

2016 No. 000

ENFORCEMENT

**The Enforcement by Deduction from Accounts (Imposition of
Charges by Deposit-takers) Regulations 2016**

<i>Made</i> - - - -	<i>Date</i>
<i>Laid before the House of Commons</i>	<i>Date</i>
<i>Coming into force</i> - -	<i>1st February 2016</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by paragraph 20(2)(e) of Schedule 8 to the Finance (No. 2) Act 2015(a).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Enforcement by Deduction from Accounts (Imposition of Charges by Deposit-takers) Regulations 2016 and come into force on 1st February 2016.

(2) These Regulations extend to England and Wales and Northern Ireland only.

Interpretation

2. In these Regulations “administrative costs” means the administrative costs incurred by a deposit-taker in complying with an obligation under Schedule 8 to the Finance (No.2) Act 2015 to which a final payment required under paragraph 13(11)(b)(ii) of that Schedule relates.

Imposition of charges

3. A deposit-taker may impose a charge upon an account holder in respect of administrative costs only where—

- (a) there is an agreement between it and the account holder (or, as the case may be, account holders), which provides that the deposit-taker may charge a fee in respect of those costs,
- (b) the deposit taker—
 - (i) has made the final payment required by paragraph 13(11)(b)(ii), and
 - (ii) has not previously imposed a charge in respect of those costs, and
- (c) the amount of the charge imposed does not exceed the amount specified in regulation 4.

Amount that can be charged for administrative costs

4. The amount specified in this regulation is the lesser of—

(a) 2015 c.33.

- (a) the amount of those administrative costs reasonably incurred by the deposit-taker, and
- (b) £55.

Name
Name

Date Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Schedule 8 to the Finance (No.2) Act 2015 (2015 c.33) makes provision for the collection of sums due and payable by a person to HMRC by making a deduction from accounts that the person holds with deposit-takers ("direct recovery of debts"). These Regulations provide that a deposit-taker is prevented from charging a fee in respect of administrative costs incurred by it in complying with any obligation that it is required to carry out under that Schedule other than in certain specified circumstances.

Regulation 3 provides that a deposit-taker may charge an account holder a fee in respect of administrative costs only where, it has agreed with the account holder, (or account holders), that a fee can be charged, the direct recovery of debts process has concluded, the deposit-taker has not previously imposed a fee in respect of those costs, and the fee charged does not exceed the amount specified in regulation 4.

Regulation 4 provides that the fee charged by the deposit-taker cannot exceed the amount of the administrative costs reasonably incurred by it in carrying out an obligation which it is required to fulfil in relation to the use of the direct recovery of debts procedure in that instance, and, in any event, cannot be more than £55.

A Tax Information and Impact Note covering this instrument was published on [... 2015] and is available on the HMRC website at <https://www.gov.uk>. It remains an accurate summary of the impacts that apply to this instrument.

EXPLANATORY MEMORANDUM TO
THE ENFORCEMENT BY DEDUCTION FROM ACCOUNTS (IMPOSITION
OF CHARGES BY DEPOSIT-TAKERS) REGULATIONS 2016

2016 NO. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Schedule 8 of the Finance Act (No.2) 2015 puts an obligation on deposit-takers in the collection of sums due and payable by a person to HMRC, by making a deduction from accounts that the person holds with their organisation (“direct recovery of debts”). This instrument prevents the deposit-taker from charging a fee in respect of administrative costs incurred in that process, other than in certain specified circumstances.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Schedule 8 to the Finance (No.2) Act 2015 allows HMRC to enforce the collection of debt directly from the accounts of the relevant debtor – the ‘direct recovery of debts’. This puts an obligation on deposit-takers to carry out certain processes in relation to this power.
- 4.2 This process involves HMRC sending an information notice to a deposit-taker, to determine what assets are held by the debtor with the deposit-taker (and in which accounts). Subsequently, HMRC may issue a hold notice to the deposit-taker, requiring a hold to be placed on assets for transfer to HMRC pending statutory rights of objection (to HMRC) and appeal (to the County Court) by the debtor.

5. Extent and Territorial Application

- 5.1 This instrument extends to England, Wales and Northern Ireland.
- 5.2 This instrument applies to England, Wales and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 At Budget 2014 the Chancellor announced the Government's intentions to introduce new powers to allow HMRC to secure payment of tax and tax credit debts directly from debtors' bank and building society accounts in credit – the 'direct recovery of debts' (DRD). This is to make the tax system fairer by targeting those who have the means to pay what they owe but choose not to do so, despite repeated contact from HMRC.
- 7.2 Following public consultation, the Government introduced a number of additional safeguards to strengthen the measure and ensure that it only affected the intended minority of debtors with the means to pay what they owe. These safeguards were set out in the Government's consultation response of 21 November 2014 and included a guaranteed face-to-face visit with every debtor whose debts are considered for recovery through the measure.
- 7.3 HMRC will only take action against debtors who owe at least £1,000 of tax or tax credit debt. HMRC will always leave a minimum aggregate of £5,000 across debtors' accounts, and will only put a hold on funds in affected accounts up to the value of the debt.
- 7.4 This instrument prevents the deposit-taker from charging a fee in respect of administrative costs incurred in the DRD process, other than in certain specified circumstances. These Regulations permit a fee to be charged where:
- the deposit-taker has agreed with the account holder, (or account holders), that a fee can be charged;
 - the DRD process has concluded, and the final payment has been made to HMRC; and
 - the deposit-taker has not previously imposed a fee in respect of those costs.

The fee charged can only be in relation to costs incurred as part of processing the DRD case, and must not exceed £55.

8. Consultation outcome

- 8.1 A public consultation document for DRD was published on 6 May 2014. The formal consultation ran until 29 July 2014. The Government published its response on 21 November 2014, and draft primary legislation was published on 10 December 2014 for further consultation.

9. Guidance

- 9.1 The Government will publish guidance on DRD to help debtors affected by the measure, deposit-takers in receipt of an information or hold notice, and other interested organisations, understand the processes involved. This will include an explanation of the responsibilities a deposit-taker has in carrying out

instructions received from HMRC, and the rights of objection and appeal available to a debtor to whose accounts DRD has been applied.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is expected to be negligible. If deposit-takers choose to pass on an administrative fee, this may have a small impact on non-compliant individuals and businesses with debts over £1,000 who have not complied with their legal obligations. However, these regulations ensure that any such fee shall not exceed £55 per DRD notice.
- 10.2 There is no impact on the public sector.
- 10.3 A Tax Information and Impact Note covering this instrument was published on 8 July alongside Financial Bill 2015 and is available on the HMRC website at <https://www.gov.uk/government/publications/direct-recovery-of-hm-revenue-and-customs-debts-from-debtors-bank-and-building-society-accounts>, a copy is submitted with this Memorandum. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 DRD will be kept under review through regular communication with affected taxpayer groups and businesses. The Government has committed to an HMRC-led review of the measure after two years of operation, to be laid before Parliament.

13. Contact

- 13.1 Ademola Adetosoye at HM Revenue and Customs (Tel 03000 586040 or email ademola.adetosoye@hmrc.gsi.gov.uk) can answer any queries regarding this instrument.