944](#), [1999/2566](#), [2000/3223](#), [2002/2497](#) and [3019](#), [2003/937](#) and [1589](#) and [2008/1554](#).

(33) [S.I.2006/213](#). Regulation 105(1) is amended by [S.I.2008/1082](#) and [2824](#). Regulation 105(1B) is inserted by [S.I.2008/2824](#).

- (b) after paragraph (1)(g) add—
 - “(h) universal credit.”;
- (c) after paragraph (1B)(d) add—
 - “(e) personal independence payment.”;
- (d) after paragraph (1B)(e) add—
 - “(f) universal credit.”.
- (3) After regulation 106 insert—

“Recovery by deduction from earnings

106A.—(1) Any overpayment which is recoverable by virtue of regulation 100 may be recovered by a relevant authority by deduction from the earnings of the person from whom it is recoverable.

(2) Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013 applies in relation to the recovery of overpayments by deduction from the earnings of a person specified in paragraph (1) by a relevant authority as it applies to the recovery of recoverable amounts by deduction from the earnings of persons under that Part of those Regulations by an appropriate authority”.

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

34.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(**34**) (recovery of overpayments from prescribed benefits) are amended as follows.

- (2) In regulation 86 (recovery of overpayments from prescribed benefits—
 - (a) after paragraph (1)(f) add—
 - “(g) personal independence payment.”;
 - (b) after paragraph (1)(g) add—
 - “(h) universal credit.”;
 - (c) after paragraph (1B)(d) add—
 - “(e) personal independence payment.”;
 - (d) after paragraph (1B)(e) add—
 - “(f) universal credit.”.
- (3) After regulation 87 insert—

“Recovery by deduction from earnings

87A.—(1) Any overpayment which is recoverable by virtue of regulation 81 may be recovered by a relevant authority by deduction from the earnings of the person from whom it is recoverable.

(2) Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013 applies in relation to the recovery of overpayments by deduction from the earnings of a person specified in paragraph (1) by a relevant authority as it applies to the recovery of recoverable amounts by

(34) [S.I.2006/214](#). Regulation 86(1) is amended by [S.I.2008/1082](#) and [2824](#). Regulation 86(1B) is inserted by [S.I.2008/2824](#).

deduction from the earnings of persons under that Part of those Regulations by an appropriate authority.”.

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