



Direct recovery of debts due to HMRC from debtors' bank and building society accounts

Who is likely to be affected?

Individuals and businesses who have debts payable to the Commissioners for Revenue and Customs under or by virtue of an enactment or under a contract settlement.

General description of the measure

The measure will allow HM Revenue & Customs (HMRC) to secure payment of tax and tax credit debts directly from debtors' bank and building society accounts in credit.

Policy objective

This measure will make the tax system fairer for those who do pay what they owe. It will enable HMRC to collect money directly from the bank and building society accounts, including ISAs, in credit, from debtors who have the means to pay but choose not to do so.

Those affected will have debts to HMRC which they have chosen not to pay despite numerous attempts from HMRC to elicit payment. This includes a guaranteed face-to-face visit to every debtor whose debts are considered for recovery through this measure.

Background to the measure

This measure was announced at Budget 2014.

A consultation document was published on 6 May 2014. The formal consultation was open until 29 July 2014.

The Government published its response to the consultation on 21 November 2014.

Detailed proposal

Operative date

This measure will be legislated for in a Finance Bill in 2015, during the next Parliament.

Current law

Currently HMRC does not have the power to hold and then remove debts direct from bank accounts of debtors without first applying to the courts under part 72 Civil Procedure Rules 1998 (CPR 1998) for a third party debt order; in Scotland section 128 FA is relied upon for similar provisions.

Although the principles that underpin this measure could previously be found in section 61 TMA 1970 and can now be found in Sch. 12 of the Tribunals, Courts and Enforcement Act (these provide for taking control of goods), the intention of this policy is to introduce separate provisions specific to recovery of debts direct from bank and building society accounts, including ISAs, of debtors that are in credit.

Proposed revisions

Legislation will be introduced in a Finance Bill in 2015, during the next Parliament, to enable HMRC to collect tax and duties from credit balances in accounts to satisfy HMRC debts.

Secondary Legislation will be published in spring 2015 and will introduce the direct recovery process and safeguards.

HMRC estimates DRD will apply to around 17,000 cases a year. HMRC will only take action against debtors who owe over £1,000 of tax or tax credits debt. HMRC will always leave a minimum aggregate of £5,000 across debtors' accounts, and will only put a hold on the funds in the affected account up to the value of the debt.

Following consultation and feedback from stakeholders, including professional and representative bodies, the safeguards for DRD have been strengthened further. These revised safeguards were set out in the Government's consultation response published on 21 November.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
<p data-bbox="399 712 1394 846">The figures include those attached to the original policy announcement, and were set out in Table 2.1 of Budget 2014 and certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2014.</p> <p data-bbox="399 846 1394 1014">The figures include the adjustments set out in Table 2.1 of Autumn Statement 2014, which cover the effect of the safeguards, as part of <i>HMRC: operational measures</i>, and have also been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Autumn Statement 2014.</p> <p data-bbox="399 1014 1394 1084">The figures also include adjustments for the impact of other measures and updated analysis.</p> <p data-bbox="399 1084 1394 1120">Revised estimates will be presented in Table 2.2 of Budget 2015.</p>	nil	+20	+110	+130	+115	+95
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals, households and families	<p data-bbox="399 1189 1394 1323">This measure will impact on non-compliant individuals (including self-employed taxpayers) and businesses who refuse to pay what they owe. Around 17,000 non-compliant individuals and businesses are likely to be affected by this measure each year.</p> <p data-bbox="399 1323 1394 1588">The measure is not expected to impact on family formation, stability or breakdown. Some families who own joint accounts may be affected by this policy. HMRC is introducing safeguards so that only a pro-rata proportion of the balance in a joint account will be affected. All account holders will be notified when action has been taken, and all account holders will have equal rights to object or appeal. Accounts held by family members on behalf of children, who are minors, will be protected.</p>					
Equalities impacts	<p data-bbox="399 1588 1394 1861">This measure targets only those debtors who have the means to pay but choose not to. HMRC will always leave a minimum aggregate of £5,000 across debtors' accounts, and will only put a hold on the funds in the affected account up to the value of the debt. All debtors who are considered for debt recovery through this measure will first receive a face-to-face visit from an HMRC agent, which will provide a further opportunity to identify vulnerable customers and offer the support they need.</p>					

Impact on business including civil society organisations	<p>This measure will impact on non-compliant individuals and businesses with debts over £1,000 who have not complied with their legal obligations.</p> <p>Deposit-takers will be required to provide information to HMRC and hold and transfer sums from customers' accounts to HMRC. However, banks will have the option to re-coup some of their costs by deducting a small administrative fee from debtors' accounts.</p>
Operational impact (£m) (HMRC or other)	<p>The additional costs for HMRC for implementing this change are estimated to be in the region of £800,000 over five years.</p>
Other impacts	<p><u>Justice impact test:</u> the measure includes a right of objection to HMRC followed by a right of appeal to the County Court. It is estimated that approximately 200 objections to HMRC will be generated each year. A small number of these may be followed by appeals to the County Court which will have an impact on HM Courts & Tribunals Service.</p> <p><u>Small and micro business assessment:</u> the measure will have no impact on compliant businesses. The majority of debtors affected by this measure are self-employed.</p> <p>Other impacts have been considered and none have been identified.</p>

Monitoring and evaluation

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

Further advice

If you have any questions about this change, please contact Andrew Willis on 03000 579079 (email: andrew.willis@hmrc.gsi.gov.uk).

1 Enforcement by deduction from accounts

- (1) Schedule 1 contains provision about the enforcement of debts owed to the Commissioners for Her Majesty's Revenue and Customs by deductions being made from accounts held with deposit-takers.
- (2) The Treasury may, by regulations made by statutory instrument, make consequential, incidental or supplementary provision in connection with any provision made by that Schedule.
- (3) Regulations under subsection (2) may amend, repeal or revoke any enactment (whenever passed or made).
- (4) "Enactment" includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.
- (5) A statutory instrument containing (whether alone or with other provision) provision amending, repealing or revoking an Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (6) Any other statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of Commons.

SCHEDULE 1

Section 1

ENFORCEMENT BY DEDUCTION FROM ACCOUNTS

PART 1

SCHEME FOR ENFORCEMENT BY DEDUCTION FROM ACCOUNTS

Introduction

- 1 This Part of this Schedule contains provision about the collection of relevant debts by the making of deductions from accounts held with deposit-takers.

“Relevant debt”

- 2 (1) In this Part of this Schedule “relevant debt” means a sum that is due and payable by a person to the Commissioners –
- (a) under or by virtue of an enactment, or
 - (b) under a contract settlement,
- and in relation to which Conditions A to C are met.
- (2) Condition A is that the sum is at least £1,000.
- (3) Condition B is that the sum is –
- (a) an established debt, or
 - (b) due under section 223 of FA 2014 (accelerated payment of tax) or by virtue of a provision mentioned in sub-paragraph (6) (provisions which prevent the payment of tax being postponed).
- (4) Condition C is that HMRC is satisfied that the person is aware that the sum is due and payable by the person to the Commissioners.
- (5) A debt is an “established debt” if it results from an assessment or decision or the operation of a statutory provision –
- (a) against which no appeal lies, or
 - (b) against which an appeal lies within a period that has expired without an appeal having been brought, or
 - (c) against which an appeal has been brought and finally determined or withdrawn.
- (6) The provisions referred to in sub-paragraph (3)(b) are –
- (a) section 55(8C) and (8D) of TMA 1970 (accelerated payment notice: no postponement of recovery of income tax etc);
 - (b) section 242(4) of IHTA 1984 (provision preventing legal proceedings for recovery of tax does not apply if accelerated payment notice given);
 - (c) paragraphs 39(10) and (11) and 40(4) of Schedule 10 to FA 2003 (accelerated payment notice: no postponement of stamp duty land tax, etc);

- (d) paragraphs 48(8B) and (8C) and 49(4) of Schedule 33 to FA 2013 (accelerated payment notice: no postponement of ATED etc).

Information notice

- 3 (1) If it appears to HMRC that—
 - (a) a person has failed to pay a relevant debt, and
 - (b) that person holds one or more accounts with a deposit-taker,HMRC may give the deposit-taker a notice under this paragraph (an “information notice”).
- (2) HMRC may exercise the power under sub-paragraph (1) only for the purposes of determining whether to give a hold notice to the deposit-taker in respect of the person concerned (see paragraph 4).
- (3) An information notice requires the deposit-taker to provide HMRC with the prescribed information specified in the notice about accounts held by that person with the deposit-taker.
- (4) Where a deposit-taker is given an information notice, it must comply with the notice as soon as reasonably practicable and, in any event, within the period of 10 working days beginning with the day on which the notice is given to it.
- (5) An information notice must explain the effect of—
 - (a) sub-paragraph (4), and
 - (b) paragraph 12 (penalties).

Hold notice

- 4 (1) If it appears to HMRC that—
 - (a) a person (“P”) has failed to pay a relevant debt, and
 - (b) P holds one or more accounts with a deposit-taker,HMRC may give the deposit-taker a notice under this paragraph (a “hold notice”).
- (2) The hold notice must—
 - (a) specify P’s name and last known address,
 - (b) specify the relevant debt and the amount of that debt in respect of which the notice has effect (“the specified amount”),
 - (c) specify the safeguarded amount,
 - (d) specify any account or description of account in respect of which the hold notice is to have no effect,
 - (e) specify amounts standing to the credit of an account which are to be disregarded for the purposes of the hold notice,
 - (f) set out any rules which are to apply for the purposes of paragraph 5(8)(b) (priority of accounts subject to a hold notice), and
 - (g) explain the effect of—
 - (i) paragraphs 5 to 11 (effect of hold notice, duty to notify account holders etc),
 - (ii) paragraph 12 (penalties), and
 - (iii) any regulations under paragraph 18(2)(d) or (e) (descriptions of account and amounts in accounts to be disregarded in

addition to those specified in the hold notice under paragraph (d) or (e) above).

- (3) The hold notice may specify any other information which HMRC considers might assist the deposit-taker in identifying accounts which P holds with it.
- (4) The specified amount must not exceed so much of the relevant debt as remains after deducting –
 - (a) any amount of that relevant debt specified in any other hold notice given to another deposit-taker on the same day, and
 - (b) any amount of that relevant debt specified in a hold notice given on an earlier day to a deposit-taker (except to the extent that HMRC has been notified by that deposit-taker under paragraph 6(2) or (4) that there is no held amount in respect of that amount).
- (5) In this Part of this Schedule “the safeguarded amount”, in relation to a hold notice, means –
 - (a) unless paragraph (b) applies, £5,000 or such greater amount as may be specified in the hold notice;
 - (b) if, within the period of 30 days ending with the day on which the hold notice is given to the deposit-taker, HMRC has received a notice under paragraph 6 which states that there is a held amount in respect of any part of the relevant debt, nil.

Effect of hold notice

- 5 (1) A hold notice requires the deposit-taker –
 - (a) to put in place hold arrangements as soon as reasonably practicable and, in any event, within the period of 5 working days beginning with the day on which the hold notice is given to the deposit-taker, and
 - (b) to maintain those arrangements until the hold notice ceases to be in force.
- (2) In this paragraph –
 - (a) “hold arrangements” means such arrangements as are necessary to ensure that the deposit-taker does not do anything that would reduce the amount standing to the credit of a relevant account below the held amount (if any) in relation to that account, and
 - (b) references to the time the hold notice takes effect are to the time the deposit-taker complies with sub-paragraph (1)(a).
- (3) If there is only one relevant account in existence at the time the hold notice takes effect, “the held amount” in relation to that account is –
 - (a) if the available amount in respect of the account exceeds the safeguarded amount, so much of the amount of the excess as does not exceed the specified amount, and
 - (b) if the available amount does not exceed the safeguarded amount, nil.
- (4) If there is more than one relevant account in existence at the time the hold notice takes effect, “the held amount” in relation to each relevant account is determined as follows –
 - Step 1*
Determine the available amount in respect of each relevant account.
 - Step 2*

Determine the total of the available amounts in respect of all of the relevant accounts.

If that total does not exceed the safeguarded amount, the held amount in relation to each relevant account is nil (and no further steps are to be taken).

In any other case, go to step 3.

Step 3

Match the safeguarded amount against the available amounts in respect of the relevant accounts, taking those accounts in reverse priority order (see sub-paragraph (8)).

Step 4

Match the amount of the specified debt against what remains of the the available amounts in respect of the relevant accounts by taking each relevant account in priority order and matching the amount (or, as the case may be, remaining amount) of the specified debt against the available amount for each account until either –

- (a) the amount of the specified debt has been fully matched, or
- (b) what remains of the available amounts is exhausted.

“The held amount”, in respect of a relevant account, is so much (if any) of the amount standing to the credit of the account as is matched against the amount of the specified debt under this Step.

- (5) In this Part of this Schedule “relevant account”, in relation to a hold notice, means an account held by P with the deposit-taker other than an account excluded under paragraph 4(2)(d) or by regulations under paragraph 18(2)(d).
- (6) “The available amount” means –
 - (a) in the case of an account other than a joint account, the amount standing to the credit of that account at the time the hold notice takes effect, and
 - (b) in the case of a joint account, the appropriate fraction of the amount standing to the credit of that account at that time;so, if no amount stands to the credit of an account at that time, “the available amount” is nil.
- (7) “The appropriate fraction”, in relation to a joint account, means –
$$\frac{1}{N}$$
where N is the number of persons who together hold the joint account.
- (8) “In priority order” means in such order as the deposit-taker considers appropriate subject to ensuring –
 - (a) that accounts other than joint accounts always have a higher priority than joint accounts, and
 - (b) subject to paragraph (a), that any rule specified in the hold notice under paragraph 4(2)(f) is adhered to;and “in reverse priority order” is to be construed accordingly.
- (9) In this paragraph references to an amount standing to the credit of an account are to be read subject to any regulations under paragraph 18(2)(e).
- (10) A hold notice ceases to be in force at the time –

- (a) the deposit-taker receives a notice cancelling it under paragraph 7(1), 9 or the notice is cancelled under paragraph 10, or
- (b) the deposit-taker receives a deduction notice in relation to the hold notice (see paragraph 11).

Duty to notify account holders and HMRC

- 6 (1) This paragraph applies where a deposit-taker receives a hold notice.
- (2) The deposit-taker must give to HMRC a notice which sets out –
 - (a) prescribed information about each of the affected accounts held by P,
 - (b) the amount of the held amount in respect of each such account,
 - (c) if any of the affected accounts are joint accounts held by P and one or more other persons, prescribed information about the other person or persons, and
 - (d) any other prescribed information.
- (3) The notice under sub-paragraph (2) must be given within the period of 5 working days beginning with the day on which the deposit-taker complies with paragraph 5(1)(a).
- (4) If the deposit-taker determines that there are no affected accounts as a result of the hold notice, it must give HMRC a notice which –
 - (a) states that this is the case, and
 - (b) sets out any other prescribed information.
- (5) The notice under sub-paragraph (4) must be given within the period of 5 working days beginning with the day on which the deposit-taker makes that determination.
- (6) If HMRC receives a notice under sub-paragraph (2) it must as soon as reasonably practicable –
 - (a) give a copy of the hold notice to P, and
 - (b) in relation to each affected account, give a notice to each person within sub-paragraph (7) explaining that a hold notice has been given in respect of the account, the effect of the hold notice so far as it relates to the account and the effect of paragraphs 8 to 10.
- (7) The persons mentioned in sub-paragraph (6)(b) are –
 - (a) any person who holds the affected account with P and in respect of whom prescribed information is provided under sub-paragraph (2)(c), and
 - (b) any interested third party, in relation to the affected account, in respect of whom sufficient information has been given in the notice under sub-paragraph (2) to enable HMRC to give a notice.
- (8) After the deposit-taker has given to HMRC the notice required by sub-paragraph (2), the deposit-taker may give a notice, in relation to any affected account, to –
 - (a) P,
 - (b) if the account is held by P and one or more other persons, that person or persons, and
 - (c) any interested third party in relation to the account,

which states that a hold notice has been received by the deposit-taker in respect of the account and the effect of that notice so far as it relates to that account.

- (9) For the purposes of this Part of this Schedule, an account is an “affected account” if, as a result of the hold notice, an amount standing to the credit of that account is the held amount in relation to that account (see paragraph 5(3) or (4)).
- (10) In this Part of this Schedule “interested third party”, in relation to an account with a deposit-taker, means a person who –
 - (a) is not a holder of the account, but
 - (b) has a beneficial interest in an amount standing to the credit of the account.

Cancellation of hold notice or reduction of specified amount

- 7 (1) Where a hold notice is given to a deposit-taker, HMRC may, by a notice given to the deposit-taker –
 - (a) cancel the hold notice, or
 - (b) reduce the amount specified in the hold notice as the specified amount.
- (2) Where a notice is given under sub-paragraph (1), HMRC must give P a copy of that notice.
- (3) Where the deposit-taker is given a notice under sub-paragraph (1), it must as soon as reasonably practicable and, in any event, within the period of 5 working days beginning with the day the notice is given –
 - (a) if the hold notice is cancelled, cancel the arrangements mentioned in paragraph 5(1), and
 - (b) if the specified amount in the hold notice is reduced, make such adjustments to those arrangements as are necessary to give effect to that change.

Making objections to hold notice

- 8 (1) Where a hold notice is given to a deposit-taker, a person within sub-paragraph (2) may object to HMRC against –
 - (a) the giving of the hold notice, or
 - (b) the total of the held amounts by virtue of the hold notice or the held amount in relation to a particular account.
- (2) The persons who may object are –
 - (a) P,
 - (b) any person given a notice under paragraph 6(6)(b), and
 - (c) any interested third party in relation to an affected account.
- (3) An objection under sub-paragraph (1)(a) may only be made on one or more of the following grounds –
 - (a) that the relevant debt has already been paid,
 - (b) that the conditions for giving the hold notice were not met,
 - (c) that the hold notice is causing or will cause the person making the objection exceptional hardship, or

- (d) that there is an interested third party in relation to the affected account or, if there is more than one affected account, all of them.
- (4) An objection under sub-paragraph (1)(b) may only be made on one or more of the following grounds—
- (a) that the relevant debt has been partly paid,
 - (b) that the hold notice is causing or will cause the person making the objection exceptional hardship, or
 - (c) that there is an interested third party in relation to an affected account.
- (5) Objections under sub-paragraph (1) may only be made within the period of 30 days beginning with—
- (a) in the case of—
 - (i) P, or
 - (ii) an interested third party in relation to an affected account who has not been given a notice under paragraph 6(6)(b), the day on which a copy of the hold notice is given to P under paragraph 6(6)(a), and
 - (b) in the case of a person given a notice under paragraph 6(6)(b), the day on which that notice is given.

Consideration of objections

- 9 (1) HMRC must consider any objections made in accordance with paragraph 8.
- (2) Having considered the objections, HMRC must determine whether—
- (a) to confirm the hold notice (with or without amendment), or
 - (b) to cancel the hold notice.
- (3) An amendment under sub-paragraph (2)(a) may, in particular—
- (a) amend the amount of the relevant debt in respect of which the hold notice has effect;
 - (b) amend the amount specified in the hold notice as the safeguarded amount;
 - (c) specify one or more accounts which, for the purposes of the hold notice and this Part of this Schedule, are to be treated as if they were not accounts held by P with the deposit-taker;
 - (d) require the hold notice and this Part of this Schedule to have effect as if a specified amount were not standing to the credit of a specified account held by P.
- (4) HMRC must give a notice stating its determination to—
- (a) P,
 - (b) each person other than P who objected, and
 - (c) any other person who holds a relevant account with P, or is an interested third party in relation to a relevant account, and whom HMRC considers is affected by the determination.
- (5) If HMRC cancels the hold notice, it must give P and the deposit-taker a notice to that effect.
- (6) If HMRC amends the hold notice, it must give the deposit-taker a copy of the amended hold notice.

- (7) Where a copy of the amended hold notice is given to the deposit-taker under sub-paragraph (6) –
 - (a) the deposit-taker must make such adjustments to the arrangements mentioned in paragraph 5(1) as are necessary to give effect to the amended hold notice, and
 - (b) paragraph 6 applies (with any necessary modifications) in relation to the amended hold notice as it applies in relation to the original hold notice, except that in paragraph 6(6)(b) the reference to paragraphs 8 to 10 is to read as a reference to paragraph 10 only.
- (8) The deposit-taker must comply with the duty under sub-paragraph (7)(a) as soon as reasonably practicable and, in any event, within the period of 5 working days beginning with the date on which it is given the copy of the notice.
- (9) Nothing in paragraph 8 (making objections to hold notice) applies in relation to an amended hold notice.

Appeals against hold notice

- 10 (1) Where a hold notice is confirmed (with or without amendment) under paragraph 9, a person within sub-paragraph (2) may appeal against –
 - (a) the failure by HMRC to cancel the hold notice under paragraph 9, or
 - (b) the total of the held amounts, or the held amount in relation to a particular account, by reason of the hold notice or, if it has been amended, the amended hold notice.
- (2) The persons who may appeal are –
 - (a) any person given a notice of HMRC’s determination under paragraph 9(4), and
 - (b) any interested third party in relation to an affected account.
- (3) An appeal under sub-paragraph (1) must be made –
 - (a) in England and Wales, to the county court, and
 - (b) in Northern Ireland, to a county court.
- (4) An appeal under sub-paragraph (1)(a) may only be made on one or more of the following grounds –
 - (a) that the relevant debt has already been paid,
 - (b) that the conditions for giving the hold notice were not met,
 - (c) that the hold notice is causing or will cause the person making the appeal exceptional hardship, or
 - (d) that there is an interested third party in relation to the affected account or, if there is more than one affected account, all of them.
- (5) An appeal under sub-paragraph (1)(b) may only be made on one or more of the following grounds –
 - (a) that the relevant debt has already been partly paid,
 - (b) that the hold notice is causing or will cause the person making the appeal exceptional hardship, or
 - (c) that there is an interested third party in relation to an affected account.
- (6) An appeal under this paragraph may only be made within the period of 30 days beginning –

- (a) in the case of a person given a notice of HMRC’s determination under paragraph 9(4), with the day on which that notice is given to that person, and
 - (b) in the case of an interested third party to whom paragraph (a) does not apply, the day on which P is given such a notice.
- (7) A notice of appeal must state the grounds of appeal.
- (8) On an appeal under this paragraph, the court may –
- (a) amend or cancel the hold notice, or
 - (b) dismiss the appeal.
- (9) An amendment under sub-paragraph (8)(a) may, in particular –
- (a) amend the amount of the relevant debt in respect of which the hold notice has effect;
 - (b) amend the amount specified in the hold notice as the safeguarded amount;
 - (c) specify one or more accounts which, for the purposes of the hold notice and this Part of this Schedule, are to be treated as if they were not accounts held by P with the deposit-taker;
 - (d) require the hold notice and this Part of this Schedule to have effect as if a specified amount were not standing to the credit of a specified account held by P.
- (10) Where an appeal on the ground in sub-paragraph (4)(c) or (5)(b) (or a further appeal following such an appeal) is pending, the court to which the appeal is made may, on an application made by the person who made the appeal –
- (a) suspend the effect of the hold notice if adequate security is provided in respect of so much of the relevant debt as is specified in the hold notice,
 - (b) suspend the effect of the hold notice in relation to a particular account if adequate security is provided in respect of the held amount in respect of that account, or
 - (c) suspend the effect of the hold notice in relation to any part of the held amount standing to the credit of a particular account, if adequate security is provided in respect of that part.
- (11) Nothing in Part 5 of TMA 1970 (appeals and other proceedings) applies to an appeal under this paragraph.

Deduction notice

- 11 (1) If it appears to HMRC that a person in respect of whom a hold notice given to a deposit-taker is in force –
- (a) has failed to pay a relevant debt, and
 - (b) holds one or more accounts with the deposit-taker in respect of which there is a held amount in relation to that debt,
- HMRC may give a notice under this paragraph (“a deduction notice”) to the deposit-taker in respect of the account or accounts and that person.
- (2) A deduction notice may not be made in respect of an account unless –
- (a) the period for making an objection under paragraph 8 has expired and either no objections were made or any objection made has been determined, and

- (b) if objections were made and determined, the period for appealing under paragraph 10 has expired and any appeal has been finally determined.
- (3) The deduction notice must –
 - (a) specify the name of the person in respect of whom it is given,
 - (b) specify the account or accounts in respect of which it is given,
 - (c) in relation to each specified account, specify –
 - (i) the amount that is to be deducted from the account and paid to the Commissioners, and
 - (ii) the day by which the payment must be made, and
 - (d) explain the effect of paragraph 12 (penalties).
- (4) The total amount specified in relation to accounts under sub-paragraph (3)(c) must not exceed the unpaid amount of the relevant debt, and the amount specified in relation to a particular account must not exceed the held amount in relation to that account.
- (5) HMRC must –
 - (a) give a copy of the deduction notice to the person in respect of whom it is given, and
 - (b) in relation to each account in respect of which the notice is given, give a notice to each person within sub-paragraph (6) explaining that a deduction notice has been given in respect of that account and the effect of the deduction notice so far as it relates to that account.
- (6) The persons mentioned in sub-paragraph (5)(b) are –
 - (a) if the account is a joint account, any person who holds the account with P, and
 - (b) any person –
 - (i) who is an interested third party in relation to the account whom HMRC knows will be affected by the deduction notice, and
 - (ii) about whom HMRC has sufficient information to enable it to give the notice under subsection (5)(b).
- (7) The deduction notice requires the deposit-taker –
 - (a) to make the specified payments to the Commissioners from the affected accounts by the specified days, and
 - (b) not to do anything (otherwise than in accordance with paragraph (a)) during the period in which the notice is in force that would reduce the amount standing to the credit of any affected account below the sum of the balance required to make the payment specified in relation to that account.
- (8) HMRC may, by a notice given to the deposit-taker, amend or cancel the deduction notice, and where it does so it must –
 - (a) give a copy of the notice under this sub-paragraph to the person in respect of whom the deduction notice was given, and
 - (b) in relation to each account affected by the amendment or cancellation, give a notice to each person within sub-paragraph (6) explaining the effect of the amendment or cancellation so far as it relates to that account.
- (9) The deduction notice –

- (a) comes into force at the time it is received by the deposit-taker, and
- (b) ceases to be in force at the time –
 - (i) the deposit-taker receives a notice cancelling it under sub-paragraph (8), or
 - (ii) the deposit-taker makes the final specified payment.

Penalties

- 12 (1) This paragraph applies to a deposit-taker who –
- (a) fails to comply with an information notice, a hold notice or a deduction notice,
 - (b) fails to comply with an obligation under paragraph 6(2) in accordance with paragraph 6(3) (obligation to notify HMRC of effects of hold notice),
 - (c) fails to comply with an obligation under paragraph 6(4) in accordance with paragraph 6(5) (obligation to notify HMRC if no affected accounts),
 - (d) fails to comply with an obligation under paragraph 7(3) (obligation to adjust hold arrangements where specified amount is reduced),
 - (e) fails to comply with an obligation under paragraph 9(7) (obligation to adjust held arrangements where hold notice is amended following objections) in accordance with paragraph 9(8), or
 - (f) following receipt of an information notice or hold notice in relation to an account or accounts held with the deposit-taker by a person (“the affected person”), makes a disclosure of information to the affected person or any other person in circumstances where that disclosure is likely to prejudice HMRC’s ability to use the provisions of this Part of this Schedule to recover a relevant debt owed by the affected person.
- (2) In sub-paragraph (1)(f), the reference to a disclosure of information does not include the giving of a notice in accordance with paragraph 6(8) to the affected person in respect of a hold notice.
- (3) The deposit-taker is liable to a penalty of £300.
- (4) If a failure within sub-paragraph (1)(a) to (e) continues after the day on which a penalty is imposed under sub-paragraph (3) in respect of the failure, the deposit-taker is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure continues.
- (5) A failure by a deposit-taker to do anything required to be done within a limited period of time does not give rise to liability to a penalty under this paragraph if the deposit-taker did it within such further time, if any, as HMRC may have allowed.
- (6) Liability to a penalty under this paragraph does not arise if the person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure or (as the case may be) disclosure.
- (7) For the purposes of this paragraph –
- (a) where the deposit-taker relies on any other person to do anything, that is not a reasonable excuse unless the deposit-taker took reasonable care to avoid the failure or disclosure, and

- (b) where the deposit-taker had a reasonable excuse for the failure but the excuse has ceased, the deposit-taker is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalty

- 13 (1) Where a deposit-taker becomes liable for a penalty under paragraph 12 –
 - (a) HMRC may assess the penalty, and
 - (b) if HMRC does so, it must notify the deposit-taker in writing.
- (2) An assessment of a penalty under paragraph 12 must be made within the period of 12 months beginning with the latest of the following –
 - (a) the day on which the deposit-taker became liable to the penalty,
 - (b) the end of the period in which notice of an appeal in respect of the hold notice could have been given, and
 - (c) if notice of such an appeal is given, the day on which the appeal is finally determined or withdrawn.

Appeal against penalty

- 14 (1) A deposit-taker may appeal against –
 - (a) a decision that a penalty is payable by the deposit-taker under paragraph 12, or
 - (b) a decision as to the amount of such a penalty.
- (2) Notice of an appeal must be given to HMRC before the end of the period of 30 days beginning with the day on which the notification under paragraph 13 was given.
- (3) Notice of an appeal must state the grounds of appeal.
- (4) On an appeal under sub-paragraph (1)(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (5) On an appeal under sub-paragraph (1)(b) that is notified to the tribunal, the tribunal may –
 - (a) confirm the decision, or
 - (b) substitute for the decision another decision that HMRC had power to make.
- (6) Subject to this paragraph and paragraph 15, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this paragraph as they have effect in relation to an appeal against an assessment to income tax.

Enforcement of penalty

- 15 (1) A penalty under paragraph 12 must be paid –
 - (a) before the end of the period of 30 days beginning with the day on which the notification under paragraph 13 was given, or
 - (b) if notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the day on which the appeal is finally determined or withdrawn.

- (2) A penalty under paragraph 12 may be enforced as if it were income tax charged in an assessment and due and payable.

Protection of deposit-takers acting in good faith

- 16 A deposit-taker is not liable for damages in respect of anything done in good faith for the purposes of complying with a hold notice or a deduction notice.

Power to modify amounts and time limits

- 17 (1) The Commissioners may by regulations amend any of the following provisions by substituting a different amount for the amount for the time being specified there –
- (a) paragraph 2(2) (requirement that relevant debt is a minimum sum);
 - (b) paragraph 4(5)(a) (meaning of “the safeguarded amount”);
 - (c) paragraph 12(3) or (4) (level of penalties).
- (2) The Commissioners may by regulations amend any of the following provisions by substituting a different number of days for the number of days for the time being specified there –
- (a) paragraph 3(4) (time limit for complying with information notices);
 - (b) paragraph 5(1)(a) (time limit for complying with hold notices);
 - (c) paragraph 6(3) or (5) (time limit for notifying HMRC of effects of hold notice);
 - (d) paragraph 7(3) (time limit for effecting amendments to hold notices);
 - (e) paragraph 8(5) (time limit for making objections);
 - (f) paragraph 9(8) (time limit for effecting amendments to hold notices).

Power to make further provision

- 18 (1) The Commissioners may by regulations make provision supplementing this Part of this Schedule.
- (2) The regulations may, in particular, make provision –
- (a) about the form and content of a notice under this Part of this Schedule;
 - (b) about the manner in which a notice or a copy of a notice is to be given, or the circumstances in which a notice or a copy of a notice is to be treated as given, for the purposes of this Part of this Schedule;
 - (c) specifying circumstances in which a notice under this Part of this Schedule may not be given;
 - (d) specifying descriptions of account in respect of which a hold notice or deduction notice has no effect;
 - (e) specifying circumstances in which amounts standing to the credit of an account are to be disregarded for the purposes of a hold notice or deduction notice;
 - (f) about fees a deposit-taker may charge a person in respect of whom a notice is given under this Part of this Schedule towards administrative costs in complying with that notice;
 - (g) with respect to priority as between a notice under this Part of this Schedule and –
 - (i) any other such notice, or
 - (ii) any notice or order under any other enactment.

Regulations

- 19 (1) Regulations under this Part of this Schedule may –
- (a) make different provision for different purposes,
 - (b) include supplementary, incidental and consequential provision, or
 - (c) make transitional provision and savings.
- (2) Regulations under this Part of this Schedule are to be made by statutory instrument.
- (3) A statutory instrument containing regulations under this Part of this Schedule is subject to annulment in pursuance of a resolution of the House of Commons if it contains one or both of the following only –
- (a) regulations which prescribe information for the purposes of paragraph 3(3) or any provision of paragraph 6, or
 - (b) regulations under paragraph 17(2).
- (4) Any other statutory instrument containing regulations under this Part of this Schedule may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

Joint accounts

- 20 In this Part of this Schedule a reference to an account held by a person includes a reference to a joint account held by that person and one or more other persons.

Defined terms

- 21 (1) In this Part of this Schedule –
- “affected account” has the meaning given by paragraph 6(9);
 - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
 - “contract settlement” means an agreement made in connection with any person’s liability to make a payment to the Commissioners under or by virtue of an enactment;
 - “deduction notice” has the meaning given by paragraph 11;
 - “deposit-taker” means a person who, in the course of a business, may lawfully accept deposits in the United Kingdom (see sub-paragraph (2));
 - “hold notice” has the meaning given by paragraph 4;
 - “HMRC” means Her Majesty’s Revenue and Customs;
 - “information notice” has the meaning given by paragraph 3;
 - “interested third party”, in relation to an account held with a deposit-taker, has the meaning given by 6(10);
 - “joint account”, in relation to a person, means an account held by the person and one or more other persons;
 - “notice” means notice in writing;
 - “prescribed” means prescribed by regulations made by the Commissioners;
 - “relevant account” has the meaning given by paragraph 5(5);
 - “the safeguarded amount” has the meaning given by paragraph 4(5);
 - “the specified amount” has the meaning given by paragraph 4(2)(b);

“the tribunal” means the First-tier Tribunal;

“working day” means a day other than –

- (a) Saturday or Sunday,
- (b) Christmas Eve, Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales or Northern Ireland.

- (2) The definition of “deposit-taker” in sub-paragraph (1) is to be read with –
 - (a) section 22 of the Financial Services and Markets Act 2000 (regulated activities),
 - (b) any relevant order under that section, and
 - (c) Schedule 2 to that Act.

Extent

- 22 This Part of this Schedule extends to England and Wales and Northern Ireland.

PART 2

MISCELLANEOUS AMENDMENTS

TMA 1970

- 23 In section 28C of TMA 1970 (determination of tax where not return delivered), after subsection (4) insert –

“(4A) Where –

- (a) action is being taken under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts) for the recovery of an amount (“the original amount”) of tax charged by a determination under this section, and
- (b) before that action is concluded, the determination is superseded by such a self-assessment as is mentioned in subsection (3),

that action may be continued as if it were action for the purposes of the recovery of so much of the tax charged by the self-assessment as is due and payable, has not been paid and does not exceed the original amount.”

Insolvency Act 1986

- 24 The Insolvency Act 1986 is amended as follows.
- 25 In section 126 (power to stay or restrain proceedings against company), after subsection (2) insert –
 - “(3) Subsection (1) applies in relation to any action being taken in respect of the company under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts) as it applies in relation to any action or proceedings mentioned in paragraph (b) of that subsection.”
- 26 In section 128 (avoidance of attachments, etc), after subsection (2) insert –

- “(3) In subsection (1) “attachment” includes a hold notice or a deduction notice under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts), and, if subsection (1) has effect in relation to a deduction notice, it also has effect in relation to the hold notice to which it relates (whenever the hold notice was given).”
- 27 In section 130 (consequences of winding-up order), after subsection (3) insert –
- “(3A) In subsections (2) and (3), the reference to action or proceedings includes action in respect of the company under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts).”
- 28 (1) Section 176 (preferential charge on goods distrained) is amended as follows.
- (2) For subsection (2) substitute –
- “(2) Subsection (2A) applies where –
- (a) any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of the company, or
 - (b) Her Majesty’s Revenue and Customs has been paid any amount from an account of the company under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts),
- in the period of 3 months ending with the date of the winding-up order.
- (2A) Where this subsection applies –
- (a) in a case within subsection (2)(a), the goods or effects, or the proceeds of their sale, and
 - (b) in a case within subsection (2)(b), the payment,
- is charged for the benefit of the company with the preferential debts of the company to the extent that the company’s property is for the time being insufficient for meeting them.”
- (3) Accordingly, in the heading for the section after “distrained” insert “, etc”.
- 29 In section 183 (effect of execution or attachment (England and Wales)), after subsection (4) insert –
- “(4A) For the purposes of this section, Her Majesty’s Revenue and Customs is to be regarded as having attached a debt due to a company if it has taken action under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction for accounts) as a result of which an amount standing to the credit of an account held by the company is –
- (a) subject to hold arrangements (within the meaning of paragraph 5(2) of that Schedule), or
 - (b) the subject of a deduction notice under paragraph 11 of that Schedule.”
- 30 Section 346 (enforcement procedures), after subsection (1)–
- “(1A) For the purposes of this section, Her Majesty’s Revenue and Customs is to be regarded as having attached a debt due to a person

if it has taken action under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts) as a result of which an amount standing to the credit of an account held by that person is—

- (a) subject to hold arrangements (within the meaning of paragraph 5(2) of that Schedule), or
- (b) the subject of a deduction notice under paragraph 11 of that Schedule.”

31 (1) In section 347 (distress, etc), for subsection (3) substitute—

“(3) Subsection (3A) applies where—

- (a) any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of 3 months beginning with the distraint, or
- (b) Her Majesty’s Revenue and Customs has been paid any amount from an account of an individual under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement by deduction from accounts) and the individual is adjudged bankrupt before the end of the period of 3 months beginning with the payment.

(3A) Where this subsection applies—

- (a) in a case within subsection (3)(a), the goods or effects, or the proceeds of their sale, and
 - (b) in a case within subsection (3)(b), the payment,
- is charged for the benefit of the bankrupt’s estate with the preferential debts of the bankrupt to the extent that the bankrupt’s estate is for the time being insufficient for meeting them.”

(2) In paragraph 40(3) of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (which amends section 347(3) of the Insolvency Act 1986 to substitute “made” for “adjudged”), the reference to subsection (3) of section 347 is to be read as a reference to the version of subsection (3) substituted by sub-paragraph (1) of this paragraph.

FA 1998

32 In Schedule 18 to FA 1998 (company tax returns, assessments etc), in paragraph 40, after sub-paragraph (4) insert—

“(5) Where—

- (a) action is being taken under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement of deduction from accounts) for the recovery of an amount (“the original amount”) of any tax charged by a determination under paragraph 36 or 37, and
- (b) before that action is concluded, the determination is superseded by a self-assessment,

that action may be continued as if it were action for the purposes of the recovery of so much of the tax charged by the self-assessment as is due and payable, has not been paid and does not exceed the original amount.”

FA 2003

- 33 In Schedule 10 to FA 2003 (stamp duty land tax: returns etc), in paragraph 27, after sub-paragraph (3) insert –

“(4) Where –

- (a) action is being taken under Part 1 of Schedule 1 to the Finance Act 2015 (enforcement of deduction from accounts) for the recovery of an amount (“the original amount”) of tax charged by a Revenue determination, and
- (b) before that action is concluded, the determination is superseded by a self-assessment,

that action may be continued as if it were action for the purposes of the recovery of so much of the tax charged by the self-assessment as is due and payable, has not yet been paid and does not exceed the original amount.”

FA 2013

- 34 In Schedule 33 to FA 2013 (annual tax on enveloped dwellings: returns etc), in paragraph 20, after sub-paragraph (3) insert –

“(4) Where –

- (a) action is being taken under Part 1 of Schedule 1 to FA 2015 (enforcement of deduction from accounts) for the recovery of an amount (“the original amount”) of tax charged by an HMRC determination, and
- (b) before that action is concluded, the determination is superseded by a self-assessment,

that action may be continued as if it were action for the purposes of the recovery of so much of the tax charged by the self-assessment as is due and payable, has not yet been paid and does not exceed the original amount.”

EXPLANATORY NOTE

ENFORCEMENT BY DEDUCTION FROM ACCOUNTS

SUMMARY

1. Clause [X] and Schedule [Y] introduce a new power to allow HMRC to recover debts due to it (including tax and tax credit debts) directly from the bank and building society accounts (including Individual Savings Accounts) of debtors. This is also known as the Direct Recovery of Debts (“DRD”).
2. This power can only be used to recover debts of more than £1,000, and is subject to a number of statutory safeguards. One such safeguard is the requirement on HMRC to be satisfied that the debtor is aware they owe HMRC a debt – to meet this requirement HMRC will ensure that every debtor will receive a face-to-face visit from HMRC’s agents, before their debts are considered for recovery through DRD. This will provide a further opportunity for HMRC to personally identify the taxpayer and confirm it is their debt; explain to debtors what they owe and discuss options to resolve it; and identify debtors who are in a vulnerable position and offer them the support they need, including removing them from the DRD process.
3. Only debtors who have received this face-to-face visit, have not been identified as vulnerable, have sufficient money in their accounts and have still refused to settle their debts will be considered for debt recovery through DRD.
4. Another key statutory safeguard is the requirement that HMRC must always leave a minimum of £5,000 across a debtor’s bank and building society accounts once the debt has been held.
5. Debtors affected by this policy will have 30 days to object before any money is transferred to HMRC. If debtors do not agree with HMRC’s decision, they will be able to appeal against this to a County Court on specified grounds, including hardship and third party rights.
6. This power will commence at Royal Assent of Finance Bill 2015. The Government has stated that in order to allow for an extended period of scrutiny, this measure will be legislated for in the next Parliament.
7. This draft legislation is the Government’s first attempt to formally set out the DRD process, including the responsibilities it places on the various parties involved. Revised safeguards for this policy were announced in the Government’s consultation response published on 21 November. The Government welcomes comments on this draft legislation, to ensure it meets the policy objectives it has set out.

DETAILS OF THE CLAUSE

8. Clause 1 introduces the Schedule, and sets out the Treasury's powers to make consequential, incidental or supplementary amendments, including to primary legislation.

DETAILS OF THE SCHEDULE

9. Paragraph 2 defines the debts which are subject to DRD, using the concept of "relevant debt". Three conditions must be satisfied in order for DRD to apply. Condition A is that the sum is at least £1,000. Condition B is that the sum is either an "established debt" or one due under the accelerated payments legislation in Finance Act 2014. Condition C is that HMRC is satisfied that the debtor is aware that they owe the debt to HMRC. In its response to the consultation, the Government committed to having a face to face meeting to fulfil these objectives, including that HMRC is satisfied that the debtor knows that they owe a debt to HMRC and can assess whether or not the debtor is vulnerable, and remove them from the DRD process.

10. Paragraph 2(5) provides that an established debt is one against which there is no right of appeal or (where there is a right of appeal) the appeal period has either expired or the appeal has been settled or withdrawn.

11. Paragraph 3 provides a definition of an "information notice" and when it may be issued to a deposit-taker. If HMRC believes that a person has failed to pay a relevant debt, they may issue an information notice to a deposit taker, where it appears the person holds one or more accounts with that deposit-taker. The information notice requires the deposit taker to provide HMRC with "prescribed information" within 10 working days about accounts held with them by the person. The information deposit-takers have to provide will be prescribed in secondary legislation.

12. Paragraph 4(1) and (2) gives HMRC the power to issue a "hold notice". A hold notice can only be issued to a deposit-taker by HMRC where it appears that a person has failed to pay a relevant debt and they hold one or more accounts with the deposit-taker. The hold notice must set out in particular:

- a. enough information for the deposit-taker to be able to identify the account holder and any account(s) to which the hold notice will apply,
- b. the amount of the relevant debt in respect of which the notice will have effect ("the specified amount"),
- c. the "safeguarded amount" (the amount which must always be left available to the debtor across their accounts – defined in sub-paragraph (4)),
- d. the order of priority of accounts subject to the notice,
- e. any descriptions of account which (in whole or part) are to be disregarded for the purposes of the hold notice.

13. Paragraph 4(4) provides for rules which have the effect that where hold notices are issued for the same debt to more than one deposit-taker, the total amount which might be held under those notices cannot exceed the total debt due to HMRC. This is to ensure HMRC can never use DRD to collect more than is due to it.

14. Paragraph 4(5) provides a definition of “the safeguarded amount”, which must be specified in the hold notice. This is a minimum of £5,000 which will continue to be available to the debtor whilst the hold is in place. HMRC will have the discretion to set the safeguarded amount at a higher amount in cases where it is reasonable to do so (for example, where a business may need to pay salaries to its employees whilst the hold notice is in effect). However the hold notice does not need to specify a safeguarded amount if the deposit taker has already safeguarded £5,000 under a previously issued hold notice in respect of the same debt, within the last 30 days.

15. Paragraph 5(1) and (2) sets out the requirement for the deposit-taker to give effect to a hold notice as soon as reasonably practicable after that notice is issued, and in any case within 5 working days from that date. It also requires the deposit-taker to ensure that until the hold notice ceases to have effect they must not allow the credit balance in each account subject to the hold notice to fall below the “held amount” (this concept is defined in paragraph 5(3) and (4), depending on how many accounts are affected by the hold notice).

16. Paragraph 5(3) explains that where only one account is affected by a hold notice the held amount is calculated as follows. The deposit-taker must first deduct the safeguarded amount (the amount specified in the notice that must continue to be available to the debtor) from the total amount available in the affected account. If there is less than the safeguarded amount available in the affected account, the held amount is nil, so no hold is placed on that account. If there is money left, a hold will be placed on the remaining credit balance up to the amount of the relevant debt – the amount of that hold is the held amount.

17. Paragraph 5(4) explains that where there is more than one account subject to the same hold notice the held amount is calculated as follows. The deposit-taker must first determine the total amount available across all the accounts affected by the hold notice. Only if that total exceeds the safeguarded amount can any hold be placed on the accounts. If there is more than the safeguarded amount across the accounts, the deposit-taker proceeds to apply that safeguarded amount to those accounts. They must apply it first to the account which has the lowest priority (i.e. ‘reverse priority order’ – paragraph 5(8) defines “priority order”). So, it will be applied in the first instance to joint accounts (to best protect the rights of third parties), and then to sole accounts in opposite priority order to that which may be specified in the hold notice (for example, the order in the hold notice may say DRD applies to savings accounts first, then current accounts – so the safeguarded amount is matched first against current accounts, then savings accounts).

18. Once the safeguarded amount has been fully matched against the available amounts across the accounts, the remainder of those accounts may be subject to a hold. The amount which is to be held is identified by applying the “specified debt” (the amount of debt specified in the hold notice) to the remainder in the available accounts, in the order of priority provided for under paragraph 5(8). So, it will be applied in the first instance to sole accounts in such priority order as may be specified in the hold notice, and then to any joint accounts.

19. Paragraph 5(6) and (7) define the concepts of ‘relevant amount’ and ‘appropriate fraction’. The latter concept is relevant to determining what proportion of a joint account a debtor is deemed to own. A pro-rata approach is adopted – the debtor is deemed to own half

if it is a joint account held with one other person; a third if it is held with two other people, and so forth.

20. Paragraph 5(8) defines the priority order in which the hold should be applied to the relevant accounts. Under paragraph 5(8)(a) joint accounts will always have a lower priority than other accounts – to protect third party rights. Under paragraph 5(8)(b) and paragraph 4(2)(f) HMRC can specify the order in which the hold should be applied to other types of accounts. However, there may be cases where there are relevant accounts with the deposit taker that are of equal priority under the hierarchy HMRC specifies in the hold notice. In these circumstances, deposit-takers will have limited discretion to determine the order in which they apply the hold notice to these accounts.

21. Taking a worked-example to explain the above:

- P owes HMRC a debt of £3,000 which has met all the legal and policy requirements for DRD. P holds three accounts with the deposit-taker– a joint account with his wife of £10,000, a savings account in his name only with £3,000 and a current account in his name only with £3,000.
- If HMRC issues the deposit-taker with a hold notice in respect of this debt, it may provide in the hold notice that the safeguarded amount is £5,000 (the minimum safeguarded amount).
- Under paragraph 5(7), P is deemed to own £5,000 of the joint account held with his wife.
- Under paragraph 5(8)(a) all ‘sole accounts’ have higher priority than joint accounts. So, when applying the safeguard of £5,000 in ‘reverse priority order’ the deposit-taker would first match it against the £5,000 which P is deemed to hold in the joint-account – exhausting that safeguard in this case.
- The deposit-taker then looks to place a hold on the remaining £6,000 (the total amount available in the two other accounts P holds). To determine how to apply this hold the deposit-taker will look to the terms of the hold notice – if HMRC has provided that the hold is to be applied to savings accounts ahead of current accounts, then the deposit-taker would hold the £3,000 in the savings account, leaving P’s current account untouched.

22. Paragraph 5(10) provides when a hold notice ceases to have effect

23. Paragraph 6 describes the duty of the deposit-taker to notify HMRC that they have applied a hold notice to one or more accounts, and the consequent obligation on HMRC to notify affected parties. The deposit-taker is also provided with a discretion to notify anyone affected by the hold, but they are only entitled to do this once they have imposed the hold (this ensures they do not become liable for a penalty under paragraph 12(1)(f)).

24. Under this paragraph the deposit-taker must provide HMRC with “prescribed information” within 5 working days of the day it places a hold on the account. Secondary legislation will in due course specify what this prescribed information comprises, and this will include details of any joint-account holders or other third parties which the deposit-taker is aware have a beneficial interest in respect of an account affected by the notice. On receipt of

this notification from the deposit-taker HMRC must as soon as reasonably practicable notify the debtor and any joint account holders or third parties that the deposit-taker has notified to them. HMRC will provide a copy of the hold notice to the debtor, but will only provide joint-account holders and interested third parties with details of how the account they have an interest in is affected, and of their rights to bring objections and an appeal.

25. Paragraph 7 makes provision for HMRC of its own accord to cancel or reduce the specified amount in the hold notice it has issued, and places requirements on the deposit-taker to implement any notice making such changes which it receives.

26. Paragraphs 8(1)-(2) explains that the debtor, anyone who holds a joint account with the debtor which is affected by the hold notice, or an interested third party, can object to HMRC. Objections under paragraph 8(1)(a) are made against the fact a hold notice has been issued at all by HMRC, whilst objections under paragraph 8(1)(b) are in effect on the basis of quantum.

27. Paragraphs 8(3) and 8(4) set out the grounds on which an objection against a hold notice can be made. These grounds vary depending on whether the objection is against the hold notice as a whole, or just on the basis of quantum.

28. Paragraph 8(5) provides that objections must be brought within 30 days from the date the hold notice is given, or for a third-party who was not given such notice, within 30 days from the date the debtor is given notice.

29. Paragraph 9 provides how HMRC will deal with any objections which are brought. On receipt of objections, HMRC can reject them entirely and confirm the hold notice without amendment, accept them in part and amend the hold notice accordingly, or accept them entirely and cancel the hold notice. When HMRC receives objections (for example which suggest that HMRC has made a mistake or that the effect of the hold notice will cause undue hardship), it will promptly carry out an internal review of the case. If there is clear evidence that DRD action will cause undue hardship, or that HMRC has made a mistake, it will instruct the deposit-taker to release an appropriate amount to the debtor.

30. Paragraph 9(3) gives examples of the amendments to a hold notice that may be made by HMRC after considering an objection. HMRC may amend the amount of the relevant debt, amend the amount specified as safeguarded (to allow additional funds to be made available to the debtor, in excess of the £5,000 minimum), exclude accounts from the notice, or exclude a specified credit balance in an account from the notice.

31. Paragraphs 9(4) – (6) requires HMRC to notify their decision to each person who objected to the hold notice and to notify the deposit holder where the hold notice is cancelled or amended. HMRC is also required to notify all other third parties who it is aware of who may be affected by an amended hold notice.

32. Paragraph 9(7)-(8) provide that when a deposit-taker is given an amended hold notice they must as soon as reasonably practicable and in any event within 5 working days make the necessary adjustments to their hold arrangements.

33. Paragraph 10 provides that the debtor, anyone who holds a joint account with the debtor which is affected by the hold notice, or an interested third party, can appeal against a hold notice, or against the amount which must be held by virtue of a hold notice. An appeal can only be made where an objection has been determined in accordance with paragraph 9.

34. Paragraphs 10(4) and 10(5) set out the grounds for making an appeal e.g. that the hold notice is causing undue hardship. These vary depending on whether an appeal is brought against the decision not to cancel the hold notice, or just on the basis of quantum. As set out in paragraph 2, this measure will only be applied to established debts where debtors will have already had the option to appeal against the underlying liability. Appeals brought at this stage are therefore confined to issues relating to HMRC's decision to use DRD rather than another enforcement tool, or the way in which it has used DRD in a particular case.

35. An appeal under this paragraph must be made within 30 days from the day on which the debtor, joint-account holder or interested third party was given notice by HMRC of its determination under paragraph 9(4). For interested third parties who have not received a notice from HMRC (for example, because HMRC and the deposit-taker were unaware of them), but who nonetheless found out that an account they have an interest in is affected by a hold-notice (for example, because the debtor tells them), they will have 30 days from the day HMRC gave the debtor notice of its determination under paragraph 9(4).

36. Appeals are brought to the County Court. Paragraph 10(8) - (10) sets out the powers of that Court on an appeal under this paragraph. The Court's power to amend the hold notice is the same as HMRC's power to make amendments under paragraph 9(3) in determining an objection. However, paragraph 10(10) permits the Court to suspend the effect of all or part of a hold notice where adequate security is provided by the debtor or another.

37. Paragraph 11(1) – (2) sets out HMRC's power to give a deduction notice to a deposit-taker. A deduction notice can only be issued where a hold notice is in force in respect of which money is being held by the deposit-taker under that notice, and there is no longer any possibility of objections or appeals continuing or being made in respect of that hold notice. Under paragraph 11(3) the deduction notice must specify in particular the amounts which are to be deducted, and by when payment to HMRC has to be made. Paragraph 11(4) is to ensure that the amounts to be deducted cannot exceed what is owed to HMRC. Paragraph 11(6)(b) provides that deposit-taker must keep a hold in place on the relevant account until all the necessary payments have been made to HMRC, at which point the deduction notice automatically ceases to have force.

38. Paragraph 12 provides for penalties to be chargeable where a deposit-taker fails to comply with the terms of an information notice, a hold notice or a deduction notice, or fails to adjust hold arrangements when required to do so. Also, liability for a penalty will arise under paragraph 12(1)(f) if after receipt of an information notice or hold notice the deposit-taker makes a disclosure which has the effect of 'tipping-off' the debtor. These penalties comprise a fixed penalty of £300 and a daily-default penalty of £60.

39. Paragraph 12(5) provides that HMRC may extend the time limit for a deposit-taker to comply with a notice, and that no penalty will be chargeable during the extended period. Paragraph 12(6) and (7) provide the deposit-taker with a reasonable excuse defence.

40. Paragraph 13 sets out the time limits for making an assessment of a penalty under paragraph 12
41. Paragraph 14 provides deposit-takers with a right to appeal against an assessment of a penalty, or against the quantum of a penalty assessment. An appeal must be in writing and given within 30 days of the issue of the penalty assessment. Appeals against a penalty assessment are made to the First-tier Tribunal and are subject to the standard tax appeal provisions contained at Part 5 of TMA 1970.
42. Paragraph 15 requires a penalty to be paid within 30 days of the issue of the penalty notice or within 30 days from the date an appeal against the penalty is finally determined, whichever is later.
43. Paragraph 16 protects deposit-takers from claims to damages in respect of anything they do in good faith when complying with a hold notice or a deduction notice.
44. Paragraph 17 provides HMRC Commissioners with the power to vary specified time limits and sums included in the Schedule.
45. Paragraph 18 provides HMRC Commissioners with powers to make secondary legislation in relation to the administration of the DRD regime. Paragraph 19 then contains further provision relating to how such powers are to be exercised.
46. Paragraphs 20 and 21 contain provisions relating to interpretation.
47. Paragraph 22 provides that DRD only extends to England, Wales and Northern Ireland (so, not to Scotland).
48. Paragraphs 23 – 34 contain miscellaneous amendments to other Acts. Notably, a number of amendments are made to the Insolvency Act 1986. These have the effect of restricting HMRC's ability to use DRD in specified insolvency situations. Their intention is to mirror a number of the restrictions which apply under that Act to HMRC's ability to use its existing powers to enforce against goods, or seek 'attachment' of money held in accounts. These amendments will only have effect in respect of England and Wales (as that is the extent of the Insolvency Act 1986). Government will separately investigate having equivalent amendments made under the devolved Northern Irish legislation which relates to insolvency.

BACKGROUND NOTE

49. The vast majority of people pay their taxes in full and on time. In 2013-14, £506 billion in revenue was paid by around 35 million taxpayers. Around 90% was paid on time but around £50 billion was not, and became a debt.

50. Some people require an additional prompt or reminder to pay what they owe, and a significant number of people pay once HMRC begins to pursue the money owed. In 2013-14, HMRC made around 16 million contacts with debtors by letter, phone, SMS or other means. This included making more than 900,000 visits to follow up on around 400,000 cases of debt.

51. HMRC encourages people to get in touch as soon as possible if they require additional assistance with their taxes, or believe they will have difficulty paying.

52. However, a very small minority of taxpayers still refuse to pay what they owe, despite having the money to do so. DRD is intended to help to level the playing field. It is a targeted measure that will affect a small number of individuals and businesses who are making an active decision to not pay, or delay paying, the money they owe – even though they have sufficient funds in their accounts.

53. This measure was announced at Budget 2014. A consultation document was published on 6 May 2014. The formal consultation was open until 29 July 2014 and the Government published its response on 21 November 2014. This response announced additional safeguards for debtors, in response to issues raised during the consultation.

54. The Government has stated that, in order to allow for an extended period of scrutiny, this measure will be legislated for in a Finance Bill in 2015 during the next Parliament.

55. HMRC has powers in England, Wales and Northern Ireland to take control of certain types of goods to cover a debt, without the need to apply to court. However this power does not apply to bank accounts and property.

56. Section 61 of the Taxes Management Act 1970 (TMA) granted HMRC the power to seize and sell goods in order to settle tax debts. This is called “distrain”, and applied to England, Wales and NI. It still applies to NI, but has been superseded for England and Wales by the Tribunal, Courts and Enforcement Act 2007 (TCEA).

57. TCEA updated the basis of HMRC’s powers in England and Wales, alongside wider reforms to the powers granted to other enforcement agents (HMRC, police, or court-appointed bailiffs).

58. HMRC does not have direct seizure powers in Scotland. However, section 128 of the Finance Act 2008 allows HMRC to seek “Summary Warrants” from the Sheriff, which allow a Sheriff’s Officer to carry out “diligence” on our behalf. This means that they can seize goods or cash (including from bank accounts) in order to settle tax debts.

59. If you have any questions about this change, or comments on the legislation, please contact Andrew Willis on 03000 579079 (email: andrew.willis@hmrc.gsi.gov.uk).