

**The Social Security (Claims and Payments)  
Amendment Regulations (No.2) 2010 (S.I.2010  
No.870)**

**Report by the Social Security Advisory Committee  
under sections 173(4) and 174(2) of the Social Security  
Administration Act 1992 and the Statement by the  
Secretary of State for Work and Pensions in  
accordance with sections 173(4) and 174(2) of that  
Act.**

*Presented to Parliament by the Secretary of State for Work and Pensions pursuant to  
Sections 173(4) and 174(2) of the Social Security Administration Act 1992.*

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## **Statement by the Secretary of State for Social Security in accordance with Section 174(2) of the Social Security Administration Act 1992.**

### **The Social Security (Claims and Payments) Regulations 2010**

1. On 14 September 2009 the Government announced in a Written Ministerial Statement (WMS), Her Majesty's Revenue and Customs (HMRC) and Department for Work and Pensions' (DWP) plans to work together to recover more of the debt which is owed by taxpayers.

2. The WMS advised of our intention to run a trial to recover certain HMRC debts by deduction from DWP benefits. In order to do so amendments are being made to the Social Security (Claims and Payments) Regulations 1987. The legislative changes to support a trial were presented to the Social Security Advisory Committee (SSAC) on 5 November 2009. After scrutiny, the Committee selected the Regulations for formal referral.

3. The Committee published the Regulations for consultation on 24 November. The consultation period ended on 22 December and the Committee subsequently issued its report on 4 February 2010.

4. I am very grateful to both the Committee and to those who made representations to it. The recommendations have been set out clearly and I have taken the time to consider these carefully.

5. This statement sets out, in accordance with sections 174(2) of the Social Security Administration Act 1992, my reasons as to why I have not felt it appropriate to give effect to the Committee's recommendations in full on this occasion.

### **The Government's Response to the Committee's Recommendations**

#### **6. Recommendation (para 7.1)**

**The maximum amount of benefit that can be deducted for an overpayment owed to HMRC should be reduced to 5 percent of the Income Support rate for a single person aged 25 and over (currently £3.25). This would bring HMRC debt recovery into line with the majority of other deductions from DWP benefits.**

7. While noting the Committee's concerns the Government believes that the proposed higher level of deduction of 15% is in line with long standing policy on the recovery of DWP benefit overpayments. Customers will be protected by the range of safeguards already in place when recovering benefit debt, aimed at preventing hardship. For example a customer can agree a repayment rate below the maximum or if following a change of circumstances they cannot afford the agreed repayment rate then they can ask for it to be reduced or stop deductions altogether.

8. This is a voluntary scheme which imposes no charges on the customer who can withdraw from the scheme at any time. Deductions will only be made from a customer's benefit at a mutually agreed rate. The deduction rate will be affected by other deductions already being taken from a customer's benefit; these will reduce the amount that can be deducted to recover a tax debt. Customers will not be pressed to agree a repayment rate which they cannot afford.

9. Reducing the maximum deduction rate to 5 per cent as suggested in the recommendation would prolong the life of the debt and may force those customers, particularly those without bank accounts, who wish to repay their tax debt at a higher rate, to use an alternative method of payment that incurs fees or interest.

10. If a customer's circumstances change and they can no longer afford the agreed repayment rate they can tell us to recover at a lower rate or stop the deductions altogether.

### **11. Recommendation (para 7.2)**

**The list of benefits from which HMRC debt recovery repayments can be made should be brought into line with the current list of benefits from which priority debts can be deducted.**

12. The Government has considered the Committee's recommendation, and agree that the range of benefits from which HMRC debt recovery repayments can be made should be the same as those from which priority debts can be made. Consequently deductions for HMRC debt recovery can be made from Income Support, Jobseeker's Allowance (Income-Based), State Pension Credit and Employment and Support Allowance (Income-Related).

### **13. Recommendation (para 7.3)**

**The communications between HMRC officials and claimants should be carefully designed to ensure that, as far as possible, claimants are fully able to understand the voluntary nature of the trial and the impact on their income of signing up for the trial. They should also be recommended to seek independent advice.**

14. The Government agree with the Committee that customers need to understand that the trial is voluntary and what participation in it means. It is important that this is explained clearly to customers. We will share copies of the letters with the Committee and will ensure these, and our contact centre staff, direct the customer to the availability of independent advice.

### **15. Recommendation (para 7.4)**

**Safeguards should ensure that claimants are fully aware of other repayment options and also the opportunity to have debts written-off in**

**cases of hardship. All options open to claimants should be considered fully and deductions from benefits should not be viewed as the default option.**

16. The Government agree with the Committee that customers must be made aware of all the repayment options. The letter advising customers of their debt/liability will outline all the repayment options available. If a customer replies stating they wish to take part in the trial, HMRC staff will liaise with the customer to establish the details of the recovery, and agree a rate of recovery. Only when this has been done will HMRC pass the information on to DWP to implement the voluntary deductions from the customer's benefit.

### **17. Recommendation (para 7.5)**

**Officials should reconsider the design of the trial to ensure that it provides robust evidence for the future development of the policy. The current design may well provide insufficient evidence for taking informed decisions on rolling out the scheme.**

18. The Government is committed to monitoring and evaluating this voluntary trial through robust and objective methodologies. Evaluation will enable us to understand recoveries and other measures of performance, including those identified by the Committee, and will be based on a sufficiently large group of participants compared to appropriate control groups. The evaluation strategy will follow HMRC and DWP practice. We intend to produce an interim report during November 2010 with a full report around January 2011. This timescale reflects the need to monitor initial take up and subsequent recovery performance recognising that a proportion of volunteers will go off benefit during the pilot period. We would want to keep the Committee informed of progress.

### **Conclusion**

19. The Government is grateful to the Committee, and the interested parties who responded to the consultation exercise, for their consideration of the draft Regulations and for their comments on them.

20. The Social Security (Claims and Payment) Amendment (No.2) Regulations 2010 are now laid before Parliament.

**The Rt Hon Yvette Cooper MP  
Secretary of State for Work and Pensions  
Caxton House  
London SW1H 9DA**

**4<sup>th</sup> February 2010**

**Dear Secretary of State,**

**REPORT OF THE SOCIAL SECURITY ADVISORY COMMITTEE MADE UNDER SECTION 174(2) OF THE SOCIAL SECURITY ADMINISTRATION ACT 1992 ON THE SOCIAL SECURITY (CLAIMS AND PAYMENTS) REGULATIONS 2010**

**1. Background**

**1.1 At the Committee's meeting on 5 November 2009, officials from the Department for Work and Pensions (DWP) and Her Majesty's Revenue and Customs (HMRC) presented proposals for the Social Security (Claims and Payments) regulations 2010 for our consideration. A detailed Explanatory Memorandum (EM) of the Department's position accompanied these proposed draft regulations (Appendix 2).**

**1.2 Following discussions with officials, and the clarification of a number of points raised at the meeting, we decided to take these proposed regulations on 'formal referral' for the preparation of this report. On 24 November we published a press release inviting comments on the proposals to reach us by 22 December 2009.**

**1.3 We received 8 responses. Details of the organisations and individuals who responded are at Appendix 1. We are grateful to those who responded and to officials from the DWP and HMRC for their assistance.**

**2. The proposals**

**2.1 The proposed regulations modify the Social Security (Claims and Payments) Regulations 1987 to support the trialling of the voluntary recovery of tax credit and self assessment tax debts (primarily overpayments) owed to HMRC from ongoing DWP benefit payments, where the customer wishes to use that repayment method.**

**2.2 The regulations would allow the recovery of HMRC debts from the following benefits – Income Support, Jobseeker's Allowance (Income Based), Jobseeker's Allowance (Contributory), State Pension Credit, State Retirement Pension, Incapacity Benefit, Employment Support Allowance (Income Related), Employment Support Allowance (Contributory) and Carer's Allowance.**

**2.3** The maximum rate of recovery would be 3 x 5 per cent of the Income Support rate for a single person aged 25 and over (currently 3 x £3.25 = £9.75). The maximum rate would be reduced by the existence of any other 5 per cent deductions and would also be subject to the overall maximum for deductions. It would also be possible to set the rate of deduction at any rate below the maximum level. Rates would be agreed voluntarily between HMRC and the customer before the debt is referred to DWP for the recovery to commence.

**2.4** HMRC debt would be placed at the bottom of the current priority list of deductions in so much as all deductions in the priority order will take precedence and reduce the maximum rate of recovery. If the customer is already repaying a DWP overpayment then no recovery on behalf of HMRC would be taken until such time as that debt has been cleared.

**2.5** The proposed changes introduced by these regulations would be trialled and would initially apply to up to 5,000 customers with HMRC debt who have claimed a DWP benefit and who have volunteered to participate in the pilot. The trial would commence in April/May 2010. Evaluation of outcomes would be conducted in terms of take up, customer service, recovery and costs as the key deliverables.

### **3. Summary of the Department's Position**

**3.1** The transition from work to benefits is a difficult one financially, posing particular problems with regard to budgeting. In this context, the repayment of existing debt can be very difficult indeed. The change is intended to help customers who cannot afford to settle their debts with HMRC in one go and who would prefer to pay them off in instalments through voluntary deductions from their DWP benefit. These decisions will already have been made when the customer decides if they want to use this nil cost method of payment over the others on offer.

**3.2** The proposed deductions will only be put in place where both HMRC and the debtor agree that this method of recovery is appropriate. The proposed voluntary agreement is a prerequisite to recovery by deduction. The customer would be able to withdraw from this arrangement at any time.

**3.3** A selection of staff from HMRC and DWP will work alongside each other allowing them to share the relevant information to enable the trial to progress. From the start of the trial, staff from HMRC will have identified 5,000 customers with a new tax credit or self assessment debt. They will liaise with DWP staff to establish whether the customer is in receipt of a DWP benefit, if deductions could be taken and the maximum rate of those deductions.

**3.4** Correspondence will then be issued to the customer asking if they would like to participate in the trial. Participation will be on a purely

voluntary basis and the letters will make this clear. If the customer does not wish to take part in the trial or no reply is received, then no further action regarding the trial will be taken.

**3.5** If the customer replies to the correspondence stating they wish to take part in the exercise, HMRC staff will then liaise with the customer to establish the details of the recovery and agree the rate of voluntary recovery. HMRC will then pass the relevant information on to DWP who will implement the voluntary deductions from the customer's benefit.

#### **4. The Committee's View**

**4.1** We are strongly supportive of initiatives that involve joint working between DWP and HMRC, particularly in respect of improving the interface between tax credits and the benefits system. In principle, we welcome the addition of an alternative, voluntary method for people to repay tax credit overpayments and we understand the importance of measures intended to improve in/out of work transitions. However, against this background, detailed discussion with officials about the rationale and design of the trial drew out a number of concerns about how the proposed arrangements would operate in practice. Written exchanges with officials followed and we subsequently decided to take the proposals on formal referral for the preparation of this report.

**4.2** The concerns we explore are threefold, and relate to:

- the maximum amount of deduction that will be allowed;
- whether the trial will be truly voluntary, and;
- the robustness of the trial design.

These issues are covered in detail in the following sections.

#### *The Third Party Deduction (TPD) Scheme and the Maximum Amount of Deduction*

**4.3** The proposal will add another type of repayment into the existing DWP Third Party Deduction (TPD) Scheme. The TPD scheme has been in existence for many years, and it was originally introduced to safeguard the provision of essential services to people receiving income-related benefits when they fell into arrears with bills for these services (in particular, those for fuel and rent). Under the current TPD scheme, Schedule 9 of the Claims and Payments Regulations 1987 prescribes the amount for each individual arrears deduction, 5 percent of the single person's Income Support rate (currently £3.25). The total amount deductible for arrears is subject to a cap of three times that rate (currently £9.75). Benefit overpayments and Social Fund loan recovery are taken in addition to TPDs and can therefore further reduce a claimant's weekly income.

4.4 Over the years, the scope of the scheme has been extended to take in other types of debt and financial obligations (such as Child Maintenance, Refugee Integration Loans, and loans from Credit Unions, see Table 1). We have long been uneasy about these extensions and in 2008 we published an Occasional Paper on TPDs that suggested the scheme should be reviewed to ensure that it was functioning as originally anticipated.<sup>1</sup>

Table 1 – Extension of the TPD scheme

Deductions allowed	Date of introduction
<b>Mortgage payments</b>	<b>1988</b>
<b>Rent arrears</b>	<b>1988</b>
<b>Other housing costs e.g. service charges</b>	<b>1993</b>
<b>Residential accommodation charges</b>	<b>1993</b>
<b>Hostel payments</b>	<b>1991</b>
<b>Fuel charges</b>	<b>1988</b>
<b>Water charges</b>	<b>1991</b>
<b>Council tax payments/community charge payments</b>	<b>1994/1990</b>
<b>Fines, court costs and compensation orders</b>	<b>1993</b>
<b>Repayment of eligible loans, for example, from credit unions or community development financial institutions</b>	<b>2006</b>
<b>Child support maintenance/child support arrears</b>	<b>1993/2006</b>
<b>Integration loans to refugees</b>	<b>2007</b>

The Department did not agree that a review was necessary and pointed to the necessity of a TPD scheme that looked beyond simply safeguarding essential services.

4.5 According to DWP, TPDs have a two-fold purpose:

- to provide last-resort rescue where a claimant is struggling with arrears of essential household outgoings, and/or;
- to impose compliance with a social and monetary obligation.

4.6 In the case of the current proposals, it is not immediately clear to us that tax credit overpayments fit neatly into either of the above categories. This leads us to question whether the purpose of the scheme is being stretched yet further.

<sup>1</sup> SSAC (2008) Deductions from Benefit: Time for a Policy Review?  
[http://www.ssac.org.uk/pdf/occasional/TPD\\_paper\\_final.pdf](http://www.ssac.org.uk/pdf/occasional/TPD_paper_final.pdf)

4.7 Although we recognise that the TPD scheme is viewed positively by the majority of claimants and that it can provide last ditch protection for people who would otherwise be unable to manage multiple pressures on their personal finances, we believe that the maximum amount of deduction for tax credit overpayments that will be allowed under the proposed scheme has been set too high. By permitting benefit income to be reduced by the proposed amount, claimants may put their other financial obligations at risk.

**4.8 The trial will allow a maximum level of deduction for tax credit overpayments (currently £9.75 per week). This is equivalent to three times five per cent of the Income Support rate for a single person aged 25 and over. In the TPD scheme, most other types of repayment (e.g. fuel costs and council tax) are limited to a single repayment of 5 per cent, with the overall amount of deductions limited to three times five per cent. Setting the rate for tax credit overpayments so high suggests that these debts are being prioritised over other types of commitment the claimant and their household might have – including bills for essential services. There appears to be an inconsistency in approach to tax credit debt in that it is assigned the lowest priority in schedule 9, yet the default rate of deduction is three times greater than that for higher priority debts. The ability to deduct the maximum in the absence of other repayments puts claimants at risk of unacceptable hardship and further debt. DWP research illustrated that paying Social Fund debts from benefits led to increased hardship for some recipients and reinforced poverty by reducing an already meagre income further and leaving many with insufficient funds for day-to-day living.<sup>2</sup>**

4.9 In our 2008 paper, we questioned whether the current rates of repayment were appropriate. Although no individual should have more than 25 percent of their benefit deducted without consent, benefit rates are at a level that makes further income reduction problematic. Commercial lenders are prepared either to exercise forbearance or to accept token payments (e.g. £1 to 2 per week) from those in financial difficulty, especially if they are in receipt of Income Support or Jobseeker's Allowance. The Financial Services Authority's principle of 'treating customers fairly' would require commercial lenders to treat such cases involving mortgage arrears sympathetically. We can see no reason why government should behave differently

4.10 A linked issue is the range of benefits from which HMRC debts will be recovered. Generally, TPDs apply to income-related benefits: Income Support (IS), income-based Jobseeker's Allowance (JSA), income-related Employment and Support Allowance (ESA) and Pension Credit. Deductions can only be made from certain non-means-tested benefits in limited circumstances. Under the proposed regulations, a broader range of benefits will be eligible for deductions (for example,

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<sup>2</sup> Finch, N and Kemp, P., (2004) The use of the Social Fund by families with children, DWP in-house Report No 139 <http://www.dwp.gov.uk/asd/asd5/ih2003-2004/IH139.pdf>

**the list of benefits includes Carer's Allowance). We can see no reason why these benefits have been included. We were particularly concerned about the inclusion of Carer's Allowance which, while non-hypothecated, is intended for a specific purpose.**

#### *The Voluntary Nature of the Trial*

4.11 We are satisfied that the proposals presented to us made it clear that participation in the trial would be voluntary. We also recognise that it is likely that some claimants will value the offer of an additional method of repayment if they are being expected to repay the money owed while they are in receipt of benefit. However, we have some concerns that not all claimants will fully understand that the trial is voluntary and that they may sign up to recovery when it is not in their best interests to do so. While much has been done by HMRC in recent years to make the tax credits system more accessible, transparent and customer friendly, there is evidence that some claimants struggle to understand and work with the system.<sup>3</sup> In particular, overpayments have long been a problem area for claimants and administrators alike.

4.12 The Explanatory Memorandum (EM) sets out the procedure for identifying and notifying claimants who would be eligible for the trial. Eligible customers will be sent a letter from HMRC informing them of the trial and inviting them take part on a voluntary basis. Only those customers who respond will be invited to liaise with HMRC staff about the details of the debt and whether they wish to have it deducted from their benefit.

4.13 Although we recognise that there are some safeguards built into the proposed trial (e.g. it will only include claimants who respond to the letter inviting them to participate), we believe that there is still scope for confusion amongst claimants about whether it is truly voluntary. The majority of people who receive tax credits readily appreciate that they should respond to letters from HMRC. This is likely to be especially the case for those who have incurred an overpayment and are therefore likely to be sensitive to official correspondence. There is a possibility that claimants could sign up for the trial (and hence lose a significant proportion of their benefit) under the misapprehension that the deductions represent the only method for dealing with the overpayment. The letter might also discourage people from seeking independent advice on possible ways of handling the overpayment, including having it overturned or some, or all of it, written off. We understand that HMRC staff may suggest that debtors apply for a commercial loan to pay off debts and we would seek assurances that claimants would not be encouraged to sign up to the trial to avoid paying commercial interest rates, even when the trial was not in their best interests.

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<sup>3</sup> Our statutory role does not cover personal tax but we assume that the same could be said about this as well as tax credits.

4.14 Should the trial proceed as planned, it is therefore critically important that the letter – and any subsequent correspondence - makes it unequivocally clear that the trial is voluntary and recommends contact with an independent advice service before they sign up to the trial. In addition, all correspondence should include a telephone number that provides access to members of HMRC staff who have full knowledge of the trial, so that the claimant can talk through the options available to them. DWP research from 2005 found that claimants' awareness of the TPD scheme was generally low and that many claimants were often unclear about when their own TPD was set up and how much was outstanding.<sup>4</sup> As a tool for debt management and reduction, TPDs can only work where the claimant has an active understanding of the process and is offered information on the state of the debt. Participants should be able to change their mind about participating in the trial if they find that the deduction causes financial hardship after a few months and this should be clearly communicated to them.

#### *Robustness of the Trial Design*

**4.15 We are concerned that the trial, as it is currently designed, may well not provide results that are sufficiently robust for decisions about policy development to be made. The EM states that the aim of the trial is to consider whether there is a demand from customers for the option of recovery from benefits and also to estimate whether the scheme is cost effective. The aim is to use a sample of approximately 5,000 participants who will be eligible for the trial and who will be invited to participate via a letter from HMRC. Those who decline the opportunity to participate in the trial will act as the 'control group'. The outcomes that the trial will assess are: take-up, customer service, recovery and costs.**

**4.16 The EM provides no detail on evaluation methodologies in terms of measuring costs and customer service etc. During discussions at our meeting with officials in November, it became apparent that officials had not estimated the minimum number of participants who would need to take part in order to make the evaluation meaningful. We are also unclear as to how those who do not take part will be followed up in order to understand their reasons for non-participation. They do not, in any case, represent a robust 'control group'. Although officials pointed to this proposed 'trial' being different in design and purpose from the sorts of pilots for proposed measures that we have scrutinised in the past, we nonetheless believe that it is essential that any trial is designed in such a way as to enable robust and objective measurement.**

**4.17 From our previous scrutiny of regulations and our knowledge of DWP generally, we are aware that there is considerable expertise in terms of developing appropriate evaluation strategies. The EM makes**

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<sup>4</sup> Farrell, C., Brown R. and O'Connor W., (2005) *Perspectives of Social Fund loans and third party deductions - A qualitative study of recipients*, Research Report No. 240

<http://www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep240.pdf>

**no mention of whether officials with relevant research expertise have been (or will be) involved in the trial. We would urge DWP/HMRC to ensure that the evaluation of the trial is carefully designed and that they share the evaluation strategy with SSAC prior to any trial taking place.**

## 5. Summary of Responses to the Consultation

**5.1** In response to our consultation, respondents focused upon four main areas of the proposed pilot regulations: The rate of deductions, the scope of the scheme, financial hardship and HMRC debt recovery and communicating the scheme to claimants.

**5.2** Overall, respondents were generally positive about the introduction of a new payment option that may be attractive to some DWP customers. They also welcomed the fact that the scheme is designed to be voluntary. In terms of the Third Party Deductions scheme itself, respondents noted that it was a useful scheme that allowed benefit claimants to meet their most pressing financial obligations in relation to essential services. One respondent noted that that the facility for direct deductions from benefits for debts and ongoing commitments, has been, and remains essential for many benefit claimants.

### *The Rate of Deductions*

**5.3** Several respondents noted that the proposed rate of deductions allowable under the trial was high, especially in relation to other deductions.

**5.4** Respondents argued that as the benefits from which deductions can be made are set at subsistence levels, then any deductions can lead to claimants living at below subsistence levels. The larger the range of debts that can be recovered from benefits, the greater the risk that claimants will be left with insufficient money to meet their basic needs. One respondent noted that they frequently come into contact with claimants who have just £30 per week to buy food and other essentials.

### *The Scope of the Scheme*

**5.5** A recurring theme from the consultation responses was a concern with the scope of the scheme. The list of benefits from which HMRC debts could be collected is broader than that from which debts for fuel, housing arrears and council tax can be collected. These debts could be seen as higher priority than the repayment of HMRC debts, as non-payment could ultimately lead to loss of housing or fuel connection. Several respondents suggested that the TPD scheme should be used to repay priority debts, for example to help keep people from being evicted from their homes, rather than repaying debts to government.

**5.6** Particular concern was expressed about the proposed extension to include Carer's Allowance or contributory benefits where no means-tested benefit is in payment. This deduction would effectively become the highest priority – putting it above arrears of housing or fuel. For example, an Incapacity Benefit recipient in rent arrears cannot have their arrears deducted from their benefit. However, the proposed

arrangements would see HMRC debts deducted from their benefit, which would reduce the amount of income that they would then have from which to repay their rent arrears.

#### *Financial Hardship and HMRC Debt Recovery*

**5.7** Respondents noted that it is vital that recovery from benefits is seen as only one option for claimants. One respondent was concerned that the availability of TPDs from benefits might be seen as an 'easy option' which would reduce the need for HMRC to work out a more suitable repayment option or to consider writing-off the debt. This ties in with SSAC Members' concern that repayment from benefits should not be viewed as the default option, and that all other options should have been properly considered first and, where appropriate, eliminated.

**5.8** Several respondents highlighted that HMRC Code of practice 26 (COP 26) contains information for claimants who are suffering hardship. Overpayments can be written-off in cases of extreme hardship or suspended until a claimant's circumstances improve. Given that the regulations are intended for people on means tested benefits, it is possible that many claimants would have strong cases for debts to be written-off.

#### *Communicating the scheme to claimants*

**5.9** Respondents noted the importance of clear communications with claimants in ensuring that they realise they have a choice over signing up to the trial. One respondent suggested that the letter inviting claimants to participate in the trial could also provide an explanation of the tax credit overpayment – something that HMRC does not routinely provide at present.

**5.10** One respondent highlighted the need for HMRC communications with customers to be clear and include sufficient information to allow a claimant to make an informed decision about whether to opt into the trial. The invitation letter to eligible claimants should make it clear that the trial is voluntary and that HMRC has the option to write-off debts in cases of hardship. It should also set out clearly how claimants can contact HMRC for further information about the trial and the assessment of hardship and that claimants can make direct repayment over varying periods of time or via a change in tax code. Another respondent noted that the letter should suggest that claimants with other debts should seek independent advice to discuss which option is best suited to their financial position. A respondent noted that HMRC should ensure that adequate processes are in place for claimants who move off benefits and into work and who therefore need to make other arrangements for repayment directly to HMRC.

## 6. The Committee's Conclusions

**6.1 We welcome this further evidence of joint working between DWP and HMRC, but we have some serious concerns about the detailed workings of the proposed trial, which we believe should be addressed before it is commenced. In addition, a more thorough and sophisticated evaluation of the trial is called for in order to inform any further development and roll-out of the proposed scheme.**

**6.2 Offering an additional repayment option is a positive move, but one which we believe has been compromised by the changes to the current TPD arrangements that it is proposed it should incorporate. The advent of these proposals has caused us to return to consider the purpose and structure of the TPD scheme and to question in particular, its use as a debt recovery vehicle and its interplay with the Government's anti-poverty objectives. We shall consider offering further advice on these issues in the coming months.**

**6.3 We urge a moderate and cautious approach to HMRC debt recovery via TPDs in order to reduce the risk both of individual hardship and of other debts accruing as benefit income is reduced. As far as possible, the trial should only involve those for whom debt recovery via benefit is the most appropriate option.**

**6.4 Finally, we are acutely aware that it is the voluntary advice sector (in particular, Citizens Advice and welfare rights services), that bear the brunt of the demand for debt management information and support. In the circumstances, ongoing engagement with these stakeholders for the lifetime of the trial, and beyond, would seem to us to be a vital element in ensuring that the scheme is working in a fair, transparent and effective manner and in a way that offers real advantages to the benefit claimant, as well as securing a repayment stream for HMRC.**

## 7. Recommendations

**We agree that the trial should proceed, subject to the inclusion of the following modifications and safeguards:**

**7.1 The maximum amount of benefit that can be deducted for an overpayment owed to HMRC should be reduced to 5 percent of the Income Support rate for a single person aged 25 and over (currently £3.25). This would bring HMRC debt recovery into line with the majority of other deductions from DWP benefits.**

**7.2 The list of benefits from which HMRC debt recovery repayments can be made should be brought into line with the current list of benefits from which priority debts can be deducted.**

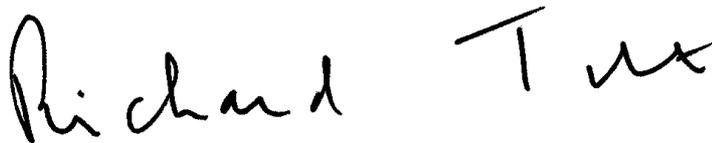
**7.3 The communications between HMRC officials and claimants should be carefully designed to ensure that, as far as possible,**

claimants are fully able to understand the voluntary nature of the trial and the impact on their income of signing up for the trial. They should also be recommended to seek independent advice.

7.4 Safeguards should ensure that claimants are fully aware of other repayment options and also the opportunity to have debts written-off in cases of hardship. All options open to claimants should be considered fully and deductions from benefits should not be viewed as the default option.

7.5 Officials should reconsider the design of the trial to ensure that it provides robust evidence for the future development of the policy. The current design may well provide insufficient evidence for taking informed decisions on rolling out the scheme.

Yours sincerely,

A handwritten signature in black ink that reads "Richard Tilt". The name "Richard" is written in a cursive style, and "Tilt" is written in a more stylized, slightly slanted cursive.

Richard Tilt  
SSAC Chair

## APPENDIX 1

### LIST OF RESPONDENTS TO THE CONSULTATION EXERCISE (in order of date received)

1. **Gerry Smalley**
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5. **Niki Goss, Wandsworth and Merton Law centre**
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Date 9/11/2009

**Ms Gill Saunders**  
**Secretary**  
**Social Security Advisory Committee**  
**Level 3**  
**Adelphi**  
**1-11 John Adam Street**  
**London WC2N 6HT**

Dear Gill,

**The Social Security (Claims and Payments) Amendments 2010**

When I attended the Social Security Advisory Committee on 5 November 2009 a question was raised by a member of the Committee as to the maximum voluntary recovery of HMRC debt which could be made from the prescribed benefits:

Income Support;  
Jobseeker's Allowance (Income Based);  
Jobseeker's Allowance (Contributory);  
State Pension Credit;  
State Retirement Pension;  
Employment Support Allowance (Income Related);  
Employment Support Allowance (Contributory); and  
Carer's Allowance.

You will remember I explained that the maximum deduction would be £9.75 as set out in para 3.3 of the Explanatory Memorandum. It was pointed out to me that the actual draft Regulations would only allow for a maximum recovery of £3.25 per week. This of course was correct; there had been a drafting error. The draft Regulations would only have allowed a maximum deduction of £3.25 rather than the intended £9.75. I spoke to our lawyers who corrected the draft Regulations.

**I have attached an amended set of Regulations which allows for the correct maximum deduction of £9.75 per week. May I apologise for the error and any inconvenience that it has caused to the Committee and your team. I am grateful to the Committee for spotting this error and bringing it to my attention.**

**Yours sincerely**

**Laurie Cairns  
Financial Policy**

**Direct Line: 0207 449 5796**

EXPLANATORY MEMORANDUM  
TO THE SOCIAL SECURITY ADVISORY COMMITTEE  
By the Department for Work and Pensions

**The Social Security (Claims and Payments)  
Amendment 2010**

**1. Purpose of the change.**

- 1.1 The change modifies the Social Security (Claims and Payments) Regulations 1987 to support the trialling of voluntary recovery of Her Majesty's Revenue and Customs (HMRC) tax credit and self assessment tax debt from ongoing Department for Work and Pensions (DWP) benefit, where the customer wishes to use that repayment method.
- 1.2 Regulation 2(2)(b) inserts a paragraph 7E into Schedule 9 to the Claims and Payments Regulations to enable the Secretary of State to make deductions from specified benefits and make payments on behalf of the claimant to the Commissioners for HMRCs, for the purpose of satisfying tax credits overpayment debts or self assessment tax debts owed by the claimant.
- 1.3 The change is intended to help customers who cannot afford to settle their debts with HMRC in one go and who would prefer to pay them off through voluntary deductions from their ongoing DWP benefit. This may be an attractive option to those who do not have access to direct debit facilities and would be reliant on other, possibly expensive, forms of repayment or credit.
- 1.4 These regulations will have no impact on the amount of the debt or the rate of the repayment. These decisions will already have been made when the customer decides if they want to use this nil cost method of payment over the others on offer.

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

- 2.1 None.

**3. Legislative Context**

- 3.1 The transition from work to benefits is often a difficult one and can involve particular issues for budgeting and debt repayment. This change would provide an easy repayment option for those on DWP benefits with debts to HMRC, should they wish to use it.

- 3.2 This change will allow the recovery of HMRC debt from the following benefits – Income Support, Jobseeker’s Allowance (Income Based), Jobseeker’s Allowance (Contributory), State Pension Credit, State Retirement Pension, Employment Support Allowance (Income Related), Employment Support Allowance (Contributory) and Carer’s Allowance.
- 3.3 The maximum rate of recovery to be 3 x 5% of the Income Support rate for a single person aged 25 and over (currently 3 x £3.25 = £9.75). The maximum rate will be reduced by the existence of any other 5% deductions and will also be subject to the overall maximum for deductions. It will also be possible to set the rate of deduction at any rate below the maximum level. Rates will be agreed voluntarily between HMRC and the customer before the debt is referred to DWP.
- 3.4 HMRC debt will be placed at the bottom of the current priority list of deductions in so much as all deductions in the priority order will take precedence and reduce the maximum rate of recovery. If the customer is already repaying a DWP overpayment then no recovery on behalf of HMRC will be taken until such time as that debt has been cleared.
- 3.5 Deductions will only be put in place where both HMRC and the debtor agree that this method of recovery is appropriate. The voluntary agreement is a prerequisite to recovery by deduction. The customer can withdraw from this arrangement at any time.
- 3.6 There is anecdotal evidence that some customers liked the ability to repay in work benefit overpayments from their out of work benefits under the pre-tax credit regime of Family Credit.
- 3.7 In summary a customer who has a tax credit overpayment or self assessment tax debt will have the option to have voluntary deductions made from their ongoing DWP benefits.

#### **4. Territorial Extent and Application**

- 4.1 This instrument applies to Great Britain.

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

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

#### **6. Policy background**

##### ***What is being done and why?***

- 6.1 A selection of staff from HMRC and DWP will work alongside each other allowing them to share the relevant information to enable the trial to progress.

- 6.2 From the start of the trial staff from HMRC will have identified 5,000 customers with a new tax credit or self assessment debt. They will liaise with DWP staff to establish whether the customer is in receipt of a DWP benefit, if deductions could be taken and the maximum rate of those deductions.
- 6.3 Correspondence will then be issued to the customer asking if they would like to participate in the trial that will commence in April/May 2010. Participation will be on a purely voluntary basis and the letters will make this clear.
- 6.4 If the customer does not wish to take part in the trial or no reply is received, then no further action regarding the trial will be taken.
- 6.5 If the customer replies to the correspondence stating they wish to take part in the trial HMRC staff will then liaise with the customer to establish the details of the recovery, and agree the rate of voluntary recovery.
- 6.6 HMRC will then pass the information on to DWP who will implement the voluntary deductions from the customer's benefit.
- 6.7 The change introduced is intended to provide an alternative payment method to around 5,000 joint customers, at a time when many of them are experiencing great financial pressure.

***Who will these changes apply to?***

- 6.8 The changes introduced by this instrument will initially apply to up to 5,000 customers with HMRC debt who claimed a DWP benefit and who have volunteered to participate in the pilot.

***Review of these provisions***

- 6.9 Cases will be reviewed to stop deductions, start deductions or amend the rate of deduction when the customer ceases to receive a benefit, starts to receive a different benefit, other deductions are implemented, the overpayment is fully recovered, the customer requests a reduced deduction rate or the customer no longer wishes to repay by this method.

**7. Consultation outcome**

- 7.1 There has been no formal consultation on this change but it was mentioned to customer representative groups at the DWP Policy and Strategy Forum who given the voluntary nature of the scheme, could envisage no problems and who showed interest in the outcome of the trial.

## **8. Guidance**

- 8.1 Guidance on the changes to Regulations will be issued to all staff involved in the trial.
- 8.2 Staff not directly involved will be made aware of the changes so they can handle customer enquiries.

## **9. Impact**

- 9.1 There is no impact on business, charities or voluntary bodies.
- 9.2 The impact on the public sector is negligible or low as it will primarily involve changes to computer programmes and changes to the provision of advice.  
These changes will be absorbed into existing resources within both departments.
- 9.3 A full impact assessment has not been prepared for this instrument.

## **10. Equality**

- 10.1 An Equality Impact Assessment has been undertaken in order to assess these proposals against the Department's disability, race and gender equality duties, under the Disability Discrimination Act 2005, the Race Relations Amendment Act 2000 and, under the Sex Discrimination Act 1975, as amended by the Equality Act 2006.
- 10.2 The changes will be equally applied to all customer groups. We have considered the potential impacts on the different customer groups to include;
  - Age
  - Disability
  - Gender
  - Race
  - Religion
  - Sexual Orientation
- 10.3 It is not envisaged that the change will adversely impact any specific customer groups.

## **11. Regulating small business**

- 11.1 The legislation does not apply to small business.

## **12 Monitoring & review**

- 12.1 The Department will consider any advice or recommendations made by the Social Security Advisory Committee.

12.2 The Department will monitor the effectiveness of this change through performance data and customer feedback. The results of the trial will be analysed against customer service, value for money and equality.

### **13. Contact**

13.1 Laurie Cairns at the Department for Work and Pensions (Tel: 0207 449 ) email: [laurie.cairns@dwp.gsi.gov.uk](mailto:laurie.cairns@dwp.gsi.gov.uk), or  
Bleddyn Goodridge at the Department for Work and Pensions (Tel: 0207 449 5798 ) email: [bleddyn.goodridge@dwp.gsi.gov.uk](mailto:bleddyn.goodridge@dwp.gsi.gov.uk) can answer any queries regarding this change.

# Equality Impact Assessment

**Name of strategy/project/policy/process/function:**

**To enable recovery of Her Majesty's Revenue and Customs (HMRC) small debt from ongoing Department for Work and Pensions (DWP) benefits on voluntary basis.**

## Introduction

- 1 A closer working initiative between the Department for Work and Pensions and Her Majesty's Revenue and Customs has identified the scope for recovering HMRC small debt from ongoing DWP benefits. HMRC small debt includes overpayments of tax credits and personal tax debts under the value of £1,000.00.
- 2 A feasibility study was commissioned and endorsed by both Departments' Ministers. A team was tasked with exploring where and how we can best work together on joint debt recovery.
- 3 The team considered a range of ideas on joint recovery of debt. They concluded that offering HMRC customers the voluntary option of paying their proposed Tax Credit overpayment and Self Assessment debt by deductions from certain Social Security benefits would both improve customer service by delivering a new cost effective payment method and increase revenues to the Exchequer.
- 4 In (April /May) 2010 HMRC will start to trial the recovery of Working Tax Credit through deductions from certain DWP benefit payments. A trial for deductions of self assessment debts will follow shortly afterwards.
- 5 The trial is designed to provide a further simple nil cost payment option to those owing money to HMRC who wish to repay their debt by deductions from ongoing benefit payment. Recovering the debt in this way will be subject to the taxpayer's agreement. Both Departments will carefully evaluate the trials and the information obtained will be used to decide whether this should become a permanent payment option.
- 6 The trials will be used to assess the effectiveness of collecting HMRC debts via deductions from certain DWP benefit payments and test customer response to this method of payment.

- 7 For tax credits, we will select a sample of debtors with overpayments not recovered through deductions from ongoing awards that are identified as being in receipt of certain DWP benefit payments. We estimate that 20,000 debtors are likely to fall into this category and a sample of 5,000 cases from this pool will be used for the trial.
- 8 These regulations permit DWP to collect HMRC's debt in this way and will have no impact on the amount of the debt to be recovered or the rate of the repayment. These decisions will already have been made before the customer decides if they want to use this simple and convenient new option.
- 9 This Impact Assessment has been undertaken in order to assess these proposals against the Department's disability, race and gender equality duties, under the Disability Discrimination Act 2005, the Race Relations Amendment Act 2000 and, under the Sex Discrimination Act 1975, as amended by the Equality Act 2006.
- 10 The Department is required to give due regard to the following duties when making a decision on policy:

Disability Equality Duty

Race Equality Duty

Gender Equality Duty

## **Purpose and aims of the proposal:**

### ***What is DWP proposing?***

- 11 We are proposing to make available on a voluntary basis an additional, straight forward and free alternative method for repaying HMRC tax credit or self assessment debt.

### ***Why are we doing this?***

- 12 We are doing this to improve customer service and choice. For example, for a number of different reasons some customers may not wish or, be able, to pay by cheque or direct debit, So this will provide them with a simple to use alternative method of repaying their debt which will not cost them anything.

### ***What do we want to achieve?***

- 13 We wish to improve customer service by giving the customer greater choice.

### ***Who is it for?***

- 14 This option will be available to DWP customers in receipt of prescribed benefits<sup>5</sup> who have an HMRC tax credit or self assessment debt.

### ***How will it be put into practice?***

- 15 We will be running a trial to establish if there is sufficient customer demand. If there is, and it is cost effective we will consider introducing this as a permanent option. **(See Annex 1)**.

### **What information and/or data (evidence) has been obtained to impact assess this proposal?**

- 16 There is anecdotal evidence that since the replacement of the DWP in work benefit (Family Credit) with the tax credit regime, a number of people have missed the ability for any overpayment of in work benefit to be recovered from their ongoing income-related social security benefits, particularly where they cease to be in employment. Previously, overpayments of Family Credit could be recovered by deduction from ongoing DWP benefits in the same way as other overpayments. Many customers found this an easy means of repaying their overpayment.

### **Who will benefit mainly from this policy?**

- 17 The change is intended to help all customers who cannot afford to settle their debts with HMRC in one go and who would prefer to pay them off through voluntary deductions from their ongoing income-related DWP benefit. For example, this may be an attractive option to those who do not have access to direct debit facilities and would be reliant on other, possibly expensive, forms of repayment or credit.

### **Impact of the proposal or change**

- 18 At this stage, we have not identified any potential direct or indirect adverse impact on any equality strand, and we have not been able to find any evidence of any disproportionate effect as a result of these proposals. Evaluation of the trial will provide statistical evidence to enable this to be more fully evaluated. This will include looking at whether this nil cost repayment option for those on certain DWP benefits should they wish to use it is a viable option in terms of take-up and the resources required by each department.

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<sup>5</sup> – Income Support, Jobseeker's Allowance (Income Based), State Pension Credit and Employment Support Allowance (Income Related).

## **Does the proposal have a positive impact on any group?**

- 19 The trial will be available to all groups regardless of race, gender and disability. Joint DWP and HMRC customers will benefit from a nil cost repayment option for tax debts should they wish to use it. This option will likely be very attractive to those who do not have a bank account. Those from disadvantaged groups are less likely to have a bank account than others.
- 20 We have been unable to establish how many customers of ethnic minority origin will be affected by the change because neither Department collects such information.

## **Next Steps – monitoring and evaluation**

- 21 We have already engaged with customer representative groups regarding this trial. They will be fully involved in the detailed design of the trial which will include service standards, monitoring and evaluation to ensure that if the trial is to become a permanent option, it is fully compliant with DWP's diversity and equality issues.

## **Contacts**

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