

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (OVERPAYMENTS AND RECOVERY)
REGULATIONS 2013**

2013 No. 384

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 The Instrument sets out the processes governing the calculation and recovery of overpayments of Universal Credit, certain Tax Credits and contributory Jobseeker's Allowance and Employment and Support Allowance (where the claim for those latter two benefits was made on or after 29 April 2013).

2.2 It also sets out the rules for recovery of certain court costs, payments on account, hardship payments, administrative penalties and civil penalties.

2.3 It also introduces Direct Earnings Attachments (DEA) which allow the Department and local authorities to recover certain debts directly from a person's earnings.

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

None.

4. **Legislative context**

4.1 The Welfare Reform Act 2012 ("the 2012 Act") introduces Universal Credit which replaces a range of DWP administered benefits, along with other benefits currently administered by separate organisations. The 2012 Act allows for the recovery of a range of social security related payments and overpayments ("debts") from Universal Credit. These Regulations set out the lower level detail of how these debts are calculated, who they can be recovered from, how they can be recovered and limitations on the rates of recovery where that recovery is made by direct deduction from a claimant's benefit.

4.2 The 2012 Act for the first time empowers both the Department and local authorities to recover debt by attachment of earnings. These Regulations set out the circumstances in which a DEA can be issued, the type of earnings from which a deduction can be taken, the responsibilities of employers and the relevant rates of deduction where a DEA is in place.

5. Territorial Extent and Application

This instrument applies to Great Britain. Similar Statutory Rules are to be introduced in respect of Northern Ireland.

6. European Convention on Human Rights

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

7. Policy Background

- *What is being done and why*

7.1 The 2012 Act introduces Universal Credit which is a new benefit. It replaces a range of DWP administered benefits, Housing Benefit and Tax Credits which are currently administered by separate organisations and have different overpayment recovery tests. The introduction of Universal Credit means a new single overpayment recovery test is needed. For consistency across all working age benefits, it has been decided that this test would also be used for overpayments of contribution-based Jobseeker's Allowance and contributory Employment and Support Allowance.

7.2 The policy objective is based on the simplification underpinning Universal Credit and on the concept that whilst the Department must take responsibility for its mistakes, that does not give people the right to keep taxpayers' money that they are not entitled to. This means that any payments of Universal Credit, Jobseeker's Allowance and Employment Support Allowance which are made in excess of entitlement will be recoverable overpayments, including those arising from official error. This is a clear and simple starting point. The new overpayment recovery test will be fair to claimants and fair to the taxpayer.

7.3 Currently DWP recovers debts via deductions from ongoing benefit entitlement. However, for those who are no longer in receipt of benefit, recovery relies heavily on a debtor's compliance with repayment. If a debtor chooses not to pay the money they owe, the only option is to take court action, which is often cost prohibitive. The new Direct Earnings Attachments (DEA) will act as an incentive to debtors to make arrangements to repay their debts and, if they still refuse to repay, will provide the Department with an alternative means to make recovery.

7.4 Enabling social security legislation to give DWP the ability to make DEAs on its own authority without reference to the Courts will potentially make recovery from a debtor's earnings a relatively simple,

administratively attractive option, where the debtor refuses to repay. It will increase debt recovery particularly from those who will not come to a voluntary agreement to repay their debt; it will also reduce the associated costs in these cases. It will also be available as an elective repayment choice for any who wants to use it.

- ***Consolidation***

7.5 Informal consolidation of the amending Regulations, (30 to 34) of this instrument will be included in due course in the Department's "The Law relating to Social Security" (The Blue Volumes) which are available at no cost to the public in main libraries and on the internet at:

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

8. Consultation Outcome

8.1 A formal consultation exercise has not been undertaken as the regulations introduce measures outlined in the Welfare Reform Act 2012. The Act was subject to a full consultation.

That consultation included the proposals to:

- increase by almost 25 per cent the maximum rate at which fraud debts could be recovered by deduction from benefit
- introduce a fast track system to deduct money direct from an employee's earnings
- widen the range of debts that can be recovered, including those resulting from official error, so as to reflect the greater simplicity of the Universal Credit system.

No specific comments were received.

(<http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/universal-credit/>)

8.2 The draft regulations have been considered by the Social Security Advisory Committee. The Committee is content and the draft Regulations have not been referred for consultation.

8.3 Employer Groups have been consulted in relation to the implementation of Direct Earning Attachments, and guidance will be provided for employers in the light of those consultations. It is intended that the guidance will become available in March 2013.

9. Guidance

9.1 Before the Regulations come into force in April 2013, a bulletin will be provided to Department for Work and Pensions staff

setting out the requirements and procedures for identifying overpayments and the appropriate actions in processing them.

9.2 A Guide will also be provided to members of the public advising what happens when an overpayment is identified. This will be available during March 2013.

9.3 Guidance will also be provided to employers on how the DEA scheme will operate in March 2013.

10. Impact

10.1 Overall there will be no impact on business. Any increased administration costs will be offset by employers being able to charge the employee an additional £1 for each deduction from earnings they apply.

10.2 There is a small benefit for the public sector with anticipated increased recoveries for the Department of approximately £3m per annum, and reduced administrative costs for the Courts of approximately £0.5m.

10.3 An Impact Assessment for this instrument is published on www.legislation.gov.uk, alongside this instrument and the Explanatory Memorandum.

11. Regulating small business.

11.1 Regulations provide for the exemption of small businesses (defined as having fewer than 10 employees), from the requirement to implement DEAs.

12. Monitoring and Review

12.1 The Department will monitor the levels of all overpayments as well as the amounts recovered and written off. Attention will be paid as to whether the increase in deduction rates leads to a greater number of debtors claiming hardship.

12.2 The impact on Employers of the use of DEAs will be reviewed as part of a Pilot that will be carried out over the first 6 months of the use of DEAs.

13. Contact

Alan Clark at the Department for Work and Pensions: tel. 0113 2519131 or email: alan.clark1@dwpgsi.gov.uk can answer any queries on the instrument.