

Regulations 17 to 30 and Schedules 1 and 2 of The Social Security (Overpayments and Recovery) Regulations 2013

PART 6

Recovery by deduction from earnings

Interpretation of Part 6

17.— (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 under section 115B(4)(a), 115C or 115D of the Act,

and where a notice has been issued, “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 payday.

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

(3) “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(a));

(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 Pension Schemes Act 1993(b);

(f) working tax credit payable under section 10 of the Tax Credits Act 2002(c);

(g) sums paid to reimburse expenses wholly and necessarily incurred in the course of the employment.

(4) “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(d);
 - (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.
- (5) 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

18. 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

- 19.—(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 20(3)(a) or as the case may be, (b) or, if applicable, the deduction to be made in accordance with regulation 20(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 25(1).

Amount to be deducted by employer

- 20.—(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 25;

(b) has been discharged under regulation 26; or

(c) has lapsed under regulation 27.

(6) Where, on any pay-day ("the relevant 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 the difference between the amount, if any, which was deducted on the relevant pay-day and the amount which should have been deducted on that pay-day.

(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 relevant 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) less the difference between the amount which was deducted on the relevant pay-day and the amount which should have been deducted on that pay-day.

(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

21.—(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 20(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

22.—(1) Amounts deducted by an employer pursuant to regulation 20 (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

23.—(1) A liable person who has been given or sent a notice in accordance with regulation 19(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

24.—(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 after the day 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 18 and Schedule 1, E must notify the appropriate authority of that fact in writing, at the address specified in the notice, within 10 days after the day 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 after the day on which P ceased to be in their employment.

Power to vary notices

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

(a) decrease any amount to be deducted under regulation 20; 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 19(1) and (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 19(3).

Discharge of notices

26.—(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 19(2) 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 22 nevertheless applies in respect of any deductions made in respect of the employment but not yet paid to the appropriate authority.

Lapse of notices

27.—(1) Where a liable person in respect of whom deductions are being made in accordance with a notice 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 22 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

28. 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

29.—(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(a);

“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) Paragraphs (3) to (10) have effect subject to paragraph (11).

(3) Paragraph (4) applies where an employer would otherwise be obliged, on any payday, to make deductions from the earnings which it would otherwise pay to the liable person on that payday 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 payday, to make deductions from the earnings which it would otherwise pay to the liable person on that payday, 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 payday 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 or notices;

(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—

(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

30. 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 20(2);

(b) regulation 22(1);

(c) regulation 22(3);

(d) regulation 23.

Schedule 1

Regulation 18

Exemption for existing micro-businesses and new businesses

Micro-businesses

1. 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 8th April 2013.

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 8th April 2013 and ending on 31st 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 subparagraph (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 subparagraph (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 8th April 2013 and ending on 31st 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 8th April 2013 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 paragraph—
- (a) the 6-month period that starts with the first day after 8th April 2013 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).

Schedule 2

Regulation 20(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%

