

8.27 Recovery of Overpayments

This policy outlines the action expected of everyone, including industrial staff, when you have received or suspect that you have received pay in excess of your entitlement and outlines the procedures for the recovery where appropriate of overpayments of salary and allowances from you.

- Section 3 Recovery of Overpayments gives details about how overpayments may occur and how they will be recovered
- Section 5 Overpayment caused by Fraud outlines what happens if it is proven that there is proved evidence of fraudulent intent
- Section 7 Collective Overpayments is about what happens when a group of people have been overpaid.
- Section 8 Recovery of Debts from Principal Civil Service Pension Scheme (NI) (PCSPS (NI)) Benefits - the Right of Set-Off gives information about the right of the department to offset any outstanding monies against your pension when you are retiring.

The following terms within this policy are defined in the glossary:

There are currently no terms within this policy defined in the glossary.

You may also be interested in the following policies:

Government Accounting Northern Ireland (GANI) 2004 to be found at <http://www.aasdni.gov.uk/frab/browse.asp?branch=1&category=2&maxres=20&start=0&orderby=3>, PCSPS (NI) to be found at <http://www.civilservicepensions-ni.gov.uk/index.htm>

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This homepage is only a guide to the policy, not the policy itself. In the event of any discrepancy between the content of this homepage and the associated policy, the wording of the policy shall apply.

8.27 RECOVERY OF OVERPAYMENTS

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8.27 RECOVERY OF OVERPAYMENTS

1 Introduction

1.1 This policy in the HR Handbook outlines the action expected of all staff, including industrial staff, when you have received or suspect that you have received pay in excess of your entitlement and outlines the procedures for the recovery where appropriate of overpayments of salary and allowances from you.

1.2 An overpayment occurs when a change of circumstances affects your salary and the adjustment is actioned retrospectively. If you have received public money to which you are not entitled, you will be asked to repay it. Therefore when a Department discovers that it has made an overpayment of salary, recovery will be pursued in whole or in part, in accordance with Article 46 of The Employment Rights (NI) Order 1996 and the guidance contained in Government Accounting Northern Ireland (GANI) 2004.

2 Staff's Responsibilities

2.1 While every effort will be made to ensure that payment of salary is made accurately, there may be occasions when information on a change of circumstance is not made available in time to make an automatic adjustment (see section 3.1), and an overpayment of salary may result. You should therefore check that your pay advice notification is accurate, taking into account any pay circulars and individual notification you have received.

2.2 If having checked your pay advice you are in doubt about any entry on your pay advice slip you should contact your Personnel Branch without delay.

2.3 Enquiries should be made by either telephone (you should keep written notes of who you spoke to and the main points and outcomes of the discussion) or in writing. You should retain copies of any correspondence between yourself and your Personnel Branch, while Personnel Branches must also keep a record of the discussion.

3 Recovery of Overpayments

3.1 In the majority of cases it will be possible for Personnel Branches to adjust and effect recovery of the amount overpaid in the following month. This process is called "automatic adjustment". Examples of automatic adjustment include tax code changes, the issue of interim or advance payments, unpaid leave notified after a pay run has been completed. Normally you should be informed, in advance of the recovery, by letter from your Personnel Branch.

3.2 Deductions from pay should not, however, be made if you have a valid defence against recovery (see GANI Chapter 17 Paragraph 2.9 and Annex 17.4). If there is any doubt about whether recovery through deduction from pay is appropriate, legal advice should be sought. Section 4 sets out the circumstances in which recovery of overpayments may not be recovered in full.

3.3 If an overpayment occurs over several months, or occurs in one month and an automatic adjustment cannot be made or is not appropriate, Personnel Branch will contact you to discuss proposals to recover or repay the overpayment. Following contact with you Personnel Branch will issue written confirmation of the proposals.

3.4 Recovery of an overpayment will normally be by agreement and will be underpinned by the following principles.

- One lump sum payment for an overpayment which occurred by this method; or
- Weekly/monthly installments over the same number of weeks/months as the overpayment occurred.

3.5 However, to avoid the potential to cause hardship in individual cases (see sections 6.1 and 6.2), if either of the scenarios above results in a repayment or installment that exceeds 5% of the net weekly/monthly pay, the deduction shall, at your request, be reduced to 5% of the net weekly/monthly pay, with a subsequent increase in the repayment period.

3.6 Subject to your agreement any subsequent arrears of salary which become available may be used to reduce the balance owing to the Department.

3.7 In cases of 'bad faith' (see section 4.3), recovery of the full amount overpaid will be sought, including recovery from pension benefits if relevant.

4 Circumstances in which Overpaid Salary may not be Recovered in Full

4.1 In cases of 'good faith' it may not always be appropriate to seek full recovery. In practice, however, each case should be dealt with on its merits and, when deciding on appropriate action, Departments should consider:

- a. the type of overpayment;
- b. whether the payee received the money in good or bad faith;
- c. the length of time since the overpayment was made;
- d. any relevant personal circumstances of the payee, including defences against recovery: guidance on defences against recovery is available in the overpayments chapter of Government Accounting Northern Ireland 2004;

- e. the cost-effectiveness of recovery action; and
- f. the need to deal equitably with overpayments to a group of people.

4.2 In seeking to satisfy itself of your 'good faith', a Department should therefore consider the extent to which:

- a. the payment depended on changes in your circumstances which you were required to notify to the Department; and
- b. the basis upon which the payment was calculated, was explained to you, or was readily accessible to you.

4.3 In the case of pay, pay-related allowances, and superannuation payments, the regulations are not always simple. It might therefore be unreasonable to assume that you will know so precisely how your entitlement is calculated, or what factors might alter it, that you can immediately detect an overpayment. If, however, there are strong grounds for thinking that you knew that there had been an overpayment – for example, if the overpayment was so obvious as to be evident to you – it may be reasonable to assume that you did not act in good faith.

4.4 If 'good faith' is established, recovery will normally be restricted to the last 12 months of the overpayment though your desire to pay more will be respected.

5 Overpayment caused by Fraud

5.1 Where on investigation a Department is satisfied that the circumstances of the overpayment involved 'bad faith' on your part, it should consider, in addition to recovery action, whether you obtained the overpayment fraudulently - for example by dishonestly giving false information or failing to disclose information.

5.2 If there is evidence of fraudulent intent, prosecution or disciplinary action should be undertaken where appropriate and practicable. A criminal conviction in such a case will not eliminate the public debt which had resulted from the overpayment, and so recovery of the debt should continue to be pursued by any means available.

6 Hardship

6.1 Repayment may be extended or deferred in exceptional circumstances if it would cause hardship, but hardship must not be confused with inconvenience. To be required to pay back money to which there was no entitlement does not in itself represent hardship, especially if the overpayment was discovered quickly. A plea of hardship should be supported by reasonable evidence that the recovery action proposed by the Department would impact adversely on your welfare or that of your family. The Departmental Welfare Officer will be able to provide advice.

6.2 Where a Department accepts that hardship would be caused by the recovery action proposed the Department may either reduce the monthly payments by extending the repayment period or defer the recovery action.

7 Collective Overpayments

7.1 If a group of people have all been overpaid as a result of the same mistake, they should not be treated differently as regards the degree of recovery required and should thus be invited to repay on the same basis. However:

- a.** repayments should not be pursued against any individuals who can claim one of the legitimate defences against recovery; and
- b.** it may be impossible or disproportionately expensive to enforce recovery against some individuals – it can be expensive to trace an individual and, in some cases, the individual will not have the resources to pay so that the sum would be, in practice, irrecoverable.

7.2 The fact that recovery cannot, in practice, be made from some members of a particular group does not mean that recovery should be waived for others in the group. The individual who pays up voluntarily should not be regarded as having been treated unfavourably; all have been required to pay. The difference is one of practicality in pursuing the claim.

7.3 There is no obligation to inform other individuals of what steps are being taken, or not being taken, to recover a claim. Although there is a general principle of treating like cases alike, as a matter of the law relating to recovery the fact that you pursue a claim against one person and not another, when both are equally liable, does not affect the validity of your claim against either.

7.4 When an overpayment arises that involves two or more officers the appropriate Departmental Trade Union Side should be informed.

8 Recovery of Debts from Principal Civil Service Pension Scheme (NI) (PCSPS (NI)) Benefits - the Right of Set-Off

8.1 Where you are retiring or resigning and you owe a debt to your employing Department, the ability to recover that debt from your PCSPS (NI) benefits rests on the common law right of set-off. Under this right of set-off, a debt due from a person to the Department may be deducted from a debt due to that person from the Crown (for example a pension or lump sum). The right to set off one debt against the other in this way does not depend on your agreement, and it may be exercised even if you do not agree to the deduction.

8.2 You must be issued with a certificate showing the amount of set-off and its effect on your benefit under the scheme. If there is any dispute as to the amount of the debt owed set-off cannot be applied except following a court order.

8.3 Under Article 7(1) of the Superannuation (NI) Order 1972 any assignment of or charge on, and any agreement to assign or charge, any benefit under the PCSPS (NI) is void. Article 7(1) of the 1972 Order does not, however, prevent you from recognising a debt, and the Department should obtain your acknowledgement of the existence and amount of the debt. As good employers, Departments will wish to proceed, as far as possible, with your agreement to the repayment and you will therefore be informed of the proposed deduction and method of recovery, to allow you to repay the debt out of your own resources if you wish.

8.4 Where recovery of a debt from superannuation benefits is to be made, but the lump sum is insufficient to repay the whole of it, payments of pension to you may be reduced until the debt has been cleared. However, the amount of any Equivalent Pension Benefit required under the Graduated Pension Scheme as defined in the National Insurance Act (NI) 1996 and any Guaranteed Minimum Pension required under the Pensions Schemes (NI) Act 1993 must continue to be paid, and the pension in payment must not be reduced below the total of these two amounts.

9 Exception to Set-Off Rights

9.1 Where a civil servant dies owing a debt, set-off can be applied against death benefit payable under the PCSPS (NI), provided that it forms part of the deceased's estate. However, where a valid nomination for death benefit under rule 3.8 of the PCSPS (NI) exists, the death benefit does not form part of the deceased's estate but is payable direct to the nominee. In this case set-off cannot be applied, since the amount owed by the Crown is to the nominee, and not to the debtor.

9.2 Similarly, transfer value payments are not a debt owed by the Crown to you if you transfer. Where you have an outstanding debt on leaving the Civil Service and you apply for a transfer value to be paid, it should therefore be calculated in the normal way without any deduction for the debt. Set-off should not be applied in such a case, and the Department should consider recovery of the debt by other means.

10 Debts which can be Deducted

10.1 As a matter of policy, only those debts owed to the Crown which arise directly out of employment by a Department should be set off against superannuation benefits. The debt must be capable of being recovered in a court of law, and the procedures set out in sections 1 to 9 above must have been followed before set-off is considered.

10.2 Where you leave the service with an advance of pay for house purchase outstanding, on no account should such a debt be set off against preserved superannuation benefits, even if you request this. Payment of the outstanding amount must be demanded immediately, and, if refused, pursued by other means.

11 Recovery of Debts from Preserved Benefits

11.1 Where it is proposed to recover a debt by way of set-off against preserved benefits, it should be noted that since the debt to you from the Crown in respect of the superannuation benefits does not arise until the preserved award comes into payment, it is only at that point in time that the recovery can be made. The procedure is for the full amount of the preserved PCSPS (NI) award to be made at the time service ends, with an endorsement on the award form requesting the Civil Service Pensions for Northern Ireland to deduct the amount of the debt at the time the award is brought into payment. This ensures that full entitlement to pensions increase on the preserved award is maintained, and that only the actual amount of the debt is set-off. The imposition of interest on such delayed debts is not permissible unless judgement has been obtained, when interest at the statutory rate can be charged. When considering the recovery of debts from preserved PCSPS (NI) awards, full account must be taken of the provisions of the Limitation Act.

12 The Limitation (Northern Ireland) Order 1989

12.1 The main provisions of this Order may, in this context, be summarised as follows. Actions to recover debts shall not be brought after the expiration of six years from the date on which the cause of action accrued. The six years commence from the date the debt was incurred, or the offence which gave rise to the debt was first discovered. In cases of fraud or mistake, the period of limitation runs from the time the fraud or mistake was discovered, or could have been discovered with reasonable diligence.

12.2 If judgement is obtained, then no action on such judgement can be taken after the expiration of 12 years from the date on which the judgement became enforceable. No arrears of interest in respect of any judgement debt can be recovered after the expiration of six years from the date on which the interest became due.

12.3 Since you have a legal entitlement to benefits under the PCSPS (NI) (with the exception of those listed in rule 8.1 of the PCSPS (NI)) you can, once the preserved benefits have been paid, sue for any amount which has been deducted from your award. If, in such a case, the time limits specified in sections 12.1 and 12.2 above have expired in relation to the debt owed to the Department, the Department cannot set off that debt since, by virtue of the Limitation (Northern Ireland) Order 1989, such a set-off is deemed to be a separate action and to have commenced on the same date as the action brought by the pensioner. The Department's right of set-off would be statute-barred.

12.4 Departments should note, therefore, that where the preserved award against which the debt would be set-off is not due to come into payment for six years or more, recovery by other means should be considered before the limitation period expires.

13 Authority for Set-Off to be Applied

13.1 All proposals for the set-off of debts against awards of pension or preserved pension and their associated lump sums must be approved by Civil Service Pensions of the Department of Finance & Personnel (DFP). Confirmation that the Department has obtained DFP approval and has notified you of the necessary deduction should be attached to the award concerned before it is dispatched to Civil Service Pensions.