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STATUTORY RULES OF NORTHERN IRELAND

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**1988 No. 142**

**The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988**

**PART VIII**

**RECOVERY BY DEDUCTIONS FROM  
EARNINGS FOLLOWING TRADE DISPUTE**

**Recovery by deductions from earnings**

**18.**—(1) Any sum paid to a person on an award of income support made to him by virtue of Article 24A of the Order (effect of return to work after a trade dispute) shall be recoverable from him in accordance with this Part.

(2) In this Part—

“available earnings” means the earnings, including any remuneration paid by or on behalf of an employer to an employee who is for the time being unable to work owing to sickness, which remain payable to a claimant on any pay-day after deduction by his employer of all amounts lawfully deductible by the employer otherwise than by virtue of a deduction notice;

“claimant” means a person to whom an award is made by virtue of Article 24A of the Order;

“deduction notice” means a notice under regulation 20 or 25;

“employment” means employment (including employment which has been suspended but not terminated) in remunerative work;

“pay-day” means an occasion on which earnings are paid to a claimant;

“protected earnings” means protected earnings as determined by an adjudicating authority, in accordance with regulation 19(3), under regulation 19(1) or 24;

“recoverable amount” means the amount (determined in accordance with regulation 20(3) or (5) or regulation 25(2)(a)) by reference to which deductions are to be made by an employer from a claimant's earnings by virtue of a deduction notice;

“repaid by the claimant” means paid by the claimant directly to the Department by way of repayment of income support otherwise recoverable under this Part.

(3) Any notice or other document required or authorised to be given or sent to any person under the provisions of this Part shall be deemed to have been given or sent if it was sent by post to that person in accordance with paragraph (6) of regulation 27 where that regulation applies and, in any other case, at his ordinary or last known address or in the case of an employer at the place of business where the claimant to which it relates is employed, and if so sent to have been given or sent on the day on which it was posted.

### **Award and protected earnings**

**19.**—(1) Where an adjudicating authority determines that a person claiming income support is entitled by virtue of Article 24A of the Order (effect of return to work after a trade dispute) and makes an award to him accordingly the authority shall determine the claimant's protected earnings (that is to say the amount below which his actual earnings must not be reduced by any deduction made under this Part).

- (2) The adjudicating authority shall include in its decision—
- (a) the amount of income support awarded together with a statement that the claimant is a person entitled by virtue of Article 24A of the Order and that accordingly any sum paid to him on that award will be recoverable from him as provided in this Part;
  - (b) the amount of the claimant's protected earnings; and
  - (c) a statement of the claimant's duty under regulation 28 (duty to give notice of cessation or resumption of employment).
- (3) The protected earnings of the claimant shall be the sum determined by—
- (a) taking the sum specified in paragraph (4),
  - (b) adding the sum specified in paragraph (5), and
  - (c) subtracting from the result any child benefit which falls to be taken into account in calculating his income for the purposes of Part V of the Income Support Regulations.
- (4) The sum referred to in paragraph (3)(a) shall be the aggregate of the amounts calculated under regulation 17(a) to (d), 18(a) to (e), 20 or 21, as the case may be, of the Income Support Regulations.
- (5) The sum referred to in paragraph (3)(b) shall be £27 except where the sum referred to in paragraph (3)(a) includes an amount calculated under regulation 20 of the Income Support Regulations in which case the sum shall be £8.

### **Service and contents of deduction notices**

**20.**—(1) Where an amount of income support has not already been repaid by the claimant, the Department shall serve a deduction notice on the employer of the claimant.

- (2) A deduction notice shall contain the following particulars—
- (a) particulars enabling the employer to identify the claimant;
  - (b) the recoverable amount;
  - (c) the claimant's protected earnings as specified in the decision of the adjudicating authority under regulation 19.
- (3) Subject to paragraph (5), the recoverable amount shall be—
- (a) the amount specified in the decision of the adjudicating authority under regulation 19 as having been awarded to the claimant by way of income support; reduced by
  - (b) the amount (if any) which has been repaid by the claimant before the date of the deduction notice.
- (4) If a further award relating to the claimant is made, the Department shall cancel the deduction notice (giving written notice of the cancellation to the employer and the claimant) and serve on the employer a further deduction notice.
- (5) The recoverable amount to be specified in the further deduction notice shall be the sum of—
- (a) the amount determined by applying paragraph (3) to the further award; and

- (b) the recoverable amount specified in the cancelled deduction notice less any part of that amount which before the date of the further notice has already been deducted by virtue of the cancelled notice or repaid by the claimant.

### **Period for which deduction notice has effect**

**21.—**(1) A deduction notice shall come into force when it is served on the employer of the claimant to whom it relates and shall cease to have effect as soon as any of the following conditions is fulfilled—

- (a) the notice is cancelled by virtue of regulation 20(4) or paragraph (2);
- (b) the claimant ceases to be in the employment of the person on whom the notice was served;
- (c) the aggregate of—
  - (i) any part of the recoverable amount repaid by the claimant on or after the date of the deduction notice, and
  - (ii) the total amount deducted by virtue of the notice, reaches the recoverable amount;
- (d) there has elapsed a period of 26 weeks beginning with the date of the notice.

(2) The Department may at any time give a direction in writing, cancelling a deduction notice and—

- (a) it shall cause a copy of the direction to be served on the employer concerned and on the claimant;
- (b) the direction shall take effect when a copy of it is served on the employer concerned.

### **Effect of deduction notice**

**22.—**(1) While a deduction notice is in force paragraphs (2) to (6) shall apply as regards any relevant pay-day.

(2) Where a claimant's earnings include any bonus, commission or other similar payment which is paid other than on a day on which the remainder of his earnings is paid, then in order to calculate his available earnings for the purposes of this regulation any such bonus, commission or other similar payment shall be treated as being paid to him on the next day of payment of the remainder of his earnings instead of on the day of actual payment.

(3) If on a relevant pay-day a claimant's available earnings—

- (a) do not exceed his protected earnings by at least £1, no deduction shall be made;
- (b) do exceed his protected earnings by at least £1, his employer shall deduct from the claimant's available earnings one half of the excess over his protected earnings,

so however that where earnings are paid other than weekly the amount of the protected earnings and the figure of £1 shall be adjusted accordingly, in particular—

- (c) where earnings are paid monthly, they shall for this purpose be treated as paid every 5 weeks (and the protected earnings and the figure of £1 accordingly multiplied by 5);
- (d) where earnings are paid daily, the protected earnings and the figure of £1 shall be divided by 5,

and if, in any case to which sub-paragraph (c) or (d) does not apply, there is doubt as to the adjustment to be made this shall be determined by the Department on the application of the employer or the claimant.

(4) Where on a relevant pay-day earnings are payable to the claimant in respect of more than one pay-day, the amount of the protected earnings and the figure of £1 referred to in paragraph (3),

adjusted where appropriate in accordance with the provisions of that paragraph, shall be multiplied by the number of pay-days to which the earnings relate.

- (5) Notwithstanding anything in paragraph (3)—
- (a) the employer shall not make a deduction on a relevant pay-day if the claimant satisfies him that up to that day he has not obtained payment of the income support to which the deduction notice relates;
  - (b) the employer shall not on any relevant pay-day deduct from the claimant's earnings by virtue of the deduction notice an amount greater than the excess of the recoverable amount over the aggregate of all such amounts as, in relation to that notice, are mentioned in regulation 21(1)(c)(i) and (ii); and
  - (c) where the amount of any deduction which by this regulation the employer is required to make would otherwise include a fraction of 1 penny, that amount shall be reduced by that fraction.
- (6) For the purpose of this regulation “relevant pay-day” means any pay-day beginning with—
- (a) the first pay-day falling after the expiration of the period of one month from the date on which the deduction notice comes into force; or
  - (b) if the employer so chooses, any earlier pay-day after the notice has come into force.

#### **Increase of amount of award on appeal or review**

**23.** If the amount of an award is increased, whether on appeal or on review by an adjudicating authority, this Part shall have effect as if on the date on which the amount of the award was increased—

- (a) the amount of the increase was the recoverable amount; and
- (b) the claimant's protected earnings were the earnings subsequently reviewed under regulation 24.

#### **Review of determination of protected earnings**

**24.—(1)** A determination of a claimant's protected earnings, whether made under regulation 19(1) or under this regulation, may be reviewed by an adjudicating authority if the authority is satisfied that the determination was based on a mistake as to the law or was made in ignorance of, or was based on a mistake as to, some material fact.

(2) Where the claimant's protected earnings are reviewed under paragraph (1) the Department shall give the employer written notice varying the deduction notice by substituting for the amount of the protected earnings as there specified (or as previously reviewed under this regulation) the amount of the protected earnings determined on review.

(3) Variation of a deduction notice under paragraph (2) shall take effect either from the end of the period of 10 working days beginning with the day on which notice of the variation is given to the employer or, if the employer so chooses, at any earlier time after notice is given.

#### **Power to serve further deduction notice on resumption of employment**

**25.—(1)** Where a deduction notice has ceased to have effect by reason of the claimant ceasing to be in the employment of the person on whom the notice was served, the Department may, if it thinks fit, serve a further deduction notice on any person by whom the claimant is for the time being employed.

(2) Notwithstanding anything in the foregoing provisions of these regulations, in any such deduction notice—

- (a) the recoverable amount shall be equal to the recoverable amount as specified in the previous deduction notice less the aggregate of—
  - (i) the total of any amounts required to be deducted by virtue of that notice, and
  - (ii) any additional part of that recoverable amount repaid by the claimant on or after the date of that notice,or, where this regulation applies in respect of more than one such previous notice, the aggregate of the amounts as so calculated in respect of each such notice;
- (b) the amount specified as the claimant's protected earnings shall be the same as that so specified in the last deduction notice relating to him which was previously in force or as subsequently reviewed under regulation 24.

### **Right of Department to recover direct from claimant**

26. Where the Department has received a decision of the adjudicating authority under regulation 19 and it is at any time not practicable for it, by means of a deduction notice, to effect recovery of the recoverable amount or of so much of that amount as remains to be recovered from the claimant, the amount which remains to be recovered shall, by virtue of this regulation, be recoverable from the claimant by the Department.

### **Duties and liabilities of employers**

27.—(1) An employer shall keep a record of the available earnings of each claimant who is an employee in respect of whom a deduction notice is in force and of the payments which he makes in pursuance of the notice.

(2) A record of every deduction made by an employer under a deduction notice on any pay-day shall be given or sent by him to the Department, together with payment of the amount deducted, by not later than the 19th day of the following month.

(3) Where by reason only of the circumstances mentioned in regulation 22(5)(a) the employer makes no deduction from a claimant's weekly earnings on any pay-day he shall within 10 working days after that pay-day give notice of that fact to the Department.

(4) Where a deduction notice is cancelled by virtue of regulation 20(4) or 21(2) or ceases to have effect by virtue of regulation 21(1) the employer shall within 10 working days after the date on which the notice is cancelled or, as the case may be, ceases to have effect—

- (a) return the notice to the Department and, where regulation 21(1) applies, give notice of the reason for its return;
- (b) give notice, in relation to each relevant pay-day (as defined in regulation 22(6)), of the available earnings of the claimant and of any deduction made from those earnings.

(5) If on any relevant pay-day to which regulation 22(3)(b) applies the employer makes no deduction from a claimant's available earnings, or makes a smaller deduction than he was thereby required to make, and in consequence any amount is not deducted while the deduction notice, or any further notice which under regulation 20(4) cancels that notice, has effect—

- (a) the amount which is not deducted shall, without prejudice to any other method of recovery from the claimant or otherwise, be recoverable from the employer by the Department; and
- (b) any amount so recovered shall, for the purposes of these regulations, be deemed to have been repaid by the claimant.

(6) All records and notices to which this regulation applies shall be given or sent to the Department, on a form approved by it, at such office of the Department as it may direct.

### **Claimants to give notice of cessation or resumption of employment**

**28.**—(1) Where a claimant ceases to be in the employment of a person on whom a deduction notice relating to him has been duly served knowing that the full amount of the recoverable amount has not been deducted from his earnings or otherwise recovered by the Department, he shall give notice within 10 working days to the Department of his address and of the date of such cessation of employment.

(2) Where on or after such cessation the claimant resumes employment (whether with the same or some other employer), he shall within 10 working days give notice to the Department of the name of the employer and of the address of his place of employment.

### **Failure to notify**

**29.** If a person contravenes or fails to comply with any requirement under regulation 27 or 28 to give notice of any matter to the Department, he shall be guilty of an offence under the Order and liable on summary conviction to a penalty not exceeding—

- (a) for any one offence, £400; or
- (b) for an offence of continuing any such contravention or failure after conviction, £40 for each day on which it is so continued.