

2015 No. 499

SOCIAL SECURITY

**The Social Security (Overpayments and Recovery) Amendment
Regulations 2015**

<i>Made</i>	- - - -	<i>4th March 2015</i>
<i>Laid before Parliament</i>		<i>6th March 2015</i>
<i>Coming into force</i>	- -	<i>6th April 2015</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 71(8), (9A) and (9C), 71ZA, 71ZD, 75(8) and (10), 78(3C) and (3E), 189(1) and (4) to (6) and 191 of the Social Security Administration Act 1992 (a) (“the Act”).

In accordance with section 173(1) 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(b), consultation has taken place with organisations appearing to the Secretary of State to be representative of the authorities concerned.

Citation and commencement

1. These Regulations may be cited as the Social Security (Overpayments and Recovery) Amendment Regulations 2015 and come into force on 6th April 2015.

Amendment of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988

2.—(1) Regulation 16 of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988(c) (limitations on deductions from prescribed benefits) is amended as follows.

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- (a) 1992 c.5. Section 71(8) was amended by section 107 of the Welfare Reform Act 2012 (c.24) (“the 2012 Act”). Section 71ZA was inserted by section 75(1) of the Social Security Act 1998 (c.14) (“the 1998 Act”). Section 71ZD was inserted by section 105 of the 2012 Act and sections 71(9A) to (9C), 71ZA(2A), 75(8) to (10) and 78(3C) to (3E) were inserted by section 106 of that Act. Section 189(1) and (4) to (6) were amended by paragraph 109(a) and (c) to (e) of Schedule 7, and Schedule 8, to the 1998 Act, 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”.
- (b) 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).
- (c) S.I. 1988/664; in respect of regulation 16, the relevant amending instruments are S.I. 1996/1345, 2000/2336 and 2012/645.

(2) In paragraph (4) omit “, subject to paragraphs 8 and 9 of Schedule 9 to the Claims and Payments Regulations,”.

(3) In paragraph (5) for “shall be 5 times” substitute “shall, subject to paragraph (5ZA), be 8 times”.

(4) After paragraph (5) insert—

“(5ZA) In a case to which paragraph (5) applies, where deductions fall to be made under Schedule 9 to the Claims and Payments Regulations (payments to third parties), the total of the amount deductible under paragraph (5) and the amount deductible under that Schedule shall not exceed 8 times 5 per cent. of the personal allowance mentioned in paragraph (5).

(5ZB) Paragraph (4)(b) is subject to paragraphs 8 and 9 of Schedule 9 to the Claims and Payments Regulations.”.

Amendment of the Social Security (Overpayments and Recovery) Regulations 2013

3. The Social Security (Overpayments and Recovery) Regulations 2013(a) are amended in accordance with regulations 4 to 8 below.

Amendment of regulation 19

4. In regulation 19(2) (notices) for sub-paragraph (e) substitute—

“(e) the deduction or rate of deduction to be made in accordance with regulation 20.”.

Amendment of regulation 20

5.—(1) Regulation 20 (amount to be deducted by employer) is amended as follows.

(2) In paragraphs (2), (4), (6) and (8), after “paragraph (3)”, wherever it occurs, insert “or (3B)”.

(3) In paragraph (3), for “The amount to be deducted is—” substitute “Except where paragraph (3B) applies, the amount to be deducted is—”.

(4) After paragraph (3) insert—

“(3A) Paragraph (3B) applies where deductions from earnings are made to recover from the liable person the whole or part of an overpayment in respect of which the liable person has been found guilty of an offence whether under statute or otherwise.

(3B) Where this paragraph applies, the amount to be deducted by the employer is—

(a) where the liable person’s earnings are payable weekly, the percentage of their earnings specified in column 2 of Table C 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 D in Schedule 2 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.”.

(5) For paragraph (5), substitute—

“(5) The employer must continue to make deductions in accordance with paragraph (3) or (3B) unless and until—

(a) they are notified by the appropriate authority that the notice—

(i) has been varied in accordance with regulation 25;

(a) S.I. 2013/384; relevant amending instrument is S.I. 2013/1508.

- (ii) has been discharged under regulation 26; or
 - (iii) has lapsed under regulation 27; or
 - (b) the employer considers that, as a result of deductions under this regulation, the balance of the recoverable amount which falls to be recovered from the liable person is nil.”.
- (6) In paragraph (7), after “paragraph (3)” insert “, (3B)”.

Amendment of regulation 21

- 6.—(1) Regulation 21 (employer to notify liable person of deduction) is amended as follows.
- (2) For paragraph (1) substitute—
- “(1) An employer making a deduction from earnings for the purposes of these Regulations must notify the liable person in writing of the amount of the deduction including any amount deducted for administrative costs under regulation 20(9).”.
- (3) After paragraph (2) add—
- “(3) An employer must, within 28 days of receiving a written request from the liable person, provide the liable person with an explanation in writing of how the first amount referred to in paragraph (1) was calculated.”.

Amendment of regulation 29

7. In regulation 29 (priority as between notices and orders requiring deduction from earnings), for paragraph (4) substitute—
- “(4) Where this paragraph applies, the employer must make deductions under any later notice as if the earnings to which it relates were the residue of the liable person’s earnings after the making of any deduction to comply with any earlier notice.”.

Amendment of Schedule 2

- 8.—(1) Schedule 2 (amounts to be deducted by employers) is amended as follows.
- (2) For the reference note at the head of the Schedule, substitute “Regulation 20(2) and (3B)”.
- (3) After “TABLE A:” insert “CASES WHERE REGULATION 20(3) APPLIES”.
- (4) In Table A, for “Less than £100” substitute “£100 or less”.
- (5) After “TABLE B:” insert “CASES WHERE REGULATION 20(3) APPLIES”.
- (6) In Table B, for “Less than £430” substitute “£430 or less”.
- (7) After Table B add—

**“TABLE C: CASES WHERE REGULATION 20(3B) APPLIES
WHERE EARNINGS ARE PAID WEEKLY**

<i>AMOUNT OF NET EARNINGS</i>	<i>DEDUCTION (PER CENT. OF NET EARNINGS)</i>
£100 or less	5
Exceeding £100 but not exceeding £160	6
Exceeding £160 but not exceeding £220	10
Exceeding £220 but not exceeding £270	14
Exceeding £270 but not exceeding £375	22
Exceeding £375 but not exceeding £520	30
Exceeding £520	40

TABLE D: CASES WHERE REGULATION 20(3B) APPLIES

WHERE EARNINGS ARE PAID MONTHLY

<i>AMOUNT OF NET EARNINGS</i>	<i>DEDUCTION (PER CENT. OF NET EARNINGS)</i>
£430 or less	5
Exceeding £430 but not exceeding £690	6
Exceeding £690 but not exceeding £950	10
Exceeding £950 but not exceeding £1,160	14
Exceeding £1,160 but not exceeding £1,615	22
Exceeding £1,615 but not exceeding £2,240	30
Exceeding £2,240	40"

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

4th March 2015

Mark Harper
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 (S.I. 1988/664) (“the 1988 Regulations”) and the Social Security (Overpayments and Recovery) Regulations 2013 (S.I. 2013/384) (“the 2013 Regulations”).

Regulation 2 amends the 1988 Regulations which relate to the recoverability of overpayments of benefit under section 71 of the Social Security Administration Act 1992 (c.5).

Paragraphs (2) and (4) ensure that where such overpayments have been incurred by fraud and recovery by deduction from benefit takes place at the same time as third party payments are being made from the benefit under Schedule 9 to the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968), the total sum deducted will not exceed 8 times 5 per cent of an individual’s personal allowance. “Personal allowance” is defined in regulation 16(8) of the 1988 Regulations.

Paragraph (3) increases the maximum deduction from benefit in respect of an overpayment which has resulted in a finding or acceptance of guilt for an offence, or in respect of which the individual has accepted an administrative penalty as an alternative to prosecution, from 5 times 5 per cent of the relevant personal allowance, to 8 times 5 per cent of that allowance.

Regulations 4 to 8 amend Part 6 of the 2013 Regulations (recovery by deduction from earnings).

Regulation 5(3) and (4) ensure that where a deduction from earnings notice has been issued in order to recover a recoverable amount and the liable person has been found guilty of an offence in relation to that amount, the amounts to be deducted by the employer are those set out in Table C (where earnings are paid weekly) or D (where earnings are paid monthly) of Schedule 2 to the 2013 Regulations (inserted by regulation 8(7)). “Liable person” and “recoverable amount” are defined in regulation 2 of the 2013 Regulations. Regulation 5(5) allows an employer to cease making deductions once they consider that, as a result of deductions under paragraph 20 of the 2013 Regulations, the balance of the recoverable amount is nil.

Regulation 6 amends the requirement on the employer, to notify a liable person of how an amount being deducted is calculated, so that this applies only if the employer receives a written request from the liable person for that information. The employer must then provide the information within 28 days of receiving the written request.

Regulation 7 clarifies how employers should make deductions where they have two or more deduction from earnings notices in respect of the same liable person.

Regulation 8(4) and (6) ensure that the correct deductions are made for those with earnings of £100 or less per week and £430 or less per month.

Regulation 4 makes a consequential amendment to the requirements for the content of notices to be issued where recovery of an overpayment is sought by deduction from earnings. Regulations 5(2), (6) and 8(2), (3) and (5) make other consequential amendments to reflect the insertion of the new paragraph (3B) to regulation 20 of the 2013 Regulations.

A full impact assessment has not been produced for this instrument as a negligible impact on business or civil society organisations is foreseen.

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