Management of Customer Overpayments and Recovery of Customer Debt

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1. OVERVIEW AND CONTEXT

1.1. Introduction

1. These guidelines set out the Department's current procedures and practices in the management of customer overpayments and the recovery of debt.

1.2. Legislation

2. References in this document to a section of the Act or the Act relate to sections of the Social Welfare (Consolidation) Act 2005, as amended.

3. The relevant legislation is the Act, in particular, Parts 11 (relating to Overpayments, Repayments, Suspension of Payments and other matters) and 11A (relating to the procedures for attachment to earnings, financial instruments and bank deposits).

4. References in this document to regulations relate to Part 9 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 - S.I. 142 of 2007 (as amended) prescribes certain matters relating to debt recovery which are addressed in these Guidelines.

5. References to the relevant legislation is set out in Appendix1.

1.3. Principles underpinning these guidelines

6. Good debt recovery practice is based on a number of underpinning principles. Each staff member has a responsibility to apply these principles in working with debtors and with those who support them. The Department’s Customer Charter requires that all customers must at all times be treated equally and fairly. Staff members must be respectful in when dealing with customers, particularly where it concerns matters covered by these guidelines.

1.4. Overpayments not covered by this policy

7. Overpayments that arise in the course of the commercial activities of the Department or in the supply of services to the Department are not covered by this Policy.

8. Neither do they relate to overpayments made to members of staff arising from pay, pension, travel and subsistence, or related payments.

9. The management of debt due to the Department and Social Insurance Fund under statutory provisions for redundancies and insolvencies are provided under separate guidance and procedures.
10. This guidance does not extent to contractual relationship or service level agreements with corporate entities (such as local development companies, Community Employment scheme sponsors, community organisations, companies providing employment, activation or related services).

1.5. **Role of managers and supervisory staff**

11. Managers and supervisory staff members must ensure that these guidelines are applied as set out.
2. DEFINING OVERPAYMENTS AND DEBTS

2.1. Overpayments and debts

12. A debt is any money owed to the Department arising from an overpayment to a person. A debt may consist of an overpayment or a number of overpayments. Where recovery is being sought for moneys owed to the Department, the amount sought should be the total debt outstanding and not just the amount of the individual overpayment.

13. Where a debt consists of a number of overpayments any recovery received will be offset against the oldest overpayment first. The age of the overpayment is determined by the date of its entry on the Departmental systems.

2.2. How do Overpayments arise?

14. Overpayments can arise on foot of a revised decision by a Deciding Officer or a Designated Person and in certain other circumstances.

2.3. Revised Decisions by Deciding Officers/Designated Persons

15. A revised decision means any decision to increase, decrease, allow or disallow a social welfare payment which is made after a previous decision on a claim.

16. An overpayment is created where a Deciding Officer or a Designated Person makes a revised decision under Section 302 or Section 325 of the Social Welfare Consolidation Act, 2005 (as amended) and the effect of the decision is to reduce a person's entitlement retrospectively.

In deciding whether or not the decision should have retrospective effect, Deciding Officers/Designated Persons are required to have regard to the facts and circumstances relevant to the decision on entitlement. In accordance with section 335 of that Act, the person concerned is liable to repay the amount overpaid to the Department.

2.4. Overpayments not arising from Deciding Officer/Designated Person decisions

17. The liability to repay overpayments which arise other than as a result of a Deciding Officer/Designated Person decision is contained in sections 336, 336(a) and 336(b) of the Social Welfare Consolidation Act 2005 (as amended).

18. Examples of this category of overpayment are:
• Double cashing e.g. a person reports that s/he did not receive a payment due, a duplicate is issued and both payments are cashed by the person.

• Impersonation e.g. a person makes a claim assuming the identity of another person

• Cashing after death e.g. a relative continues to cash a pension or allowance after the death of the person entitled to it.

2.5. Overissues – S.336

19. Overissued entitlement payments may occur due to system technical difficulties or payment faults. The customer will not have been at fault but will be aware of the additional payment received. As with other debts, customers are obliged to repay any sum overpaid.

2.1. Debt Recovery

20. Article 243 of the Regulations impose a duty on the Minister to make every effort to recover overpayments in full taking into account a number of factors.

21. The legislative framework provides the Department with a number of methods to recover debt and also places an obligation on the Department and Staff members to follow a prescribed procedure. The key elements of debt recovery are:

• Application of a clear and consistent methodology for determining that an overpayment has occurred and that a recovery is due on foot of this

• Application of the legislative provisions that provide for the recovery of debt

• Ensuring that the debt is properly recorded and activated on DRAS

• That a debt recovery plan is put in place with the debtor’s input and agreement at the earliest opportunity

22. The financial and other circumstances of the debtor and their family is taken into account in a structured and equitable manner
3. DEBT RECOVERY

3.1. Underpinning legislative framework

23. The Act provides that where a person has received money from the Department to which they were not entitled to receive, that person is liable to repay the amount of the money received.

24. Recovery procedures are contained in Part 9 of the Act and in the Regulations. The Act also provides for the recovery of debts from the estates of deceased persons, for recovery by deduction from ongoing payments, and for recovery by Notice of Attachment of earnings and financial assets (Part 11A of the Act).

3.2. Methods to recovery

25. The Regulations provide that a number of methods, or a combination of methods, may be used to recover debt:

- deduction from ongoing and future social welfare payments
- withholding arrears of social welfare payments
- offset of other entitlements
- payment of a lump sum
- regular or instalment payments by the person
- Notice of Attachment;
- settlement of the estate of a deceased customer.

26. A combination of the above methods can be considered, particularly where a debt is being recovered over a prolonged period of time and/or where a customer moves between social welfare schemes or discontinues receiving social welfare payments, and in cases where the debtor is in a position to make a lump sum payment followed by installment payments.

3.3. Restrictions

27. In general, where a customer may have had an entitlement to a payment other than the scheme where an overpayment arose due to ineligibility of some nature, the payments due under that other scheme can be offset to reduce or eliminate an overpayment, provided they cover some or all of the same time period. However, there is a restriction on how such offsets can be applied (s.342A).
3.4. **Offset of entitlement is not possible to repay a fraud overpayment**

28. S.342A provides that where an overpayment is assessed as arising from a revised decision made under s.302(a); s.319(a) or s.325(a) (a fraud related decision) any entitlement arising under another scheme during the period to which the fraudulent overpayment applies, cannot be paid.

29. Certain scheme payments are made in respect of duties and benefits to persons other than the person receiving the payment *(in cases where payments are made to adults in respect of children)*. Such payments cannot be reduced to offset a debt owed by another person. This does not preclude a debtor offering a voluntary offset of such a payment – in general offers of this nature by a debtor should be avoided and notified in advance to CDU. The schemes to which such restrictions apply are:

3.5. **Recovery from ongoing and future social welfare payments**

30. Where a debtor is in receipt of an ongoing social protection payment, any outstanding debt, irrespective of scheme of origin, is recoverable by making ongoing deductions from the current and ongoing payments – note restrictions above.

31. The Act provides that, in the absence of engagement by the debtor, the Department can impose a deduction of up to 15% of the weekly personal rate of assistance or benefit payable to a customer for the purposes of the recovering a debt.

3.6. **Withholding arrears due**

All or part of the arrears due to a debtor may be withheld and offset to repay any debt owed to the Department

**RECOVERY WHERE THE DEBTOR DIES**

3.7. **General provisions**

32. Debts which have not been recovered in full at the time of death of a debtor can be recovered from the deceased debtor’s estate. A debt may also arise during the settlement of a deceased customer’s estate where it is determined that the customer had not adequately declared their means during the time they received an assistance payment (means tested payment) during their lifetime.

33. The Act provides that any person who is getting a social assistance payment must notify the Department of any increases in their means. In general, this notification must be provided within a period of three months of the increase in means occurring.
34. If, subsequent to the death of a customer, it comes to light that not all of the deceased’s means were properly disclosed, the Department has powers to recover any monies overpaid from the estate of the deceased.

35. Recovery of any overpayment assessed and for which a revised decision is made is sought from the assets of the estate allowing for reasonable funeral and legal expenses for which the estate is liable.

### 3.1. Death of customer receiving pensions

Debt Units in Sligo manage all operational matters in relation to the settlements of the estates of deceased pensioners whose pensions are administered by SWS Sligo. Debts which have not been recovered in full at the time of death of a debtor can be recovered from the deceased debtor’s estate.

### 3.1. Death of debtor – non-pension payment

36. Estates of deceased debtors, whether debtors were making repayments or not at the time of death, have a continuing legal obligation to repay the overpayment (S.335 of the Social Welfare Consolidation Act 2005). The Department has a responsibility to ensure the recovery of the debt is pursued.

### 3.2. Obligations of Personal Representatives

37. Under S.339, the Personal Representative of a deceased person, who was at any time in receipt of a means-tested payment, is obliged to give notice to the Department of their intention to distribute the assets of the estate and to provide a schedule of the assets.

38. The notifications and schedules must be provided at least three (3) months before the planned distribution of the assets of the estate. The notification is usually done by the Solicitor representing the estate.

39. The Personal Representative must comply with the above obligations set out in the Act. In the absence of co-operation, the person may face civil proceedings under the Act to repay the debt.
Appendix 1

SI 142/2007/PART 9

OVERPAYMENTS

Provision of information on overpayments.
242. Where an overpayment has been assessed against a person, in accordance with Part 11 of the Principal Act, that person shall be –

(a) informed of the factors which gave rise to the overpayment,

(b) informed of the amount of overpayment,

(c) informed of the proposed method of recovery, and

(d) afforded an opportunity to bring to the notice of the Department 1 –

(i) any view he or she may wish to offer on the assessment of the overpayment,

(ii) any view he or she may wish to offer on the proposed method of recovery of the overpayment, and

(iii) any facts or circumstances which he or she considers relevant to the recovery of the overpayment,

before any decision is made regarding the recovery of the overpayment.

Recovery of overpayment.
243. The Minister 2 shall make every effort to recover overpayments in full having regard to the provisions of these Regulations and shall, subject to these Regulations, determine the method and rate of repayment and such repayment may take the form of lump sum payment or periodic payments or both.

Determining the method of recovery.
244. When determining the method and rate of repayment of an overpayment, the Minister 3 shall take account of –

(a) the amount of the overpayment and the circumstances in which it arose, and

1 Substituted by Art 4(b) S.I. 498 of 2011

2 Substituted by Art 4(c) S.I. 498 of 2011

3 Substituted by Art 4 (d)(i) S.I. 498 of 2011
(b) any facts or circumstances relevant to the recovery which have come to the notice of the Department 4.

Recovery of overpayment by means of deduction from social welfare and other payments

245. (1) Where a person is required in accordance with section 335, 336, 337 or 338 to repay an amount of any benefit, assistance, working family payment 5, continued payment for qualified children or back to work family dividend 6 (in this article referred to as the ‘relevant benefit’) and that person is or becomes entitled to—

(a) a payment of any relevant benefit, or

(b) a payment under—

(i) section 34A or 36,

(ii) regulations made under section 34, 34A, 35 or 37,

(iii) section 32 of the Redundancy Payments Act 1967, or

(iv) section 6 of the Protection of Employees (Employers’ Insolvency) Act 1984,

recovery of the relevant benefit may, without prejudice to any other method of recovery, take the form of—

(i) withholding all or part of—

(I) any arrears of any relevant benefit,

(II) any grant or gratuity under Part 2 or Part 3 of the Principal Act, or

(III) any payment specified in paragraph (b), to which that person is or becomes entitled,

(ii) making deductions from ongoing payments of any relevant benefit to which that person is or becomes entitled, having regard to the total amount to be recovered and the person’s ability to repay, or

(iii) any combination of the methods specified in paragraphs (i) and (ii).

(2) Where, in accordance with sub-article (1)(ii), repayment of any relevant benefit is made by way of weekly deduction from the weekly rate of any benefit or assistance, it shall not, without the prior written consent of the person liable to repay that amount, exceed the percentage of such weekly rate of benefit or assistance specified in section

4 Substituted by Art 4(d)(ii) S.I. 498 of 2011

5 Substituted by s.8 and Sch. 1 SWA 2017

6 Sub-article (1) amended by art. 4 and Sch. to S.I. No. 180 of 2015
(3) In this article–

‘assistance’ has the meaning assigned to it in section 2(1);

‘benefit’ has the meaning assigned to it in section 2(1);

‘back to work family dividend’ means back to work family dividend under Part 7A of the Principal Act;\(^7\)

‘working family payment\(^8\)’ means “working family payment\(^9\)” under Part 6 of the Principal Act;

‘continued payment for qualified children’ means continued payment for qualified children under Part 7 of the Principal Act;

‘weekly rate’ has the meaning assigned to it in section 341(7B).\(^10\)

**Reduction or cancellation of sum to be repaid.**

246. (1) The amount of an overpayment to be repaid may be reduced or cancelled where the overpayment arose because of—

(a) a failure by the Department\(^11\) to act within a reasonable period on information which was provided by or on behalf of the person concerned, or

(b) an error by the Department\(^12\),

and the person concerned could not reasonably have been expected to be aware that a failure or error had occurred.

(2) The amount to be repaid shall, where the facts or circumstances warrant, be reduced to the amount accepted in settlement.

(3) Other than in the case of a person to whom section 342A applies, the amount of an overpayment to be repaid may be reduced by the amount of any relevant benefit (within the meaning of article 245(1)) to which the person would otherwise have been entitled in the period to which the overpayment relates had he or she not been in receipt of the relevant benefit which gave rise to the overpayment.\(^13\)

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\(^7\) Definition of ‘back to work family dividend’ inserted by art. 4 and Sch. to S.I. No. 180 of 2015

\(^8\) Substituted by s.8 and Sch. 1 SWA 2017

\(^9\) Substituted by s.8 and Sch. 1 SWA 2017

\(^10\) Art. 245 substituted by S.I. No. 511 of 2014

\(^11\) Substituted by Art 4(e) S.I. No. 498 of 2011

\(^12\) Substituted by Art 4(e) S.I. No. 498 of 2011

\(^13\) Sub-art. (3) substituted by S.I. No. 511 of 2014
(4) In determining whether repayment of an overpayment is to be reduced or cancelled, account shall be taken of any omission made by or on behalf of the person concerned, which contributed in whole or in part to the overpayment being made.

(5) The repayment of an overpayment may be cancelled where there is no reasonable prospect of securing repayment in whole or in part.

**Proceedings for recovery of overpayment.**

247. These Regulations are without prejudice to any right of the Minister to recover overpayments by proceedings taken under statute or simple contract debt in any court of competent jurisdiction.

**Obligations of personal representatives.**

248. These Regulations do not affect the obligation of the personal representative of a deceased person who was at any time in receipt of a social assistance payment to –

(a) give notice of his or her intention to distribute the assets of that person and to furnish a schedule of such assets at least 3 months before commencing to distribute the assets,

(b) ensure that sufficient assets are retained to repay any assistance overpaid, and

(c) be personally liable to repay the amount of an overpayment outstanding as a result of failure to meet these obligations.

**Decisions as to the application of this chapter.**

249. All questions which arise in the application of this Part shall be determined by an officer of the Minister.  

**PART 9A**

**RECOVERY OF CERTAIN BENEFITS AND ASSISTANCE**

**Definitions**

249A. In this Part—

‘Board’ has the meaning given to it in section 343L;

‘compensator’ has the meaning given to it in section 343L;

‘injured person’ has the meaning given to it in section 343L;
‘personal injury’ has the meaning given to it in section 343L;

‘recoverable benefits’ has the meaning given to it in section 343L;

‘revised statement of recoverable benefits’ has the meaning given to it in section 343L;\(^\text{17}\)

‘statement of recoverable benefits’ has the meaning given to it in section 343L.

Application for statement of recoverable benefits

249B. An application by a compensator or the Board for a statement of recoverable benefits under section 343P shall be made to the Minister—

(a) in the form for the time being approved by the Minister, or

(b) in such other manner as the Minister may accept as sufficient in the circumstances,

and such form or manner may include an application made by electronic means or in electronic form.

Information to be given when making application for statement of recoverable benefits

249C. For the purposes of an application for a statement of recoverable benefits under section 343P, a compensator or the Board, as appropriate, shall provide to the Minister—

(a) the following information relating to the identity of the injured person and benefits received by that person—

(i) the name of the injured person,

(ia) the personal public service number of the injured person,\(^\text{18}\)

(ii) the date of birth of the injured person,

(iii) the address of the injured person,

(iv) details of the personal injury sustained by the injured person, and

(v) the date of occurrence of the personal injury sustained by the injured person,

(b) the following information relating to the identity of the compensator—

(i) the name of the compensator, and

(ii) the address of the compensator,

(c) where an agent or legal representative is acting on behalf of a compensator, the

\(^{17}\) Definition of ‘revised statement of recoverable benefits’ inserted by art. 2(a) S.I. No. 177 of 2015

\(^{18}\) Inserted by Art. 3 S.I. No. 497 of 2014
following information relating to the identity of that agent or legal representative—

(i) the name of the agent or legal representative, as appropriate, and

(ii) the address of the agent or legal representative, as appropriate,

(d) where a compensator or the agent or legal representative of a compensator has assigned a case manager to deal with a claim for compensation by an injured person, the following information relating to the identity of that case manager—

(i) the name of the case manager,

(ii) the address of the case manager, and

(iii) contact details for the case manager, including telephone number and electronic mailing address,

(e) where an application for a statement of recoverable benefits under section 343P is made by a person other than a person mentioned in paragraph (b), (c) or (d), the name of the person who makes such application, and

(f) the reference number assigned to the case by the compensator or Board.\(^{19}\)

**Information to be given for purposes of issuing statement and revised statement of recoverable benefits under section 343PA**

249D. For the purposes of the issuing of a statement of recoverable benefits or a revised statement of recoverable benefits under section 343PA a compensator or an injured person shall provide any of the information specified in paragraphs (a) to (d) and paragraph (f) of article 249C in relation to the identity of the compensator, the identity of the injured person and the benefits received by the injured person, as may be required by the Minister.\(^{20}\)

\(^{19}\) Part 9A inserted by art. 3 S.I. No. 332 of 2014

\(^{20}\) Art. 249D inserted by art. 2(b) S.I. No. 177 of 2015