



Social Security Administration (Northern Ireland) Act 1992

1992 CHAPTER 8

PART III

OVERPAYMENTS AND ADJUSTMENTS OF BENEFIT

Adjustments of benefits

71 **Overlapping benefits - general.**

- (1) Regulations may provide for adjusting benefit as defined in section 121 of the Contributions and Benefits Act [^{F1}, or a contribution-based jobseeker's allowance [^{F2} or a contributory employment and support allowance] ,] which is payable to or in respect of any person, or the conditions for [^{F3}receipt of that benefit], where—
 - (a) there is payable in his case any such pension, allowance or benefit as is described in subsection (2) below; or
 - (b) the person is, or is treated under the regulations as, undergoing medical or other treatment as an in-patient in a hospital or similar institution.
- (2) Subsection (1)(a) above applies to any pension, allowance or benefit payable out of public funds (including any other benefit as so defined, whether it is of the same or a different description) which is payable to or in respect of—
 - (a) the person referred to in subsection (1);
 - (b) that person's [^{F4}wife, husband or civil partner] ;
 - (c) any [^{F5}... dependant of that person; or
 - (d) the [^{F6}wife, husband or civil partner] of any adult dependant of that person.
- (3) Where but for regulations made by virtue of subsection (1)(a) above two persons would both be entitled to an increase of benefit in respect of a third person, regulations may make provision as to their priority.

[^{F7}(4) Regulations may provide for adjusting—

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- (a) benefit as defined in section 121 of the Contributions and Benefits Act; ^{F8}...
 - (b) a contribution-based jobseeker's allowance, [^{F9}or
 - (c) a contributory employment and support allowance,]
- payable to or in respect of any person where there is payable in his case any such benefit as is described in subsection (5) below.]
- (5) Subsection (4) above applies to any benefit payable under the legislation of any member State other than the United Kingdom which is payable to or in respect of—
- (a) the person referred to in that subsection;
 - (b) that person's [^{F10}wife, husband or civil partner] ;
 - (c) any ^{F11}... dependant of that person; or
 - (d) the [^{F12}wife, husband or civil partner] of any adult dependant of that person.

Textual Amendments

- F1** Words in s. 71(1) inserted (17.7.1996) by S.I. 1995/2705, art. 40(1), **Sch. 2 para. 32(2)(a)**; S.R. 1996/285, art. 2, **Sch.**
- F2** Words in s. 71(1) inserted (1.7.2008 for specified purposes, 27.10.2008 in so far as not already in force) by **Welfare Reform Act (Northern Ireland) 2007 (c. 2)**, s. 60(1), **Sch. 3 para. 4(7)(a)**; S.R. 2008/276, art. 2(2)(c), Sch. Pt. 1
- F3** Words in s. 71(1) substituted (17.7.1996) by S.I. 1995/2705, art. 40(1), **Sch. 2 para. 32(2)(b)**; S.R. 1996/285, art. 2, **Sch.**
- F4** Words in s. 71(2)(b) substituted (5.12.2005) by **Civil Partnership Act 2004 (c. 33)**, s. 263(8)(d), **Sch. 24 para. 111**; S.I. 2005/3255, art. 2(1), Sch.
- F5** Words in s. 71(2)(c) repealed (10.4.2006) by **Child Benefit Act 2005 (c. 6)**, s. 6(2), Sch. 1 para. 47, **Sch. 2 Pt. 2**
- F6** Words in s. 71(2)(d) substituted (5.12.2005) by **Civil Partnership Act 2004 (c. 33)**, s. 263(8)(d), **Sch. 24 para. 111**; S.I. 2005/3255, art. 2(1), Sch.
- F7** S. 71(4) substituted (17.7.1996) by S.I. 1995/2705, art. 40(1), **Sch. 2 para. 32(3)**; S.R. 1996/285, art. 2, **Sch.**
- F8** Word in s. 71(4)(a) repealed (27.10.2008) by **Welfare Reform Act (Northern Ireland) 2007 (c. 2)**, s. 60(1), **Sch. 8**; S.R. 2008/276, art. 2(2)(d), Sch. Pt. 2
- F9** S. 71(4)(c) and word added (1.7.2008 for specified purposes, 27.10.2008 in so far as not already in force) by **Welfare Reform Act (Northern Ireland) 2007 (c. 2)**, s. 60(1), **Sch. 3 para. 4(7)(b)**; S.R. 2008/276, art. 2(2)(c), Sch. Pt. 1
- F10** Words in s. 71(5)(b) substituted (5.12.2005) by **Civil Partnership Act 2004 (c. 33)**, s. 263(8)(d), **Sch. 24 para. 111**; S.I. 2005/3255, art. 2(1), Sch.
- F11** Words in s. 71(5)(c) repealed (10.4.2006) by **Child Benefit Act 2005 (c. 6)**, s. 6(2), Sch. 1 para. 47, **Sch. 2 Pt. 2**
- F12** Words in s. 71(5)(d) substituted (5.12.2005) by **Civil Partnership Act 2004 (c. 33)**, s. 263(8)(d), **Sch. 24 para. 111**; S.I. 2005/3255, art. 2(1), Sch.

72 Income support and other payments.

- (1) Where—
- (a) a payment by way of prescribed income is made after the date which is the prescribed date in relation to the payment; and
 - (b) it is determined that an amount which has been paid by way of income support [^{F13}, an income-based jobseeker's allowance [^{F14}, state pension credit or an

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income-related employment and support allowance]] would not have been paid if the payment had been made on the prescribed date,

the Department shall be entitled to recover that amount from the person to whom it was paid.

(2) Where—

- (a) a prescribed payment which apart from this subsection falls to be made from public funds in the United Kingdom or under the law of any other member State is not made on or before the date which is the prescribed date in relation to the payment; and
- (b) it is determined that an amount (“the relevant amount”) has been paid by way of income support [^{F15}, an income-based jobseeker’s allowance [^{F16}, state pension credit or an income-related employment and support allowance]] that would not have been paid if the payment mentioned in paragraph (a) above had been made on the prescribed date,

then—

- (i) in the case of a payment from public funds in the United Kingdom, the authority responsible for making it may abate it by the relevant amount; and
- (ii) in the case of any other payment, the Department shall be entitled to receive the relevant amount out of the payment.

(3) Where—

- (a) a person (in this subsection referred to as A) is entitled to any prescribed benefit for any period in respect of another person (in this subsection referred to as B); and
- (b) either—
 - (i) B has received income support [^{F17}, an income-based jobseeker’s allowance or an income-related employment and support allowance] for that period; or
 - (ii) B was, during that period, a member of the same family as some person other than A who received income support [^{F17}, an income-based jobseeker’s allowance or an income-related employment and support allowance] for that period; and
- (c) the amount of the income support [^{F18}, an income-based jobseeker’s allowance or an income-related employment and support allowance] has been determined on the basis that A has not made payments for the maintenance of B at a rate equal to or exceeding the amount of the prescribed benefit,

the amount of the prescribed benefit may, at the discretion of the authority administering it, be abated by the amount by which the amounts paid by way of income support [^{F19}, an income-based jobseeker’s allowance or an income-related employment and support allowance] exceed what it is determined that they would have been had A, at the time the amount of the income support [^{F19}, an income-based jobseeker’s allowance or an income-related employment and support allowance] was determined, been making payments for the maintenance of B at a rate equal to the amount of the prescribed benefit.

(4) Where an amount could have been recovered by abatement by virtue of subsection (2) or (3) above but has not been so recovered, the Department may recover it otherwise than by way of abatement—

- (a) in the case of an amount which could have been recovered by virtue of subsection (2) above, from the person to whom it was paid; and

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- (b) in the case of an amount which could have been recovered by virtue of subsection (3) above, from the person to whom the prescribed benefit in question was paid.
- (5) Where a payment is made in a currency other than sterling, its value in sterling shall be determined for the purposes of this section in accordance with regulations.

Textual Amendments

- F13** Words in s. 72(1)(b) substituted (2.12.2002 for certain purposes, 6.10.2003 in so far as not already in force) by [State Pension Credit Act \(Northern Ireland\) 2002 \(c. 14\)](#), ss. 14, 21(2), [Sch. 2 para. 11\(a\)](#); [S.R. 2002/366](#), art. 2; [S.R. 2003/373](#), art. 2
- F14** Words in s. 72(1)(b) substituted (1.7.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\)](#), s. 60(1), [Sch. 3 para. 4\(8\)\(a\)](#); [S.R. 2008/276](#), art. 2(2)(c), [Sch. Pt. 1](#)
- F15** Words in s. 72(2)(b) substituted (2.12.2002 for specified purposes, 6.10.2003 in so far as not already in force) by [State Pension Credit Act \(Northern Ireland\) 2002 \(c. 14\)](#), ss. 14, 21(2), [Sch. 2 para. 11\(b\)](#); [S.R. 2002/366](#), art. 2; [S.R. 2003/373](#), art. 2
- F16** Words in s. 72(2)(b) substituted (1.7.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\)](#), s. 60(1), [Sch. 3 para. 4\(8\)\(a\)](#); [S.R. 2008/276](#), art. 2(2)(c), [Sch. Pt. 1](#)
- F17** Words in s. 72(3)(b) substituted (1.7.2008 for specified purposes, 27.10.2008 in so far as not already in force) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\)](#), s. 60(1), [Sch. 3 para. 4\(8\)\(b\)](#); [S.R. 2008/276](#), art. 2(2)(c), [Sch. Pt. 1](#)
- F18** Words in s. 72(3)(c) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/413\)](#), regs. 1(1), 2
- F19** Words in s. 72(3) substituted (27.10.2008) by [The Employment and Support Allowance \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/413\)](#), regs. 1(1), 2

[72A] ^{F20}Payment of benefit where maintenance payments collected by Department.

- (1) This section applies where—
- (a) a person (“the claimant”) is entitled to a benefit to which this section applies;
 - (b) the Department is collecting periodical payments of child or spousal maintenance made in respect of the claimant or a member of the claimant’s family; and
 - (c) the inclusion of any such periodical payment in the claimant’s relevant income would, apart from this section, have the effect of reducing the amount of the benefit to which the claimant is entitled.
- (2) The Department may, to such extent as it considers appropriate, treat any such periodical payment as not being relevant income for the purposes of calculating the amount of benefit to which the claimant is entitled.
- (3) The Department may, to the extent that any periodical payment collected by it is treated as not being relevant income for those purposes, retain the whole or any part of that payment.
- (4) Any sum retained by the Department under subsection (3) shall be paid by the Department into the Consolidated Fund.
- (5) In this section—
- “child” means a person under the age of 16.

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“child maintenance”, “spousal maintenance” and “relevant income” have such meaning as may be prescribed;

[^{F21}“couple” has the meaning given by section 133(1) of the Contributions and Benefits Act;]

“family” means—

- (a) a [^{F22}couple] ;
- (b) a [^{F22}couple] and a member of the same household for whom one of them is, or both are, responsible and who is a child or a person of a prescribed description;
- (c) except in prescribed circumstances, a person who is not a member of a [^{F22}couple] and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description;

F23 ...
F23 ...

- (6) For the purposes of this section, the Department may by regulations make provision as to the circumstances in which—
 - (a) persons are to be treated as being or not being members of the same household;
 - (b) one person is to be treated as responsible or not responsible for another.
- (7) The benefits to which this section applies are income support, an income-based jobseeker’s allowance [^{F24}, an income-related employment and support allowance] and such other benefits (if any) as may be prescribed.]

Textual Amendments

- F20** S. 72A inserted (16.11.1995) by S.I. 1995/2702 (N.I. 13), **art. 18**; S.I. 1995/428, **art. 2**, **Sch.**
- F21** Words in s. 72A(5) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 112(a)**; S.I. 2005/3255, **art. 2(1)**, **Sch.**
- F22** Words in s. 72A(5) substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 112(b)**; S.I. 2005/3255, **art. 2(1)**, **Sch.**
- F23** Words in s. 72A(5) repealed (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(8)(d), **Sch. 24 para. 112(c)**, **Sch. 30**; S.I. 2005/3255, **art. 2(1)**, **Sch.**
- F24** Words in s. 72A(7) inserted (27.10.2008) by Welfare Reform Act (Northern Ireland) 2007 (c. 2), s. 60(1), **Sch. 3 para. 4(9)**; S.R. 2008/276, **art. 2(2)(d)**, **Sch. Pt. 2**

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