
STATUTORY INSTRUMENTS

1987 No. 491

**Social Security (Payments on account,
Overpayments and Recovery) Regulations 1987**

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Payments on account, Overpayments and Recovery) Regulations 1987 and shall come into force on 6th April 1987.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1986;

“adjudicating authority” means, as the case may be, the Chief or any other adjudicating officer, a social security appeal tribunal, the Chief or any other Social Security Commissioner or a Tribunal of Commissioners;

“benefit” means any benefit under the Social Security Act 1975(1), child benefit, family income supplement, supplementary benefit and any social fund payment under section 32(2) (a) of the Act (maternity and funeral expenses);

“child benefit” means benefit under Part I of the Child Benefit Act 1975(2);

“the Claims and Payments Regulations” means the Child Benefit (Claims and Payments) Regulations 1984(3), the Family Income Supplements (Claims and Payments) Regulations 1980(4), regulations 5 to 9 inclusive of the Mobility Allowance Regulations 1975(5), the Mobility Allowance (Motability Payments Arrangements) Regulations 1978(6), the Social Security (Claims and Payments) Regulations 1979(7), the Social Fund Maternity and Funeral Expenses (Claims and Payments) Regulations 1986(8) and the Supplementary Benefit (Claims and Payments) Regulations 1981(9);

“family income supplement” means benefit under the Family Income Supplements Act 1970(10);

“guardian’s allowance” means an allowance under section 38 of the Social Security Act 1975(11);

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- (1) 1975 c. 14; amendments altering the range of benefits available under this Act were made by the Social Security Pensions Act 1975 (c. 60), sections 15, 16, 22 and 66(2), the Social Security and Housing Benefits Act 1982 (c. 24), s.39, the Health and Social Security Act 1984 (c. 48), sections 11 to 13 and Schedule 5 and the Social Security Act 1986 (c. 50), sections 36 to 42, Schedule 3 and Schedule 4, paragraph 13.
- (2) 1975 c. 61.
- (3) S.I.1984/1960.
- (4) S.I. 1980/1438, amended by S.I. 1983/1003.
- (5) S.I. 1975/1573; relevant amending instruments are S.I. 1981/1817, 1982/1241, 1983/1186 and 1984/458.
- (6) S.I. 1978/1131, amended by S.I. 1982/1629.
- (7) S.I. 1979/628; relevant amending instruments are S.I. 1979/781 and 1199, 1980/1136, 1621 and 1943, 1981/1101, 1982/699, 1241, 1344 and 1362, 1983/186 and 1015, 1984/458, 550, 1303 and 1699, 1985/600 and 1250 and 1986/903.
- (8) S.I. 1986/2172.
- (9) S.I. 1981/1525; relevant amending instruments are S.I. 1982/522, 907, 914 and 1400, 1983/337, 1000 and 1004, 1984/458 and 938, 1985/1016 and 1986/562.
- (10) 1970 c. 55; sections 6(1) and 8(3) were amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 8, Part IV.
- (11) 1975 c. 14; section 38 was amended by the Child Benefit Act 1975 (c. 61), Schedule 4 paragraph 12(a) and (c) and by the Social Security Act 1986 (c. 50), section 45.

“severe disablement allowance” means an allowance under section 36 of the Social Security Act 1975(12);

“supplementary allowance” means an allowance under section 1(1)(b) of the Supplementary Benefits Act 1976(13);

“supplementary benefit” means benefit under Part I of the Supplementary Benefits Act 1976;

“supplementary pension” means a pension under section 1(1)(a) of the Supplementary Benefits Act 1976.

(3) Unless the context otherwise requires, any reference in these regulations to a numbered Part or regulation is a reference to the Part or regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

PART II

INTERIM PAYMENTS

Making of interim payments

2.—(1) The Secretary of State may, in his discretion, make an interim payment, that is to say a payment on account of any benefit to which it appears to him that a person is or may be entitled, in the following circumstances:—

- (a) a claim for that benefit has not been made in accordance with the Claims and Payments Regulations and it is impracticable for such a claim to be made immediately; or
- (b) a claim for that benefit has been so made, but it is impracticable for it or a reference, review, application or appeal which relates to it to be determined immediately; or
- (c) an award of that benefit has been made but it is impracticable for the beneficiary to be paid immediately, except by means of an interim payment.

(2) On or before the making of an interim payment the recipient shall be given notice in writing of his liability under this Part to have it brought into account and to repay any overpayment.

Bringing interim payments into account

3. Where it is practicable to do so and notice has been given as required by regulation 2(2), the interim payment shall be brought into account as follows:—

- (a) any interim payment made in anticipation of an award of benefit shall be offset by the adjudicating authority in reduction of the benefit to be awarded; and
- (b) any interim payment (whether or not made in anticipation of an award) which is not offset under sub-paragraph (a) shall be deducted by the Secretary of State from—
 - (i) the sum payable under the award of benefit on account of which the interim payment was made; or
 - (ii) any sum payable under any subsequent award of the same benefit to the same person.

(12) 1975 c. 14; section 36 was substituted by section 11 of the Health and Social Security Act 1984 (c. 48).

(13) 1976 c. 71; sections 1—30 have effect as set out in the Social Security Act 1980 (c. 30), sections 6, 8 and 21 and Schedule 2, Part II.

Recovery of overpaid interim payments

4.—(1) Where the adjudicator has determined that an interim payment has been overpaid in circumstances which fall within paragraph (3) and that notice has been given as required by regulation 2(2), that authority shall determine the amount of the overpayment.

(2) The amount of the overpayment shall be recoverable by the Secretary of State, by the same procedures and subject to the same conditions as if it were recoverable under section 53(1) of the Act.

(3) The circumstances in which an interim payment may be determined to have been overpaid are as follows:—

- (a) an interim payment has been made under regulation 2(1)(a) or (b) but—
 - (i) the recipient has failed to make a claim in accordance with the Claims and Payments Regulations as soon as practicable, or having made such a claim has withdrawn it or is deemed to have withdrawn it; or
 - (ii) it has been determined that there is no entitlement on the claim, or that the entitlement is less than the amount of the interim payment; or
- (b) an interim payment has been made under regulation 2(1)(c) which exceeds the entitlement under the award of benefit on account of which the interim payment was made.

PART III OFFSETTING

Offsetting prior payment against subsequent award

5.—(1) Subject to regulation 6 (exception from offset of recoverable overpayment), any sum paid in respect of a period covered by a subsequent determination in any of the cases set out in paragraph (2) shall be offset against arrears of entitlement under the subsequent determination and, except to the extent that the sum exceeds the arrears, shall be treated as properly paid on account of them.

(2) Paragraph (1) applies in the following cases:—

Case 1: Payment under an award which is revised, reversed or varied

Where a person has been paid a sum by way of benefit under an award which is subsequently varied on appeal or revised on a review.

Case 2: Award or payment of benefit in lieu

Where a person has been paid a sum by way of benefit under the original award and it is subsequently determined, on review or appeal, that another benefit should be awarded or is payable in lieu of the first.

Case 3: Child benefit and severe disablement allowance

Where either—

- (a) a person has been awarded and paid child benefit for a period in respect of which severe disablement allowance is subsequently determined to be payable to the child concerned; or
- (b) severe disablement allowance is awarded and paid for a period in respect of which child benefit is subsequently awarded to someone else, the child concerned in the subsequent determination being the beneficiary of the original award.

Case 4: Increase of benefit for dependant

Where a person has been paid a sum by way of an increase in respect of a dependent person under the original award and it is subsequently determined that that other person is entitled to benefit for that period, or that a third person is entitled to the increase for that period in priority to the beneficiary of the original award.

(3) Where an amount has been deducted under regulation 14(b) (sums to be deducted in calculating recoverable amounts) an equivalent sum shall be offset against any arrears of entitlement of that person under a subsequent award of supplementary pension or allowance for the period to which the deducted amount relates.

(4) Where child benefit which has been paid under an award in favour of a person (the original beneficiary) is subsequently awarded to someone else for any week, the benefit shall nevertheless be treated as properly paid if it was received by someone other than the original beneficiary, who—

- (a) either had the child living with him or was contributing towards the cost of providing for the child at a weekly rate which was not less than the weekly rate under the original award, and
- (b) could have been entitled to child benefit in respect of that child for that week had a claim been made in time.

(5) Any amount which is treated under paragraph (4) as properly paid shall be deducted from the amount payable to the beneficiary under the subsequent award.

Exception from offset of recoverable overpayment

6. No amount may be offset under regulation 5(1) which has been determined to be a recoverable overpayment for the purposes of section 53(1) of the Act.

PART IV

PREVENTION OF DUPLICATION OF PAYMENTS

Duplication of payments and supplementary benefit

7. References in this Part to section 27 of the Act (prevention of duplication of payments) are to the provisions of that section as applied to supplementary benefit by section 73 of, and paragraph 2 of Schedule 7 to, that Act.

Duplication and prescribed income

8.—(1) For the purposes of section 27(1) of the Act (recovery of amount of benefit awarded because prescribed income not paid on prescribed date), a person's prescribed income consists of resources which are required by Part III of the Supplementary Benefit (Resources) Regulations 1981(14) to be taken into account in the calculation of his income resources.

- (2) The prescribed date in relation to any payment of income prescribed by paragraph (1) is—
 - (a) where it is made in respect of a specific day or period, that day or the first day of the period;
 - (b) where it is not so made, the day or the first day of the period to which it is fairly attributable.

(14) S.I. 1981/1527; relevant amending instruments are S.I. 1982/1125, 1126 and 1127, 1983/503, 505, 1240 and 1245, 1984/1102, 1985/614, 1246 and 1835 and 1986/1292 and 1293.

Duplication and prescribed payments

9.—(1) For the purposes of section 27(2) of the Act (recovery of amount of benefit awarded because prescribed payment not made on prescribed date), the payment of any of the following is a prescribed payment:—

- (a) any benefit under the Social Security Act 1975(15) other than any grant or gratuity;
- (b) any child benefit;
- (c) any family income supplement;
- (d) any war disablement pension or war widow’s pension(16) which is not in the form of a gratuity and any payment which the Secretary of State accepts as analogous to any such pension;
- (e) any allowance paid under the Job Release Act 1977(17);
- (f) any allowance payable by or on behalf of the Manpower Services Commission to or in respect of a person for his maintenance for any period during which he is following a course of training or instruction provided or approved by that Commission;
- (g) any payment of benefit under the legislation of any member State other than the United Kingdom concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community(18), whether or not the benefit has been acquired by virtue of the provisions of that Regulation.

(2) The prescribed date, in relation to any payment prescribed by paragraph (1) is the date by which receipt of or entitlement to that benefit would have to be notified to the Secretary of State if it were to be taken into account in determining, whether on review or otherwise, the amount of or entitlement to supplementary pension or allowance.

Duplication and maintenance payments

10. For the purposes of section 27(3) of the Act (recovery of amount of benefit awarded because maintenance payments not made), the following benefits are prescribed:—

- (a) child benefit;
- (b) increases for dependants of any benefit under the Social Security Act 1975;
- (c) child’s special allowance under section 31 of the Social Security Act 1975(19); and
- (d) guardian’s allowance.

Conversion of payments made in a foreign currency

11. Where a payment of income prescribed by regulation 8(1), or a payment prescribed by regulation 9(1), is made in a currency other than sterling, its value in sterling, for the purposes of section 27 of the Act and this Part, shall be determined, after conversion by the Bank of England,

(15) 1975 c. 14.

(16) “War disablement pension” and “war widow’s pension” are each defined in section 84(1) of the Social Security Act 1986 (c. 50).

(17) 1977 c. 8.

(18) O.J. No. L149, 5.7.1971; Regulations No. 1408/71 and No. 574/72 were restated in amended form in Regulation No. 2001/83 (O.J. No. L230, 22.8.1983) and further amended by Council Regulation (EEC) No. 1660/85 (O.J. No. L160, 20.6.1985), Council Regulation (EEC) No. 1661/85 (O.J. No. L160, 20.6.1985) and Commission Regulation (EEC) No. 513/86 (O.J. No. L57, 28.2.1986).

(19) 1975 c. 14; child’s special allowance is abolished except for existing beneficiaries by Social Security Act 1986 (c. 50), section 40.

or by any bank which is a recognised bank for the purposes of the Banking Act 1979⁽²⁰⁾, as the net sterling sum into which it is converted, after any banking charge or commission on the transaction has been deducted.

PART V

DIRECT CREDIT TRANSFER OVERPAYMENTS

Recovery of overpayments by direct credit transfer

12.—(1) Where it is determined by the adjudicating authority that a payment in excess of entitlement has been credited to a bank or other account under an arrangement for direct credit transfer made in accordance with regulation 16A of the Social Security (Claims and Payments) Regulations 1979⁽²¹⁾, or regulation 7 of the Child Benefit (Claims and Payments) Regulations 1984⁽²²⁾ and that the conditions prescribed by paragraph (2) are satisfied, the excess, or the specified part of it to which the Secretary of State's certificate relates, shall be recoverable under this regulation.

(2) The prescribed conditions for recoverability under paragraph (1) are as follows:—

- (a) the Secretary of State has certified that the payment in excess of entitlement, or a specified part of it, is materially due to the arrangement for payments to be made by direct credit transfer; and
- (b) notice of the effect which this regulation would have, in the event of an overpayment, was given in writing to the beneficiary, or to a person acting for him, before he agreed to the arrangement.

(3) Where the arrangement was agreed to before these regulations came into force the condition prescribed by paragraph 2(b) need not be satisfied in any case where the application for benefit to be paid by direct credit transfer contained a statement, or was accompanied by a written statement made by the applicant, which complied with the provisions of regulation 16A(3)(b) and (8) of the Social Security (Claims and Payments) Regulations 1979 or, as the case may be, regulation 7(2)(b) and (6) of the Child Benefit (Claims and Payments) Regulations 1984⁽²³⁾.

PART VI

REVISION OF DETERMINATION AND CALCULATION OF AMOUNT RECOVERABLE

Circumstances in which determination need not be revised

13. Section 53(4) of the Act (recoverability dependent on reversal, variation or revision of determination) shall not apply where the fact and circumstances of the misrepresentation or non-disclosure do not provide a basis for reviewing and revising the determination under which payment was made.

⁽²⁰⁾ 1979 c. 37.

⁽²¹⁾ S.I. 1979/628, amended by S.I. 1982/1241 and revoked in part by regulation 19(1) of these regulations..

⁽²²⁾ S.I. 1984/1960; revoked in part by regulation 19(1) of these regulations..

⁽²³⁾ Both sets of provisions are revoked in part by regulation 19(1) of these regulations and Part I of the Schedule to them.

Sums to be deducted in calculating recoverable amounts

14. In calculating the amounts recoverable under section 53(1) of the Act or regulation 12, where there has been an overpayment of benefit, the adjudicating authority shall deduct—

- (a) any amount which has been offset under Part III;
- (b) any additional amount of supplementary pension or allowance which was not payable under the original, or any other, determination, but which should have been determined to be payable—
 - (i) on the basis of the claim as presented to the adjudicating authority, or
 - (ii) on the basis of the claim as it would have appeared had the misrepresentation or non-disclosure been remedied before the determination;

but no other deduction shall be made in respect of any other entitlement to benefit which may be, or might have been, determined to exist.

Quarterly diminution of capital resources

15.—(1) For the purposes of section 53(1) of the Act, where a supplementary pension or allowance has been overpaid in consequence of a misrepresentation as to capital resources or a failure to disclose their existence, the adjudicating authority shall treat those resources as having been reduced at the end of each quarter from the start of the overpayment period by the amount paid by way of supplementary pension or allowance within that quarter.

(2) Capital resources shall not be treated as reduced over any period other than a quarter or in any circumstances other than those for which paragraph (1) provides.

(3) In this regulation “a quarter” means a period of 13 weeks starting with the first day on which the overpayment period began and ending on the 90th consecutive day thereafter.

PART VII

THE PROCESS OF RECOVERY

Recovery by deduction from benefits

16.—(1) Where any amount is recoverable under sections 27 or 53(1) of the Act, or under these regulations, it shall be recoverable by the Secretary of State from any of the benefits prescribed by the next paragraph, to which the person from whom it is determined to be recoverable is entitled.

(2) The following benefits are prescribed for the purposes of this regulation:—

- (a) subject to paragraphs (3) and (4), any benefit under the Social Security Act 1975;
- (b) subject to paragraphs (3) and (4), any child benefit;
- (c) any family income supplement;
- (d) any benefit payable under the legislation of any member State other than the United Kingdom concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation;
- (e) subject to regulation 17, any supplementary pension or allowance;

- (f) any benefit payable under the social security legislation applicable in Northern Ireland which is equivalent to benefit prescribed by paragraphs (a), (b), (c) or (e) subject to exceptions equivalent to those made by paragraphs (3) and (4).

(3) Deductions may not be made from entitlement to the benefits specified in paragraph (4) except as a means of recovering an overpayment of the benefit from which the deduction is to be made.

(4) The benefits specified for the purposes of paragraph (3) are guardian's allowance, attendance allowance in respect of a child, arising under section 35(1) to (4) of the Social Security Act 1975, as modified by regulation 6 of the Social Security (Attendance Allowance) (No. 2) Regulations 1975⁽²⁴⁾, and child benefit.

Limitations on deductions from supplementary pension or allowance

17.—(1) Regulation 16 shall apply without limitation to any payment of arrears of supplementary pension or allowance other than any arrears caused by the operation of regulation 8(1) of the Supplementary Benefit (Determination of Questions) Regulations 1980⁽²⁵⁾ (suspension of payments), but shall apply to the amount of pension or allowance to which a person is presently entitled only to the extent that there may, subject to regulation 18 of the Supplementary Benefit (Claims and Payments) Regulations 1981⁽²⁶⁾ (priority as between certain debts), be recovered in respect of any one benefit week—

- (a) in a case to which paragraph (2) applies, not more than the amount there specified; and
 (b) in any other case, 3 times 5 per cent of the single householder rate, that 5 per cent being, where it is not a multiple of 5 pence, rounded to the next higher such multiple.

(2) Where—

- (a) the person to whom the supplementary pension or allowance is payable is a person to whom—
- (i) paragraph 1(a) of the table in paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976 (normal requirements for person over pensionable age who has a partner) applies,
 - (ii) paragraph 3(a) of that table (normal requirements for householders over pensionable age) applies,
 - (iii) regulation 7 of the Supplementary Benefit (Requirements) Regulations 1983⁽²⁷⁾ (long-term rates for normal requirements) applies; or
 - (iv) regulation 9(12)(a)(i) or (b)(i) of those regulations (long-term rates for normal requirements of boarders) applies; or
- (b) the person responsible for the misrepresentation of or failure to disclose a material fact has, by reason thereof, been found guilty of an offence under section 55 of the Act or under any other enactment, or has made a written statement after caution in admission of deception or fraud for the purpose of obtaining supplementary benefit,

the amount mentioned in paragraph (1)(a) shall be one-sixth of the weekly amount for normal requirements for the time being applicable to a person to whom paragraph 3 of the table in paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976 (long-term rate for householders) applies, that one-sixth being, where it is not a multiple of 10 pence, rounded to the nearest such multiple or, if it is a multiple of 5 pence but not of 10 pence, the next higher multiple of 10 pence.

⁽²⁴⁾ S.I. 1975/598, amended by S.I. 1977/1361.

⁽²⁵⁾ S.I. 1980/1643; relevant amending instruments are S.I. 1981/815, 1982/907, 1983/337, 1000 and 1984/458.

⁽²⁶⁾ S.I. 1981/1525; relevant amending instruments are S.I. 1982/1400, 1983/337 and 1986/562.

⁽²⁷⁾ S.I. 1983/1399, to which there are amendments not relevant to these regulations.

(3) Where in the calculation of the resources of the person to whom the supplementary pension or allowance is payable the amount of earnings or other income falling to be taken into account is reduced by regulation 10(5) or 11(5) of the Supplementary Benefit (Resources) Regulations 1981(28) (partial disregard of earnings or other income respectively) the weekly amount applicable under paragraph (1) may be increased by not more than half the amount of the reduction, and any increase under this paragraph has priority over any increase which would, but for this paragraph, be made under regulation 17(3) of the Supplementary Benefit (Claims and Payments) Regulations 1981(29) (regular payments to third parties for fuel items).

(4) Regulation 16 shall not be applied to a supplementary pension or allowance so as to reduce that pension or allowance in any one benefit week—

- (a) in a case in which the person to whom that pension or allowance is payable is also entitled to payment of any benefit under the Social Security Act 1975 together with which, under arrangements made by the Secretary of State either throughout or in any part of Great Britain, supplementary pension or allowance is paid, to less than 5 pence;
- (b) in any other case, to less than 10 pence.

(5) In this regulation—

- (a) “benefit week” has the same meaning as in regulation 7 of the Supplementary Benefit (Determination of Questions) Regulations 1980;
- (b) “written statement after caution” means—
 - (i) in England and Wales, a written statement made in accordance with the Police and Criminal Evidence Act 1984 (Codes of Practice) (No. 1) Order 1985(30), or, before that order came into operation, the Judges Rules;
 - (ii) in Scotland, a written statement duly witnessed by 2 persons.

Recovery from couples

18. In the case of an overpayment of supplementary benefit or family income supplement in respect of a married or unmarried couple, the amount recoverable by deduction, in accordance with regulation 16, may be recovered by deduction from supplementary benefit or family income supplement payable to either of them, provided that the two of them are a married or unmarried couple at the date of the deduction.

PART VIII

PREVOCATIONS, CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

Revocations and consequential amendments

19.—(1) The regulations specified in column (1) of Part I of the Schedule to these regulations are revoked to the extent mentioned in column (2) of the Schedule.

(2) The regulations specified in column (1) of Part II of the Schedule to these regulations are each amended by substituting for the passage specified in column (2) of the Schedule the words “he, or any person acting for him has, whether fraudulently or otherwise, misrepresented or failed

(28) S.I. 1981/1527; relevant amending instruments are S.I. 1982/1125, 1126 and 1984/1102.

(29) S.I. 1981/1525; relevant amending instruments are S.I. 1982/522 and 914 and 1984/458.

(30) 1985/1937.

to disclose any material fact and that the interim payment has been made in consequence of the misrepresentation or failure”.

(3) The regulations revoked by paragraph (1) and those amended by paragraph (2) shall nevertheless continue in force in their existing form for the purposes of any review or appeal in relation to any question of repayment or recoverability first determined before the commencement of these regulations.

Transitional provisions

20.—(1) Parts II to VI shall apply to the determination of any questions first determined after the commencement of these regulations, but not to the determination on review or appeal of any question of repayment or recoverability first determined before that date.

(2) Section 53(7) and (9) (recovery by deductions from benefit and recovery through the county court or sheriff court) and Part VII of these regulations (the process of recovery) shall apply to any amount recoverable or repayable under any enactment repealed by the Act or any regulations revoked by these regulations as if it was an amount recoverable under section 53(1).

(3) Section 53(9) shall apply to any amount which was, or would have been, recoverable through the county court or sheriff court under enactments repealed by the Act as if it was an amount recoverable under section 53(1).

Signed by authority of the Secretary of State for Social Services

18th March 1987

Nicholas Lyall
Parliamentary Under-Secretary of State,
Department of Health and Social Security