

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (OVERPAYMENTS AND RECOVERY) AMENDMENT
REGULATIONS 2015**

2015 No. 499

1. This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations increase the maximum rate of recovery from Income Support, Incomer-Related Jobseeker's Allowance, Income Related Employment Support Allowance and State Pension Credit (from now on referred collectively to legacy benefits), where benefit overpayments have resulted in a finding or acceptance of guilt for an offence, or an administrative penalty as an alternative to prosecution has been accepted in respect of an overpayment.

2.2 These Regulations also increase the rates of recovery that will apply where an overpayment of benefit or of Social Fund has arisen as a consequence of an offence for which an individual has been found guilty and recovery is made by a Direct Earnings Attachment (DEA).

2.3 They also amend some minor provisions in relation to DEAs, most of which came to light whilst working with employers during the initial phase of the DEA implementation.

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

3.1 None

4. Legislative Context

4.1 These regulations amend the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 ("the 1988 Regulations"). Specifically, they provide that where an overpayment of benefit has resulted in a finding or acceptance of guilt for an offence, or the individual has accepted an administrative penalty as an alternative to prosecution, and recovery of the overpayment is being made under the 1988 Regulations via deductions from benefit, the maximum rate of deduction from a claimant's benefit is increased from 25% to 40% of the personal allowance for a single claimant aged not less than 25.

4.2 They also amend the Social Security (Overpayments and Recovery) Regulations 2013 ("the 2013 Regulations") to allow for a higher rate of recovery via a DEA where an overpayment of benefit has arisen as a consequence of an offence for which an individual has been found guilty. Specifically, they provide that where an overpayment of benefit has arisen as a consequence of an offence for which an individual has been found guilty, and recovery is being made via a DEA, the percentage rates of deduction are increased in most cases by a factor of two.

4.3 By way of example, under the current DEA provisions where net weekly earnings exceed £520, the percentage rate of deduction from those earnings is 20%. By virtue of the amendments made by these Regulations, where the individual has been found guilty of an offence, in respect of an overpayment, the rate of deduction will be 40%. Details of all the new percentage rates are set out in the new Tables C and D at regulation 8 of these Regulations.

4.4 These Regulations also make some minor amendments to the 2013 Regulations relating to the operation of DEAs; these are set out in more detail in section 7.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 As part of the wider Departmental and cross-Government measures to tackle fraud in the benefit system, the Government announced on 8 April 2014 some tougher measures against social security benefit fraud.

7.2 One of the key measures announced in relation to overpayments which result in a finding or acceptance of guilt for an offence, or which arise where an administrative penalty as an alternative to prosecution has been accepted in respect of the same, was to increase the maximum amount which can be recovered by deductions from legacy benefits, from 25% of the personal allowance rate for a person aged 25 or over to 40% of that rate.

7.3 This is intended to serve as a deterrent against future fraud and to ensure that where fraud has been detected, recovery of overpaid amounts is made more quickly. This will also bring rates into line with those for deductions from Universal Credit where the maximum rate of recovery for fraud related overpayments is already set at 40%. By increasing the rate of recovery it is also intended that the person feels the effect of their actions.

7.4 Another related measure in respect of benefit overpayments was to increase the deduction rates applicable where the recovery of an overpayment, relating to an offence for which the person had been found guilty, is to be undertaken by a DEA.

7.5 This is intended to ensure that where fraud has been detected the recovery of overpaid amounts is made more quickly. By increasing the rates of recovery it is also intended that the person feels the effect of their fraudulent behaviour.

7.6 The Regulations also include some minor changes to the provisions governing the operation of DEAs, mainly as a result of feedback received from employers during

the initial period of implementation. These are:

- In order to reflect the new rates imposed by these Regulations, changes to the definition of the rate of a DEA to be incorporated into a DEA notice.
- Changes to the circumstances in which a DEA can be lapsed by the employer to enable them to stop a DEA when a debt has been fully recovered.
- Removal of the need for employers to automatically provide separate notification of how the amount deducted under the DEA was calculated. In practice, wage slips have proved sufficient. The rules have also been changed to allow for a full explanation of how the amount deducted was calculated, to be provided when so requested by the employee.
- Clarification of the priority order between subsequent notices for a DEA.
- Correction to the first rate in both the weekly and monthly earnings tables. The percentage rates of deduction via a DEA from net earnings, are currently set out in two tables (where earnings are paid weekly and where they are paid monthly). The current tables did not allow for an exact weekly rate of £100 or an exact monthly rate of £430, and these regulations make the necessary amendment to ensure that those rates are covered.

Consolidation

- 7.7 Informal consolidated text of instruments is 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/> or the National Archive website legislation.gov.uk. An explanation as to which instruments are maintained on each site is available [here](#).

8. Consultation outcome

- 8.1 No formal public consultation was undertaken on the Regulations. The changes have no impact on the liability of individuals who have outstanding fraud related overpayments; they will owe the same amount before and after the changes. The changes merely allow for increased rates of recovery. Where such recovery would cause hardship for any children of the debtor or in other exceptional circumstances, recovery may be undertaken at a rate less than the specified maximum.
- 8.2 As DEAs also allow recovery by local authorities in relation to housing benefit (and historic council tax) debt, consultation has taken place with organisations representative of local authorities as required by section 176 of the Social Security Administration Act 1992. That consultation did not reveal any concerns.
- 8.3 The Regulations were considered by the Social Security Advisory Committee at its meeting on 28 January 2015. The Committee decided it did not wish to have the Regulations formally referred to it.

9. Guidance

9.1 Guidance is available for DWP staff (and for local authority staff for DEAs), who will then be able to answer any queries that people may have about the recovery of their overpaid benefits.

10. Impact

10.1 There is an impact on business as this change will require some minor changes to payroll software in order to accommodate higher rate DEAs. However a full impact assessment was not considered necessary as the impact is negligible and had already been identified by working with the payroll software industry. There is no impact on civil society.

10.2 Whilst there are some changes to the rates of DEAs which are implemented by businesses there will be no additional burden on these businesses. They will be undertaking the same processes as before when implementing a DEA, it is simply that the rate of the DEA may be different. There will be some impact on payroll software providers as mentioned above.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Impact on small businesses

11.1 The impact mentioned in paragraph 10 above will apply equally to small businesses. Some minor changes will be needed to payroll software to accommodate higher rates of DEAs deductions. However a full impact assessment was not considered necessary as the impact is negligible and had already been identified by the payroll industry.

11.2 As detailed in 10.2 above, although there are some changes to the rates of DEAs which will be implemented by businesses, the changes will be undertaken through the same processes as when DEAs were introduced. It is simply that the rate of deduction under the DEA may be different. There will be no additional burdens on these businesses. As detailed above there will be some impact on payroll software providers.

12. Monitoring & review

12.1 The increased levels of recovery of DWP overpayments that result from fraudulent activity will be monitored as will any possible impact on debtor's welfare. This will be done by monitoring complaints and requests for reductions in repayment rates.

13. Contact

Alan Clark at the Department for Work and Pensions Tel: 0113 2519131 or email: alan.clark1@dwp.gsi.gov.uk can answer any queries regarding the instrument.