

Circular Title: **Recovery of Salary, Allowances, and Expenses Overpayments made to Staff Members/Former Staff Members/Pensioners**

File Reference: **DPE189-002-2016**

I am directed by the Minister for Public Expenditure and Reform to say that the following will apply in relation to the recovery of overpayments of salary, allowances, and expenses from staff members/former staff members/pensioners:

Circular Number: **10/2017**

Purpose: To set out the administrative arrangements for the repayment of overpayments salary, allowances, and expenses made to staff members/former staff members/pensioners

Circular Applications: To all civil servants both current staff members, former staff members, and pensioners

Relevant Law/Circulars: Civil Service Regulation Act 1956 (as amended)
Payment of Wages Act 1991

Effective From: 1 May 2017

Circular 01/2015 *Public Service Bodies (PSBs) Recovery of Overpayments from Staff* is revoked. All local office notices and agreements in place in the bodies covered by this circular relating to the recovery of overpayments are revoked.

1. Principles

1.1 This circular is issued pursuant to section 17 of the Civil Service Regulation Act 1956 (as amended).

1.2 Where Departments and Offices are not serviced by PeoplePoint, Local HR (LHR) will carry out the functions of PeoplePoint.

1.3 An overpayment arises when money is paid in excess of what is due in the appropriate salary, allowance, or expenses payment and is recoverable in principle.

1.4 Departments and Offices are under an obligation to seek to recover the amount of the overpayment and to correct the mistake in the disbursement of public monies, subject to relevant procedures and practices in Government accounting. Staff members/former staff members/pensioners have a reciprocal obligation to repay.

1.5 Overpayments to staff members of salary, allowances, and expenses may occur for various reasons. For example, an overpayment might occur where a staff member takes unplanned leave at short notice, exceeds the permitted limits for sick leave or fails to provide appropriate certification for sick leave. Alternatively, an overpayment may be as a result of a mistake in applying a particular rate of pay to the staff member or an administrative error. These are examples of some of the reasons an overpayment may occur, but this list is not exhaustive.

1.6 A staff member must immediately report circumstances where he/she is aware that he/she may have been overpaid to his/her HR Unit.

1.7 All monies owed by a staff member/pensioner on foot of their being overpaid for whatever reason must be repaid to the Exchequer as soon as possible, as provided in this Circular.

1.8 Where the staff member has received an overpayment, but is also owed arrears, these arrears will automatically be offset against the amount owed (gross amount prior to calculation of statutory deductions).

1.9 Where a repayment plan has been agreed or has commenced before the commencement of this Circular, those arrangements will not be affected by the provisions of this Circular.

1.10 Where an overpayment cannot be recovered through deductions from salary or other monies paid by the employer (such as pension entitlements) then the staff member/former staff member/pensioner will be expected to facilitate other arrangements to make good the overpayment. As a last resort, appropriate legal proceedings may be initiated by the Department or Office for the recovery of both the overpayment and the consequential costs of the proceedings.

2. Repayment Plan

2.1 Departments and Offices have an obligation to put repayment plans in place for all overpayments, regardless of how the overpayment has occurred. These repayment plans should facilitate the repayment of monies owed to the Exchequer by overpaid staff members/former staff members/pensioners at the earliest possible opportunity.

General Repayment Plans

2.2 For the generality of overpayments (i.e. for overpayments not described at 2.6, 2.7 and 2.8 below) a repayment plan will be devised that either facilitates (a) a **minimum** repayment of 8% of gross salary per pay period or (b) recoupment of the money owed within a 12 month time frame, whichever achieves the repayment of the monies owed to the Exchequer in the shortest timeframe.

2.3 Staff members/pensioners who are on the payroll must choose one of the following arrangements to repay amounts owed:

- Deduction from salary/pension or other entitlements due (gross amount prior to calculation of statutory deductions);
- Staff members may also surrender non-statutory annual leave.
- Staff members may surrender time in lieu earned for bank holidays accrued during periods of sick leave.
- Section 1.8 also refers i.e. if the staff member/former staff member/pensioner is also owed arrears these arrears will automatically be offset against the amount owed.

2.4 In the event that a single repayment arrangement does not discharge the overpayment, multiple repayment arrangements may be combined to discharge the

amount owed to the Exchequer e.g. surrender of non-statutory annual leave may be combined with a general repayment plan.

2.5 Repayment plans must be reviewed by Local HR whenever a further overpayment is discovered in respect of a staff member or where there is a material change in circumstances, for example, a promotion or a change in work pattern.

Delayed Pay Adjustment

2.6 A delayed pay adjustment will be applied when a staff member has been overpaid for a period of five days or less. In these circumstances adjustments will automatically be made to the staff member's salary over a one month period (i.e. over four pay periods for those who are paid weekly and over two pay periods for those who are paid fortnightly) commencing in the next available pay run to recover the overpayment to the Exchequer.

2.7 Where a staff member exceeds his/her access to paid sick leave or access to sick leave remunerated at a particular rate and incurs a consequent overpayment of 10 days or less, the full amount of the consequent overpayment will be recouped from the staff member's salary over a one month period (i.e. over four pay periods for those who are weekly paid and over two pay periods for those who are paid fortnightly) commencing in the next available pay run to recover the overpayment to the Exchequer.

2.8 Where a staff member takes unplanned unpaid leave, unpaid leave at short notice, or exceeds the staff member's access to self-certified sick leave, the full amount of the consequent overpayment will be recouped from the staff member's salary at the first available opportunity. Where the amount owed to the Exchequer exceeds the staff member's gross salary, deductions will be made from gross salary on all subsequent pay dates until the amount is fully repaid.

Multiple Overpayments and/or overpayments exceeding €2,500

2.9 Multiple overpayments can occur for a variety of reasons. They usually occur where there is a combination of events, for example, a staff member may be placed on the incorrect increment point and then be absent on a week's sick leave which should have been paid at half pay but was not due to timing issues with pay runs. This

is an example of some of the reasons for multiple overpayments, but there may be other reasons.

2.10 Where a staff member has five (5) overpayments or more and/or overpayments with a cumulative unrecouped value of €2,500 or more and his/her pattern of attendance gives rise to an increased risk of incurring multiple overpayments he or she may, for a limited period of time, be placed on a salary payment arrangement whereby he or she is paid only for those days that he or she attends work. The purpose of this administrative arrangement is to prevent the further accumulation of debt by the staff member to the Exchequer.

3. Procedure for the recoument of overpayments

3.1 This section sets out the procedures regarding the recoument of overpayments not subject to the delayed pay adjustment provisions described at 2.6, 2.7, and 2.8 above.

3.2 Upon discovery of an overpayment the staff member/former staff member/pensioner will be advised as quickly as practicable of the overpayment by PeoplePoint¹. PeoplePoint should first consult with the relevant HR Manager (which in this Circular includes any person nominated by a HR Manager to discharge this function) to determine whether it is appropriate to contact the staff member/pensioner directly.

3.3 In some cases, the HR Manager may determine that the staff member/former staff member/pensioner should not be contacted by PeoplePoint about the overpayment (e.g. due to critical illness). In such cases the HR Manager should advise PeoplePoint of this determination. The staff member/former staff member/pensioner will not be contacted by PeoplePoint until the HR Manager has confirmed that it is appropriate to do so.

3.4 Where the HR Manager confirms that it is appropriate to do so, the first overpayment letter will be issued from PeoplePoint to the staff member/former staff member/pensioner who was overpaid, detailing the following:

- Value of the overpayment, i.e. the amount owed to the Exchequer;

¹ Where an organisation has not yet transitioned to PeoplePoint, the Local HR Unit (LHR) will be responsible for the procedure for the recoument of overpayments.

- Reason for the overpayment;
- Period to which the overpayment relates;
- Proposed repayment plan (see section 2 above);
- The procedure for querying the amount of the overpayment (see section 3.6 below);
- Staff obligations (see section 3.7 below); and
- The procedure for making an Exceptional/Hardship Arrangements application (see section 5 below)

3.5 The letter should give a clear, simple explanation as to how the overpayment arose and include the basis of the calculation of the overpayment amount in a manner that is easily understandable for the staff member/former staff member/pensioner affected. The letter should confirm that this Circular forms the basis for the recovery of the overpayment.

Querying the Overpayment Amount

3.6 In the event that the staff member/former staff member/pensioner queries the amount of the overpayment, the matter will be escalated to a Team Leader (which in this section includes any person nominated by the Team Leader to discharge this function) in PeoplePoint for review. The Team Leader will review the amount of the overpayment and provide the staff member/former staff member/pensioner with the outcome of that review as soon as possible. The Team Leader should ensure that the staff member/former staff member/pensioner has sufficient information to understand how the overpayment occurred and the amount that is due to be repaid to the Exchequer.

Where There Is No Confirmation/Appeal of the Repayment Plan

3.7 Where the staff member/former staff member/pensioner neither confirms his or her agreement with, nor appeals, the proposed repayment plan within 21 calendar days (3 weeks) of issuing of the first overpayment letter (or any outcome letter from the Team Leader (whichever is later)) the staff member/former staff member/pensioner will be deemed to have consented to the repayment plan. A second overpayment letter will confirm the details of the repayment plan, its commencement date (which will

normally be the next pay date following the expiry of a period of 14 calendar days (2 weeks) from the issue of the letter), and the final date of repayment.

4. Non - Standard Arrangements

Leaving employment

4.1 Where a staff member is due to leave employment with the civil service (including on retirement, on expiration of contract, on a career break, or on extended unpaid leave), a higher rate of deduction will be applied to completely discharge the overpayment in advance of his or her departure, if possible.

4.2 Should any higher rate of deduction prior to leaving employment not be sufficient to fully discharge the overpayment, the staff member/former staff member/pensioner will be notified by PeoplePoint of the amount outstanding and this amount will be recouped from any retirement lump sum, pension payment, allowance, death in service (or other) gratuity or any other monies, including any other entitlements under the Superannuation Acts, due to the staff member²/former staff member/pensioner.

4.3 Where a staff member leaves employment with the civil service and there is no opportunity to recoup the full amount from using any of the above arrangements, any outstanding monies owed to the Exchequer remain due for payment.

4.4 Further to section 1.8 above, any payment due to a staff member leaving employment, including any potential payment in lieu of untaken annual leave or any refund of pension contributions or pension-related deductions owing, should be offset against any outstanding overpayment.

Moving to another civil service organisation

4.5 Where a staff member transfers to another civil service organisation the amount of the overpayment to be repaid to the Exchequer will transfer with him or her and he or she will be required to repay any overpayment as provided in this Circular.

² This does not include expenses owed to the staff member.

Death in service

4.6 Where a staff member dies in service any overpayment that he or she owes to the Exchequer will be deducted in full in a single lump sum from any gratuity payable to his or her legal representative.

4.7 Notwithstanding section 4.6, PeoplePoint should consult with the Department of Public Expenditure & Reform in respect of a staff member who dies in service and who was a member of the Non-Contributory Pension Scheme for Non-Established State Employees where a death gratuity is payable to his or her surviving spouse or civil partner.

Overpayments that come to light following retirement or death in service

4.8 Overpayments that come to light after retirement or death in service and/or where no arrangement to recover an overpayment has been made with a staff member prior to his or her retirement or death in service may be recouped from his or her death in service benefit, pension lump sum, or regular pension payments.

Salary/Pension Adjustment Orders

4.11 While deductions can be made from a staff member's salary or former staff member's pension to recoup an overpayment of salary, this can only be achieved where the entitlement is paid to the staff member/former staff member/pensioner. Any portion that is paid, in accordance with a court-certified order (e.g. a Salary/Pension Adjustment Order) to another individual, cannot be altered for the purposes of recouping an overpayment of salary unless the particular order at issue is subsequently varied by the courts.

5. Exceptional and Hardship Arrangements

5.1 There may be circumstances where the previously outlined repayment plans may not be appropriate given the particular circumstances of a staff member/former staff member/pensioner.

5.2 Where a staff member/former staff member/pensioner considers that he or she cannot make a minimum repayment at a rate of 8% or more of gross salary per pay period or cannot repay the overpayment within 12 months (in circumstances where that is the repayment plan proposed) on the grounds that such a repayment plan would

cause him or her undue hardship, he or she can apply in writing to a person designated by the HR Manager (the designated person) to have his or her case reviewed. The staff member/former staff member/pensioner will be asked to complete a form which will request the following information and relevant supporting documentation:

- Personal Information (name, grade);
- Amount of overpayment;
- Salary/pension details of staff member/former staff member/pensioner;
- Circumstances that require an application of exceptional/hardship arrangements;
- Any repayment plan that has previously been agreed (whether before or after the introduction of Circular 1 of 2015) and whether the staff member/former staff member/pensioner has complied with this plan;
- Other relevant information that the staff member/former staff member/pensioner should provide that could influence the decision of the designated person (e.g. outgoings such as mortgage repayments, rent, or childcare costs, other income of staff member/pensioner e.g. rental income, income continuance plan payment, widow's pension, income of staff member's/former staff member's/pensioner's spouse/civil partner/cohabitant, etc.);
- Repayment plan (or other recovery arrangements) proposed by PeoplePoint;
- Repayment plan (or other recovery arrangements) proposed by staff member/former staff member/pensioner.

5.3 The decision to grant a request for an exceptional or hardship arrangement will be based on the information supplied by the applicant. Failure to supply the requested information may impact on the decision to grant a request for an exceptional or hardship arrangement.

5.4 The designated person has discretion to determine:

- (a) whether exceptional or hardship arrangements should be applied and thereby apply an amended repayment plan or other recovery arrangement; and
- (b) if exceptional or hardship arrangements are applied, the level of the repayment plan or other recovery arrangement that should be applied.

5.5 The primary focus of the designated person should be on the financial hardship that may arise as a result of the application of the repayment plan/recovery

arrangement proposed by PeoplePoint. However, there may be other circumstances related to the overpayment that may be relevant to the decision making process. The designated person may consider such issues after considering the information provided in respect of financial hardship.

5.6 Any rate of repayment that is lower than 8% of gross salary per pay period must be agreed by the designated person and confirmed by them to PeoplePoint in writing within 14 days of the hardship application being made to Local HR.

5.7 Notwithstanding any other provision of this section 5, the designated person may not normally reduce the amount repaid by a staff member/former staff member/pensioner per pay period to less than 3% of gross salary per pay period.

5.8 Exceptional/Hardship arrangements may be subject to review after 6 months, and every 6 months thereafter should they be in place for longer than a year.

5.9 It should be noted that an overpayment arising from leave that the staff member knows in advance will be unpaid, e.g. late application for Parental Leave, will not normally qualify for an application to have the repayment amount per pay period reduced on hardship grounds.

5.10 Where a staff member/former staff member/pensioner is not satisfied with the decision of the designated person they can have their case reviewed by the HR Manager. If the staff member/pensioner is not satisfied with the decision of the HR Manager in relation to their application to be considered under the Exceptional and Hardship arrangements in this section they make invoke the Grievance Procedure.

6. Union Representation

6.1 At any stage in this process an individual can consult his or her union representative for clarification on their rights and responsibilities. Union representatives will also be able to advise on the Payment of Wages Act 1991, the Statute of Limitations, and access to the Grievance Procedure.

7. Civil Service Employee Assistance Service (CSEAS)

7.1 It is recognised that financial concerns can be difficult and challenging. Staff are reminded that personal support is available from the Civil Service Employee

Assistance Service (CSEAS). Further details are available on the CSEAS website:
www.cseas.per.gov.ie

8. Overpayment Recoupment

8.1 The amount of overpayment to be recouped is the gross amount of the overpayment. If the overpayment is recouped by means of salary/pension deductions, the gross amount of the overpayment is deducted from gross salary or gross pension. Using this method, any overpayment recouped through payroll will give the staff member/pensioner, Pension, PAYE, PRD, USC and PRSI relief, if applicable.

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Head of Civil Service HR Policy Unit

5 April 2017