

**EXPLANATORY MEMORANDUM TO**  
**THE UNIVERSAL CREDIT, PERSONAL INDEPENDENCE PAYMENT,**  
**JOBSEEKER'S ALLOWANCE AND EMPLOYMENT AND SUPPORT**  
**ALLOWANCE (DECISIONS AND APPEALS) REGULATIONS 2013**

**2013 No.**

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 provision in relation to the administration of Universal Credit, Personal Independence Payment, contribution-based Jobseeker's Allowance and contribution-related Employment and Support Allowance. In particular, the Regulations make provision as to the making of decisions and in relation to rights of appeal.
3. **Matters of special interest to the Secondary Legislation Scrutiny Committee**
  - 3.1. None.
4. **Legislative context**
  - 4.1. The Social Security Act 1998 (c. 14) ("the 1998 Act") and the Social Security Administration Act 1992 (c. 5), as amended by the Welfare Reform Act 2012 (c. 5) ("the 2012 Act"), make provision for the administration of all social security benefits, including Universal Credit, Personal Independence Payment, Jobseeker's Allowance (contributory) and Employment and Support Allowance (contributory). These Regulations are made by virtue of, or in consequence of, those Acts and the decision-making processes they introduce.
  - 4.2. The Regulations are modelled closely on the provisions that are contained in the existing Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991) ("the 1999 Decisions and Appeals Regulations"). However, the opportunity is being taken to rationalise and combine the provisions relating to decision-making and appeals for Universal Credit, Personal Independence Payment, contribution-based Jobseeker's Allowance and contribution-related Employment and Support Allowance in a single instrument.
  - 4.3. These Regulations also make use of an additional power, inserted by section 102 of the 2012 Act, which enables provision to be made requiring a person to apply to the Secretary of State for a decision to be revised before they are permitted to appeal and the powers in section 104 of that Act relating to the use of electronic communications in relation to the administration of the benefits to which these Regulations apply.

4.4 These Regulations are made in association with the following Regulations: the Universal Credit Regulations 2013, the Social Security (Personal Independence Payment) Regulations 2013, the Jobseeker's Allowance Regulations 2013, the Employment and Support Allowance Regulations 2013, the Social Security (Payments of Account of Benefit) Regulations 2013 and the Universal Credit Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013. Schedule 3 of this instrument sets out those decisions which do not carry a right of appeal. They include certain decisions under the Social Security (Overpayments and Recovery) Regulations 2013. A near-final draft of those Regulations is annexed to this Memorandum for information purposes.

## **5. Territorial extent and application**

5.1. This instrument applies to Great Britain.

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

6.1. The Minister for Welfare Reform has made the following statement regarding Human Rights:

“In my view, the provisions of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 are compatible with the Convention Rights”.

## **7. Policy background - What is being done and why**

7.1. The Department for Work and Pensions (“the Department”) is introducing a new set of Decisions and Appeals Regulations to ensure that the decision-making and appeals framework which currently applies to all social security benefits applies to the new benefits introduced by the 2012 Act.

7.2 The Department considered amending the existing 1999 Decisions and Appeals Regulations, but decided that, as Universal Credit and Personal Independence Payment are brand new benefits, and with income-related Employment Support Allowance and income-based Jobseeker's Allowance being phased out, there should, in terms of supporting administrative arrangements, be a clean break with the past. The 1999 Decisions and Appeals Regulations have been subject to numerous changes since they were introduced. This has led to substantial additional complexity in an already complex policy area. To have mixed the old and the new would have added to that complexity.

7.3 That said, many of the provisions of the existing Regulations have been carried forward in these Regulations. They are tried and tested and provide a credible basis for decision-making in the new regime. However, the Department has taken the opportunity to restructure and modernise the drafting and, where it is considered appropriate, to align the rules across the benefits to which the new Regulations apply. The intent is that the legislation should be more accessible to users so that

claimants and others can better understand their rights and the rules that govern benefit administration.

- 7.4 The following paragraphs set out, for each of the benefits in scope of these Regulations, some areas where the Department is introducing new provisions or changing how the existing provisions work.

#### ***General provision – new for all benefits***

- 7.5 A key change in approach is being made consequent on section 102 of the 2012 Act. This enables regulations to be made so that claimants must first apply for a disputed decision to be reconsidered by a decision maker (ie revised) before they can appeal a decision – known as “mandatory reconsideration”. This follows the Department’s principle that issues should be resolved, and errors should be identified and corrected, at the earliest possible opportunity. If the decision maker does reconsider and revise (i.e. change) the decision, the person will have the right of appeal against the new outcome decision. This provision was the subject of debate during the passage of the Bill – <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111123-gc0001.htm#111123104000283> (column GC451)

#### ***Universal Credit***

- 7.6 As Universal Credit is being designed as primarily an online benefit the intention is that claimants should notify the Department of changes of circumstance, and be notified of decisions relating to their Universal Credit award, through the online channel in the majority of cases. There will continue to be other options where needed, for example, reporting changes by telephone.
- 7.7 Universal Credit will be calculated on the basis of a wide range of personal circumstances and is assessed and paid monthly, known as the “whole month” approach<sup>1</sup>. If a claimant’s circumstances change while receiving Universal Credit the Department wants to ensure that, at the end of each assessment period, they are paid the amount the Department thinks they will need to manage over the coming month. This will be done by treating reported changes, for the purpose of the award calculation, as if they occurred at the start of the relevant assessment period – rather than attempting to calculate payment pro rata. This whole month approach means that Universal Credit payments will reflect the claimant’s circumstances at the point of payment, and so leave them better able to manage from pay day to pay day.

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<sup>1</sup> Universal Credit will be a calendar monthly assessed benefit that will be paid monthly in arrears. Claimants will receive a single household payment to go towards their household needs. This approach reflects the world of work, where around 75% of all employees receive their wages monthly. Paying in this manner will encourage claimants to take personal responsibility for their finances and to budget on a monthly basis which could save households money. For example, monthly direct debits for household bills are often cheaper than more frequent billing options. Assessing Universal Credit on a monthly basis will also ensure that we receive at least one update of earnings information for each working member of a household, meaning that the benefit calculated accurately reflects the needs of the household.

- 7.8 In the main, Universal Credit will follow existing policy on appeal rights, and which decisions do or do not carry the right of appeal (Schedule 2 and 3 to the 1998 Act and the 1999 Decisions and Appeals Regulations refer). This is to ensure that, where possible, claimants are treated consistently and that the Regulations are compatible with claimants' Convention rights. A key difference under Universal Credit is that, unlike Housing Benefit, landlords will not be able to appeal a decision whether to pay housing costs directly to them, in order to protect claimant welfare.

### ***Personal Independence Payment***

- 7.9 The entitlement criteria for Personal Independence Payment will be different to that for Disability Living Allowance. There will be a much fuller engagement with the claimant within the evidence gathering process, including for the majority a face-to-face assessment with a Health Care Professional. The policy intention is that decision notices will, much more than they do now, fully explain why a decision was made, allowing claimants to making informed decisions about their next step without first having to contact the Department.

### ***Employment and Support Allowance and Jobseeker's Allowance***

- 7.10 For the most part, the decisions and appeals policy for Jobseeker's Allowance and Employment and Support Allowance remain unchanged as, although the two benefits will be entirely based on contributions in the future, most of the rules that give rise to changes that could occur during an award will be carried forward from the 1999 Decisions and Appeals Regulations.

### **Consolidation**

- 7.11 These Regulations will be published in the Law Relating to Social Security ("Blue Books") and will sit alongside the existing Decision and Appeals Regulations. Consolidation will be considered as appropriate.

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

## **8. Consultation outcome**

- 8.1 Proposals for regulations were presented to the Social Security Advisory Committee on 13 June 2012 and at its August and November meetings. The Committee chose not to refer the proposals for formal consultation, instead publishing them on its website when it formally consulted on a number of other regulations made under the 2012 Act. This consultation ran from 15 June 2012 to 31 July 2012.
- 8.2 At this meeting the Social Security Advisory Committee itself only commented on two matters:

“Given that claimants are subject to quite onerous time-limits, should not decision-makers be subject to similar time constraints in the making of decisions?”

and

“It is noted that Personal Independence Payment has a different date of change than Universal Credit which relies on a monthly assessment period with changes taking effect from the end of the assessment period. Does this add another layer of complexity?”

8.3 The Department has never had a strict time-limit for decision makers. Under the 1975 Social Security Act adjudication officers were expected to decide a claim within 14 days or as soon as practicable. The addition of the latter caveat in effect made the target meaningless. A prescribed target could only be of meaning if there was a sanction for failing to meet it; it would also engender a culture where speed was more important than quality. The Social Security Advisory Committee was told there were no plans to introduce such a target.

8.4 For Personal Independence Payment, the effective date of a change of circumstance will be the date of the actual change. This is because Personal Independence Payment is not an income-replacement benefit like Universal Credit, but is awarded specifically to help people meet some of the extra costs arising from having a long-term health condition. If someone’s circumstances change on an identifiable day then it is important that their Personal Independence award promptly reflects that change. The Regulations reflect this approach.

8.5 The only comments received in relation to the informal consultation were in relation to supersession for change of circumstances in Universal Credit:

“The Department should continue the current system of backdating changes of circumstances to the start of week in which they occurred, rather than the start of the monthly assessment period.”

As the ‘whole month’ approach is key to the administration of Universal Credit, for the reasons set out above, the Department did not amend the regulations in response to this request.

8.6 Although the Social Security Advisory Committee did not formally consult on these Regulations, there had already been a public consultation exercise on the introduction of mandatory consideration of revision before appeal – para 7.2 above. The consultation exercise commenced on 9 February 2012 and closed on 4 May 2012. - <http://www.dwp.gov.uk/docs/mandatory-consideration-consultation.pdf>

An interim response was published by the Department on 12 June 2012 and a full response on 26 September 2012 - <http://www.dwp.gov.uk/consultations/2012/mandatory-consideration.shtml>

8.7 In summary, there were 154 responses received to the consultation from a wide range of organisations and individuals. Three common issues were raised by respondents:

- that the Department should have a time limit to complete the mandatory reconsideration process. *The Department has no plans to introduce a statutory limit. However, it is working up a process which will ensure that applications are dealt with without delay. A key to this will be that the application can be made by telephone.*
- issues around the payment of Employment and Support Allowance pending appeal. *The current policy is to continue to pay Employment and Support Allowance where someone is found fit for work and appeals that decision. This policy will not change when Universal Credit is introduced.*
- the need for improvement to the standards of decision-making. *Whilst this is an ongoing challenge for the Department, the Committee may wish to note the work it has done in response to Professor Harrington's reports on Employment and Support Allowance - [Work Capability Assessment – Year 3 call for evidence](#). Also, the Department in conjunction with Her Majesty's Courts and Tribunal Service has developed a 'dropdown' menu which First-tier Tribunal judges are using to record why they made their decision. A pilot was run between July and October 2012 using cases where the Tribunal overturned the Department's decision. The results are being evaluated, so that focus can be given to potential improvements in processes and procedures.*

8.8 The Social Security Advisory Committee considered the Regulations for a second time in November 2012 having been appraised of amendments made subsequent to the July meeting. They made a number of observations which resulted in further amendments being made. These were all of a technical nature which did not affect the policy. For example:

- a provision which suggested that it would be possible to suspend the payment of Jobseeker's Allowance (and terminate entitlement) where the issue concerned actively seeking work and availability for work, has been removed because for Jobseeker's Allowance(contributions) the award will be sanctioned; entitlement will not be affected;
- the opening words of regulation 46 have been clarified to put it beyond doubt that when a suspension is lifted the claimant will receive all benefit which has been suspended. As drafted it read as if it would only be paid from the date that the decision was made to lift the suspension – this was never the intention.

8.9 Extensive stakeholder engagement has taken place throughout the development of Universal Credit. As part of this a workshop was held with customer representative organisations and Devolved Administrations to outline the detail in the draft Regulations and provide the opportunity for them to seek clarification. As above the concerns were around the effect of the whole month approach and potential delays with mandatory reconsideration.

## 9. Guidance

9.1 The Decision Maker's Guide will be updated to reflect the new Regulations. As now, we intend that it will be published on the main Department for Work and Pensions website. It will be in place before April 2013. Prior to publication, the guidance in key policy areas will be shared with key stakeholders and the Social Security Advisory Committee. Once published, using the website, interested parties are able to join a mailing list to be informed as soon as updates are published.

## 10. Impact

10.1 There is no impact on business or civil society organisations.

10.2 In relation to the impact on the public sector of these Regulations, we have considered the possible impact the changes will have on decision makers, claimants and stakeholders of having to operate with two sets of decision-making regulations. The Department considers this is manageable, and will not have an adverse impact. The Regulations clearly specify the benefits to which they apply (see regulation 1). Decision makers will, of course, be trained specifically for Universal Credit and Personal Independence Payment; the computer systems relating to these benefits will operate independently of any other benefit system. The decision notifications sent to claimants will reflect the decision-making process which will apply to them.

10.3 The impact of the new mandatory reconsideration process on the DWP and Her Majesty's Court and Tribunals Service is included in the published Impact Assessment which is on the DWP website at

<http://www.dwp.gov.uk/docs/consideration-of-revision-wr2011-ia.pdf>

Apart from the above, an Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

11.1 This instrument does not apply to small business.

## 12. Monitoring and review

12.1 As part of the Department's on-going evaluation of decision-making and appeals, the effects of these Regulations will be monitored by examining:

- the number of requests for decisions to be reconsidered – *a database is being developed to this end*;
- the number and subject matter of appeals made by individuals to the First-tier and Upper Tribunals – *this will build on the current practice; this information is published by Her Majesty's Courts and Tribunals Service quarterly and is available on their website -*

<http://www.justice.gov.uk/statistics/tribunals/quarterly>

- the success rates of appeals made by individuals to the First-tier and Upper Tribunal – *again this builds on the current practice; this information is published as above;*
- the number and success rates of appeals lodged by the Department against First-tier Tribunal decisions – *this information is already collected and published as above.*
- the whole month approach – *this will be looked at as part of the Universal Credit evaluation, both in qualitative and quantitative projects.*

### **13. Contact**

- 13.1. Lyndon Walters at the Department for Work and Pensions can answer any questions regarding the instrument. Tel: 0207 449 7347 or email: [lyndon.walters@dwp.gsi.gov.uk](mailto:lyndon.walters@dwp.gsi.gov.uk)



## STATUTORY INSTRUMENTS

2013 No.

## SOCIAL SECURITY

The Social Security (Overpayments and Recovery) Regulations  
Made -

Made \*\*\*

Laid before Parliament \*\*\*

Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 71(4), (8) and (9A) to (9C), 71ZA(2A), 71ZB(2)(b), (3), (4) and (5), 71ZC(1) to (3), 71ZD, 71ZG(5), 71ZH(5), 75(4), (5)(a) and (8) to (10), 76(3)(c), 78(2) and (3C) to (3E), 189(1), (4) to (6) and 191 of the Social Security Administration Act 1992<sup>(2)</sup> (“the Act”) and section 32 of, and paragraphs 1(1) and 6(b) of Schedule 6 to, the Welfare Reform Act 2012<sup>(3)</sup>.

In accordance with section 173(1)(b) of the Act, the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it.

In relation to provisions in these Regulations relating to housing benefit in accordance with section 176(1) of the Act<sup>(4)</sup>, consultation has taken place with organisations appearing to the Secretary of State to be representative of the authorities concerned.

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<sup>(2)</sup> 1992 c.5. Section 71ZA is inserted by section 75(1) of the Social Security Act 1998 (c.14). Section 71ZD is inserted by section 105 of the Welfare Reform Act 2012 (“the 2012 Act”) Act and sections 71(9A) to (9C), 71ZA(2A), 75(8) to (10) and 78(3C) to (3E) are inserted by section 106 of that Act. Sections 71ZB, 71ZC, 71ZG and 71ZH are inserted by section 105 of the 2012 Act. Section 75(5) is amended by section 16 of the Social Security Administration (Fraud) Act 1997 (c.47). Section 76(1) is amended by paragraph 15(1) of Schedule 9 to the Local Government Finance Act 1992 (c.14) and by paragraph 175(3) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39). Section 189(1) and (4) to (6) are amended by paragraph 109(a) and (c) to (e) of Schedule 7, and Schedule 8, to the Social Security Act 1998 (c.14), paragraph 57(1) and (2) of Schedule 3 to the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c.2) and Schedule 6 to the Tax Credits Act 2002 (c.21). Section 191 is cited for the definition of “prescribe”.

<sup>(3)</sup> 2012 c.5.

<sup>(4)</sup> Section 176(1) is amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c.14), paragraph 3(4) of Schedule 13 to the Housing Act 1996 (c.52) and section 69(6) of the Child Support, Pensions and Social Security Act 2000 (c.19).

# PART 1

## General

### Citation and commencement

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

(2) They come into force—

- (a) for the purposes of this Part, Part 6 and regulation 30, on 8th April 2013;
- (b) for all other purposes, 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<sup>(5)</sup>;

“the 2007 Act” means the Welfare Reform Act 2007<sup>(6)</sup>;

“the 2012 Act” means the Welfare Reform Act 2012<sup>(7)</sup>;

“the UC Regulations” means the Universal Credit Regulations 2012<sup>(8)</sup>

“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 2012<sup>(9)</sup>;

“assessment period” has the same meaning as in the UC Regulations;

“benefit week” in relation to a benefit which is paid weekly, means the week corresponding to the week in respect of which the benefit is paid;

“claimant” means the person who has claimed the benefit concerned;

“couple” has the same meaning as in Part 1 of the 2012 Act<sup>(10)</sup>;

“employment and support allowance” means an allowance under Part 1 of the 2007 Act as amended by Schedule 3, and Part 1 of Schedule 14 to the 2012 Act (to 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 Part 1 of Schedule 14 to the 2012 Act (to remove references to an income-based allowance);

“landlord” means a person to whom rent is payable by the person entitled to a housing payment;

“liable person” means the person from whom a recoverable amount is recoverable;

“overpayment” means an amount of—

- (a) relevant benefit paid 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 is recoverable under section 29 of the Tax Credits Act 2002<sup>(11)</sup> as modified by paragraph 10 of the Schedule to the Universal Credit (Transitional Provisions) Regulations 2013<sup>(12)</sup>;

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<sup>(5)</sup> 1995 c.18.

<sup>(6)</sup> 2007 c.

<sup>(7)</sup> 2012 c.5.

<sup>(8)</sup> S.I.2012/.

<sup>(9)</sup> S.I.2012/.

<sup>(10)</sup> See section 39 of that Act.

<sup>(11)</sup> 2002 c.21.

<sup>(12)</sup> S.I.2013/.

“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;

“relevant benefit” means universal credit, jobseeker’s allowance and employment and support allowance;

“universal credit” means the benefit payable under Part 1 of the 2012 Act.

## PART 2

### Recoverability

#### Meaning of recoverable amount

- 3.—(1) In these Regulations but subject to regulation 16(2), “recoverable amount” means—
- (a) 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<sup>(13)</sup>—
- (a) section 71ZG(5) (recovery of payments on account);
  - (b) section 71ZH(5) (recovery of hardship payments);
  - (c) section 115B(4A)<sup>(14)</sup> (recovery of penalties imposed as an alternative to prosecution);
  - (d) section 115C(5) (recovery of civil penalties for incorrect statements); and
  - (e) section 115D(5) (recovery of civil penalties for failure to disclose information).

#### Persons from whom recovery of an overpayment may be sought

4.—(1) The following paragraphs apply for determining who is the liable person where an overpayment has been made in the circumstances specified in those paragraphs.

(2) Where the Secretary of State is satisfied that an overpayment of housing costs occurred in consequence of any change of dwelling occupied by the claimant as their home, both the claimant and the person to whom it was paid (“the payee”), if different, are liable persons.

(3) Where the Secretary of State is satisfied that the overpayment of housing costs occurred in consequence of a misrepresentation of, or a failure to disclose a material fact (in either case, whether fraudulent or otherwise), by any person (“M”), M is the liable person and not, if different, the payee.

(4) Where the Secretary of State is satisfied that the overpayment of housing costs occurred due to the amount of that payment exceeding the amount of rent for which the claimant is liable, the payee is the liable person and not, if different, the claimant.

(5) Where the Secretary of State is satisfied that the overpayment of housing costs occurred for a reason other than those mentioned in paragraphs (2), (3) and (4), the claimant is the liable person and not, if different, the payee.

(6) Where the payee is a person appointed under regulation 51 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 52 of those Regulations, both the claimant and the payee are liable persons.

(7) Paragraph (8) applies where the payee is a person to whom a relevant benefit has been paid pursuant to Schedule 6 to the UC etc. Claims and Payments Regulations (payments to third parties).

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<sup>(13)</sup> The specified provisions are all inserted by the Welfare Reform Act 2012.

<sup>(14)</sup> Section 115B is inserted by section 15 of the Social Security Fraud Act 2001 (c.11).

(8) The claimant is the liable person and not the payee to the extent that the overpayment does not exceed the amount payable to the payee under that Schedule to those Regulations.

**Circumstances in which a determination need not be reversed, varied, revised or superseded prior to recovery**

5. Section 71ZB(3) (recoverability of an overpayment dependent on reversal, variation, revision or supersession) of the Act is not to 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<sup>(15)</sup> or superseded under section 10 of that Act.

## PART 3

### Prevention of duplication of payments

**Duplication and prescribed income**

6.—(1) For the purposes of section 71ZB(5) of the Act (duplication of payments: universal credit), a person's prescribed income is income to be taken into account in accordance with Chapters 2 and 3 of Part 6 of the UC Regulations.

(2) The date on which income referred to in paragraph (1) is to be treated as paid is—

- (a) where the payment of income is made in respect of a specific day or period; that day or the first day of the 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.

## 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 relating to the amount of a person's capital; and
- (b) that overpayment is in respect of a period of more than 3 months ("the overpayment period").

(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 benefit 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 benefit overpaid during the immediately preceding 3 months.

(3) Capital is not to be treated as reduced over any period other than 13 benefit weeks or, as the case may be, 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 a relevant benefit, the Secretary of State must deduct—

- (a) any amount which has been offset under regulation 15; and

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<sup>(15)</sup> 1998 c.14.

- (b) any amount of universal credit which should have been awarded in respect of all or part of the overpayment period to the liable person or their partner—
    - (i) on the basis of the claim as presented to the Secretary of State or as it would have appeared if any change of circumstances, except a change of the dwelling which the liable person occupies as their home, had been notified at the time that change occurred; or
    - (ii) had any misrepresentation or non-disclosure of a material fact been remedied prior to the award being made.
- (2) In paragraph (1), “overpayment period” means the period over which the overpayment accrued.

### **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 paid 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 amount of the overpayment which is recoverable, the Secretary of State may at their discretion deduct an amount equal to the liable person’s weekly entitlement to housing costs in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the liable person 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 liable person’s entitlement to housing costs in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing costs in respect of dwelling A.

(4) In calculating the amount of the overpayment which is recoverable, the Secretary of State may at their discretion deduct an amount equal to the liable person’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 liable person was overpaid housing costs in respect of dwelling A.

(5) Where a sum has been deducted under paragraph (4), an equivalent sum is to be treated as having been paid in respect of the liable person’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 liable person 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 13, the Secretary of State may recover a recoverable amount from a liable person by deduction from the benefits specified in paragraph (2) which are, or may be, payable to them.

(2) Those benefits are—

- (a) benefits under Parts 2 to 5 of the Social Security Contributions and Benefits Act 1992;
- (b) universal credit;
- (c) jobseeker’s allowance;

- (d) employment and support allowance;
- (e) state pension credit; and
- (f) personal independence payment.

### **Recovery by deduction from universal credit**

**11.**—(1) The following paragraphs apply where the recoverable amount is to be recovered by deduction from universal credit payable to the liable person.

(2) Regulation 10 is to apply without limitation to any payment of arrears of universal credit other than any arrears caused by the operation of regulation 45 of the Universal Credit, Personal Independence Payments and Working-age Benefits (Decisions and Appeals) Regulations 2013<sup>(16)</sup>(making of payments which have been suspended).

(3) Regulation 10 is to apply without limitation where—

- (a) the recoverable amount is an overpayment of housing costs; and
- (b) the liable person is, for the purpose of regulation 4(2) to (5), a payee who is not the claimant.

(4) Subject to paragraph (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 (5) applies, not more than 8 times 5 per cent. of the appropriate universal credit standard allowance;
- (b) in a case to which paragraph (6) applies, not more than 5 times 5 per cent. of that allowance; and
- (c) in any other case, not more than 3 times 5 per cent. of that allowance.

(5) This paragraph applies where deductions from universal credit are made to recover from the liable person—

- (a) the whole or part of an overpayment in respect of which the liable person—
  - (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).

(6) 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).

(7) Paragraph (4) is subject to paragraphs 4 and 5 of Schedule 6 to the UC etc. Claims and Payments Regulations (payments to third parties).

(8) Where the amount deductible under paragraph (4) is not a multiple of five pence, it is to be rounded to the next higher such multiple.

(9) No deduction made under paragraph (4) is to be applied so as to reduce the universal credit in respect of an assessment period to less than 1 penny.

(10) In this regulation and in regulation 13, “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<sup>(17)</sup>;
- (b) in Scotland, admission after a caution has been administered, such admission being duly witnessed by two persons; and

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<sup>(16)</sup> S.I.2012/.  
<sup>(17)</sup> 1984 c. 60.

(11) In paragraph (4), “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 by virtue of regulation 21 of the UC Regulations.

### **Recovery by deduction from jobseeker’s allowance and employment and support allowance**

**12.**—(1) The following paragraphs apply where the recoverable amount is to be recovered by deduction from jobseeker’s allowance or employment and support allowance payable to the liable person.

(2) Regulation 10 applies to the amount of a jobseeker’s allowance or an employment and support allowance to which a person is presently entitled only to the extent that there may, subject to paragraphs 4 and 5 of Schedule 6 to the UC etc. Claims and Payments Regulations, be recovered in respect of any one benefit week a sum equal to 40 per cent. of the age-related amount applicable to the liable person—

- (a) where the liable person is entitled to a jobseeker’s allowance, specified in regulation 79 of the Jobseeker’s Allowance Regulations 1996;
- (b) where the liable person is entitled to an employment and support allowance, specified in paragraph 1(1) of Schedule 4 to the Employment and Support Allowance Regulations 2008.

(3) For the purposes of paragraph (2), where the sum which would otherwise fall to be deducted is not a multiple of 5 pence, it is to be rounded up to the next higher such multiple.

### **Recovery by deduction from state pension credit**

**13.**—(1) The following paragraphs apply where the recoverable amount is to be recovered by deduction from state pension credit payable to the liable person.

(2) Regulation 10 is to apply without limitation where the liable person is, for the purpose of regulation 4(2) to (5), a payee who is not the claimant.

(3) Subject to paragraph (6), 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 (4) applies, an amount equivalent to not more than 5 times 5 per cent of the universal credit standard allowance for a single person aged 25 or over specified in regulation 21 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.

(4) 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—
  - (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 relevant benefit; 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).

(5) Where the amount deductible under paragraph (3) is not a multiple of five pence, it is to be rounded to the next higher such multiple.

(6) No deduction made under paragraph (3) is to be applied so as to reduce the state pension credit in respect of a benefit week to less than 1 penny.

### **Restrictions on recovery of rent and consequent notifications**

**14.**—(1) Where, pursuant to section 71ZC(2)(b), an amount of housing costs has been recovered by deduction from benefit paid to a person (referred to as “the landlord” in this regulation) to discharge (in whole or in part) an obligation owed to the landlord by the person on whose behalf the recoverable amount was paid (referred to as “the tenant” in this regulation), that obligation is to, in a case to which paragraph (2) applies, be taken to be discharged by the amount of the deduction.

(2) This paragraph applies in a case where the amount recoverable from the landlord relates to an overpayment of housing costs in relation to which the landlord has—

- (a) agreed to pay a penalty pursuant to section 115A of the Act (penalty as an alternative to prosecution); or
- (b) been convicted of an offence arising under the Act or any other enactment.

(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 that—

- (a) the overpayment that it has recovered or that it has determined to recover (“that sum”) is, or will be, one to which paragraph (2) applies; and
- (b) 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**

**15.**—(1) Subject to paragraph (3), where a person has been paid a sum of benefit under a decision which is subsequently—

- (a) revised or further revised;
- (b) superseded or further superseded; or
- (c) set aside on an appeal,

any relevant benefit paid in respect of a period covered by a subsequent decision is to be offset against arrears of entitlement under the subsequent decision and, except to the extent that the relevant benefit exceeds the arrears, is to be treated as properly paid on account of them.

(2) 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.

(3) No amount may be offset under paragraph (1) which is an overpayment.

## **PART 6**

### **Recovery by deduction from earnings**

#### **Interpretation of Part**

**16.**—(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,

and “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, “recoverable amount” also means—

- (a) the amount of any benefit paid which may be recovered by virtue of section 71(1) or (4) or 75(1) of the Act; and
- (b) the amount of any social fund payment which may be recovered by virtue of section 71ZA or 78 of the Act.

(3) In this Part, subject to paragraph (4), “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 or 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.

(4) “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);
- (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 Social Security Pensions Act 1975;
- (f) working tax credit payable under section 10 of the Tax Credits Act 2002;
- (g) sums paid to reimburse expenses wholly and necessarily incurred in the course of the employment.

(5) “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;
- (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.

(6) 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**

**17.** 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**

**18.**—(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 5(3)(a) or as the case may be (b) or, if applicable, the deduction to be made in accordance with regulation 5(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 24(1).

## **Amount to be deducted by employer**

**19.**—(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 24;
- (b) has been discharged under regulation 25; or
- (c) has lapsed under regulation 26.

(6) Where, on any 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 that shortfall.

(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 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) for that pay-day less that excess.

(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**

**20.**—(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 19(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**

**21.**—(1) Amounts deducted by an employer pursuant to regulation 19 (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**

**22.**—(1) A liable person who has been given or sent a notice in accordance with regulation 18(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**

23.—(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 of the date 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 17 and Schedule 1, E must notify the appropriate authority of that fact in writing, at the address specified in the notice, within 10 days of the date 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 of P ceasing to be in their employment.

### **Power to vary notices**

24.—(1) The appropriate authority may vary a notice so as to—

- (a) decrease any amount to be deducted under regulation 19; 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 18(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 18(3).

### **Discharge of notices**

25.—(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 18(3) 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 21 nevertheless applies in respect of any deductions made in respect of the employment but not yet paid to the appropriate authority.

### **Lapse of notices**

26.—(1) Where a liable person in respect of whom a notice is in force 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 21 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**

**27.** 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.**

**28.**—(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<sup>(18)</sup>;

“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) The following paragraphs 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;
- (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—

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<sup>(18)</sup> S.I.1992/1989.

- (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.

(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

**29.** 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 19(2);
- (b) regulation 21(1);
- (c) regulation 21(3);
- (d) regulation 22.

## PART 7

### Amendments to associated legislation

#### **Amendments to the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988**

**30.**—(1) The Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988<sup>(19)</sup> are amended as follows.

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

- (a) before the definition of “the Administration Act” insert—
  - ““the 1995 Act” means the Jobseekers Act 1995<sup>(20)</sup>;
  - “the 2007 Act” means the Welfare Reform Act 2007<sup>(21)</sup>;
  - “the 2012 Act” means the Welfare Reform Act 2012<sup>(22)</sup>”;
- (b) in the definition of “benefit” after “an employment and support allowance” insert “personal independence payment”;
- (c) after the definition of “disabled person’s tax credit” insert—
  - ““employment and support allowance” means, except in relation to Part 7, an income-related allowance under Part 1 of the 2007 Act as it has effect apart from the amendments made by Schedule 3, and Part 1 of Schedule 14 to the 2012 Act (to remove references to an income-related allowance)”;
- (d) after the definition of “Income Support Regulations” insert—
  - ““jobseeker’s allowance” means, except in relation to Part 7, an income-based allowance under the 1995 Act as it has effect apart from the amendments made by Part 1 of Schedule 14 to the 2012 Act (to remove references to an income-based allowance)”;
- (e) after the definition of “tax credit” insert—
  - ““universal credit” means the benefit payable under Part 1 of the 2012 Act”;

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<sup>(19)</sup> S.I.1988/664.

<sup>(20)</sup> 1995 c.18.

<sup>(21)</sup> 2007 c. .

<sup>(22)</sup> 2012 c.5.

(3) 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 this Part applies.”.

(4) For regulation 13(1) substitute—

**“Sums to be deducted in calculating recoverable amounts**

**13.**—(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 amount of a benefit specified in paragraph (1A) which should have been awarded to the person from whom the overpayment is recoverable or their partner in respect of all or part of the overpayment period—
  - (i) on the basis of the claim as presented to the adjudicating authority; or
  - (ii) had any misrepresentation or non-disclosure of a material fact been remedied prior to the award being made.

(1A) The specified benefits are—

- (a) universal credit;
- (b) income support;
- (c) state pension credit;
- (d) jobseeker’s allowance; and
- (e) 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”.

(5) In regulation 15 (recovery by deduction from benefits)—

(a) after sub-paragraph (2)(f) add—

- “(g) universal credit;
- (h) personal independence payment.”;

(b) after paragraph (2) add—

“(3) For the purposes of this Part—

(a) “employment and support allowance” means—

- (i) an allowance under Part 1 of the 2007 Act as amended by Schedules 3 and 14 to the 2012 Act and a contributory allowance under that Part as it has effect apart from those amendments; and
- (ii) an income-related allowance under that Part as it has effect apart from those amendments;

(b) “jobseeker’s allowance” means—

- (i) an allowance under the 1995 Act as amended by Schedules 3 and 14 to the 2012 Act and a contribution-based allowance under the 1995 Act as it has effect apart from those amendments; and
- (ii) an income-based allowance under the 1995 Act as it has effect apart from those amendments.”.

(6) 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.”.

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

**31.** In regulation 3 of the Social Fund (Recovery by Deductions from Benefits) Regulations 1988<sup>(23)</sup> (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 housing benefit provisions**

**32.** In both regulation 105 of the Housing Benefit Regulations 2006<sup>(24)</sup> and regulation 86 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006<sup>(25)</sup> (recovery of overpayments from prescribed benefits)—

(a) after paragraph (1)(f) add—

“(g) universal credit;

(h) personal independence payment.”;

(b) after paragraph (1B)(d) add—

“(e) universal credit

(f) personal independence payment.”.

Signed by authority of the Secretary of State for Work and Pensions.

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

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<sup>(23)</sup> 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.

<sup>(24)</sup> 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.

<sup>(25)</sup> 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.



## EXEMPTION FOR EXISTING MICRO-BUSINESSES AND NEW BUSINESSES

### Micro-businesses

1. A micro-business is a business that has fewer than 10 employees (see paragraphs 6 to 8).

### Existing micro-businesses

2. An existing micro-business is a business that was a micro-business immediately before [the commencement date].

### New businesses

3.—(1) A new business is a business which a person, or a number of persons, (“P”) begins to carry on during the period beginning on the commencement date and ending on 31 March 2014.

(2) But a business is not a new business if—

- (a) P has, at any time during the period of 6 months ending immediately before the date on which P begins to carry on the business, carried on another business consisting of the activities of which the business consists (or most of them), or
- (b) P carries on the business as a result of a transfer (within the meaning of sub-paragraph (3)).

(3) P carries on a business as a result of a transfer if P begins to carry on the business on another person ceasing to carry on the activities of which it consists (or most of them) in consequence of arrangements involving P and the other person.

(4) For this purpose, P is to be taken to begin to carry on a business on another person ceasing to carry on such activities if—

- (a) P begins to carry on the business otherwise than in partnership on such activities ceasing to be carried on by persons in partnership, or
- (b) P is a number of persons in partnership who begin to carry on the business on such activities ceasing to be carried on—
  - (i) by a person, or a number of persons, otherwise than in partnership,
  - (ii) by persons in partnership who do not consist only of all the persons who constitute P, or
  - (iii) partly as mentioned in paragraph (i) and partly as mentioned in paragraph (ii).

(5) P is not to be regarded as beginning to carry on a business for the purposes of sub-paragraph (1) if—

- (a) before P begins to carry on the business, P is a party to arrangements under which P may (at any time during the period beginning on the commencement date and ending on 31 March 2014) carry on, as part of the business, activities carried on by any other person, and
- (b) the business would have been prevented by sub-paragraph (2)(b) from being a new business if—
  - (i) P had begun to carry on the activities when beginning to carry on the business, and
  - (ii) the other person had at that time ceased to carry them on.

(6) “Arrangements” includes an agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

### The exemption period: existing micro-businesses

4.—(1) This paragraph defines the exemption period in relation to an existing micro-business.

(2) The exemption period starts on the commencement date and ends on the day after a grace period in relation to the business ends, if the grace period is one in which the business grows (see paragraphs 5 and 6).

(3) The following are grace periods in relation to a business for the purposes of this regulation—

- (a) the 6-month period that starts with the first day after the commencement date on which the business has 10 or more employees;
- (b) the 6-month period that starts after the end of a grace period (the “earlier grace period”) that is not one in which the business grows, in accordance with sub-paragraph (4) or (5).

(4) If the business has 10 or more employees on the day after the end of the earlier grace period, the next grace period starts on that day.

(5) If the business has fewer than 10 employees on that day, the next grace period starts on the next day on which the business has 10 or more employees.

### **Grace periods in which business grows**

5.—(1) For the purposes of this Schedule, a grace period is one in which a business grows if A is greater than B, where—

- (a) A is the number of days in the grace period when the business has 10 or more employees, and
- (b) B is the number of days in the grace period when the business has fewer than 10 employees.

### **Number of employees of a business**

6. For the purposes of this Schedule, the number of employees of a business is calculated as follows—

$$TH/37.5$$

where TH is the total number of hours per week for which all the employees of the business are contracted to work.

### **Employees of a business**

7. For the purposes of this Schedule, the employees of a business are the persons who are employed for the purposes of the business, in connection with any of the activities of which the business consists.

### **Employees**

8.—(1) In this Schedule, “employee” means an individual who has entered into or works under a contract of employment.

(2) In sub-paragraph (1) “contract of employment” means a contract of service, whether express or implied, and (if it is express) whether oral or in writing.

### **Franchises**

9. For the purposes of this Schedule, a business that is carried on pursuant to a franchise agreement is treated as part of the business of the franchisor (and not as a separate business carried on by the franchisee).

### **The commencement date**

10. For the purposes of this Schedule, “the commencement date” means the date on which these Regulations come into force.

## SCHEDULE 2

Regulation 4(2)

### AMOUNTS TO BE DEDUCTED BY EMPLOYERS

TABLE A: WHERE EARNINGS ARE PAID WEEKLY

| AMOUNT OF NET EARNINGS                | DEDUCTION (PER CENT. OF NET EARNINGS) |
|---------------------------------------|---------------------------------------|
| Less than £100                        | Nil                                   |
| Exceeding £100 but not exceeding £160 | 3                                     |
| Exceeding £160 but not exceeding £220 | 5                                     |
| Exceeding £220 but not exceeding £270 | 7                                     |
| Exceeding £270 but not exceeding £375 | 11                                    |
| Exceeding £375 but not exceeding £520 | 15                                    |
| Exceeding £520                        | 20                                    |

TABLE B: WHERE EARNINGS ARE PAID MONTHLY

| AMOUNT OF NET EARNINGS                    | DEDUCTION (PER CENT. OF NET EARNINGS) |
|---|---------------------------------------|
| Less than £430                            | Nil                                   |
| Exceeding £430 but not exceeding £690     | 3                                     |
| Exceeding £690 but not exceeding £950     | 5                                     |
| Exceeding £950 but not exceeding £1,160   | 7                                     |
| Exceeding £1,160 but not exceeding £1,615 | 11                                    |
| Exceeding £1,615 but not exceeding £2,240 | 15                                    |
| Exceeding £2,240                          | 20                                    |

#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision relating to recovery of certain amounts which are recoverable under social security legislation.

Part 1 makes general commencement and interpretation provision (regulations 1 and 2).

Part 2 makes provision relating to recoverability. Regulation 3(1) prescribes that recoverable amounts are overpayments of benefits set out in section 71ZB of the Social Security Administration Act 1992 (“the benefits”) (“the Act”) and of tax credits under the Tax Credits Act 2002 (c.21) and other amounts such as civil penalties, payments on account of benefit and hardship payments which are recoverable under certain provisions of the Act as if they were overpayments of those benefits.

Regulation 4 makes provision as to who an overpayment is recoverable from where it is necessary to recover from a person instead of, or in addition to, the person to whom it was paid. Regulation 5 makes provision as to when overpayments made under an award will still be recoverable if there has been no revision or supersession of that award.

Part 3 prevents duplication of payment of universal credit where income which would be taken into account in a universal credit claim is paid after the prescribed date for payment of that income.

Part 4 makes provision as to the calculation of the recoverable amount. Regulation 7 makes provision where the overpayment relates to the amount of a person's capital, for the amount of the overpayment to be reduced to take account of diminution in that capital. Regulation 8 allows for the recoverable amount of benefit to which these Regulations apply to be reduced to take account of any universal credit which should have been paid to the person concerned or their partner. Regulation 9 makes provision relating to calculating the amount of an overpayment of a housing payment where a claimant changes dwelling

Part 5 makes provision as to process of recovery. Regulation 10 allows recovery of recoverable amounts to take place by deduction from the benefits. Regulation 11 prescribes limitations on such recovery where the benefit to be deducted from is universal credit, regulations 12 and 13 respectively do the same where the benefit to be deducted from is jobseeker's allowance or employment and support allowance on the one hand and state pension credit on the other. Regulation 14 makes provision confirming when an obligation of a tenant is taken to have been discharged when recovery of an overpayment of a housing payment has been obtained by deduction from a landlord's benefit. Regulation 15 allows, where a decision is reversed or varied or revised or superseded, for the offsetting of arrears of entitlement against subsequent payments of benefit.

Part 6 makes provision for recovery of recoverable amounts by deduction from earnings. Regulation 16 defines certain terms used in that Part. These include a "recoverable amount" which for these purposes includes housing benefit and social fund overpayments. It also defines "earnings" for the purpose of the Regulations and the proportion of earnings below which the amount paid to the liable person must not be reduced by virtue of the deduction under regulation 19. That proportion is 60 per cent. of the liable person's net earnings for the relevant period.

Regulation 17 and Schedule 1 do not impose any obligation under these Regulations on new businesses and existing micro-businesses. New businesses are those which start business in the period starting on 1st April 2013 and ending on 31st March 2014. An existing micro-business is a business with less than 10 employees on the day these Regulations come into force. Such businesses are exempt from that requirement both for so long as they remain a micro-business, and for any grace period (defined in paragraph 4 of Schedule 1) following the date on which they cease to be such a business.

Regulation 18 prescribes what details a notice requiring the employee to make deductions from earnings must contain and when it (and a varied notice) takes effect.

Regulation 19 and Schedule 2 prescribe the amounts to be deducted by the employer from the amount paid to the liable person each pay-day. In addition, paragraph (9) of that regulation allows the employer also to deduct a charge not exceeding £1 in respect of any administrative costs.

Regulation 20 requires the employer to notify the liable person of the amount of the deduction including any deduction for in respect of the employer's administrative costs.

Regulation 21 requires the employer to pay the amount of the deduction (excluding any additional deduction for administrative costs) to the appropriate authority which sent the employer the notice by any of the methods set out in paragraph (2) of that regulation. It also requires the employer to keep records of amounts deducted and of persons in respect of whom such deductions have been made.

Regulation 22 requires the liable person to inform the appropriate authority within 7 days if they leave the employment of an employer who has received a notice in respect of them or when they become employed or re-employed.

Regulation 23 requires the employer to notify the appropriate authority if a notice is received on the assumption by a person on the assumption that they are the employer of a liable person but it transpires that they are not or if they think the exemption in regulation 3 applies to them. It also requires the employer to notify the appropriate authority if the liable person leaves their employment or if they become aware that a notice has been issued in respect of an employee of theirs.

Regulation 24 allows the appropriate authority to vary notices to increase or decrease amounts included in them or to substitute a new employer for a previous one and requires the employer to comply with the notice as varied.

Regulation 25 provides for a notice to be discharged in certain circumstances if no further payments are due under it, it is ineffective as a means of recovery or it is defective.

Regulation 26 allows for notices to lapse if the employer no longer has the liable person in their employment.

Regulation 27 makes special provision relating to those in the employment of the Crown.

Regulation 28 makes provision as to priority as between notices issued under these Regulations and orders under other enactments in England and Wales (“other orders”) and diligences against earnings in Scotland, requiring deductions to be made from earnings. The general rule is that deduction from earnings orders under the Child Support (Collection and Enforcement) Regulations 1992 (S.I.1992/1989) must be dealt with first. Where deductions would otherwise fall to be made under notices issued under these Regulations and either deductions under those other enactments and diligences against earnings, deductions under other orders and diligences are to be made first if in existence on the first pay-day for deductions under the notice. Otherwise, they are to be dealt with in date order.

Regulation 29 makes it a criminal offence to fail to comply with certain provisions of these Regulations. These relate primarily to failures to make or pay deductions or to provide information.

Part 7 makes consequential amendments. Regulation 16 amends the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 (S.I.1988/664) to ensure that overpayments of benefits coming within section 71 of the Act can be recovered by deduction from universal credit. It also clarifies the rules on what sums are deducted in calculating the amount of a recoverable overpayment under those Regulations. The amendments also ensure that the limitations on deductions from universal credit made under these Regulations apply equally to deductions under those Regulations. Regulation 17 amends the Social Fund (Recovery by Deductions from Benefits) Regulations 1988 (S.I.1988/35) to add universal credit to the list of benefits from which social fund awards may be recovered by deduction.

Part 8 amends housing benefit legislation to ensure that local authorities can request the Secretary of State to instigate recovery of overpaid housing benefit by deduction from universal credit.

In relation to Part 6, an assessment of the impact of these provisions is included in the impact assessment which accompanied the Welfare Reform Act 2012 and is available in the libraries of both Houses of Parliament. Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA or from the DWP website <http://www.dwp.gov.uk/resourcecentre/ria/asp>.

A full impact assessment has not been produced for the remainder of this instrument as it has no impact on the private sector or civil society organisations.