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STATUTORY INSTRUMENTS

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**1988 No. 1890**

**The Housing Benefit (Community Charge Rebates) (Scotland) Regulations 1988**

**PART XI**

**OVERPAYMENTS**

**Meaning of overpayment**

**82.** In this Part “overpayment” means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations (whether on initial determination or as subsequently revised on review or further review).

**Recoverable overpayments**

**83.—(1)** Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) This paragraph applies to an overpayment caused by an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), “overpayment caused by official error” means an overpayment caused by a mistake made or something done or omitted to be done by the appropriate authority or by an officer or person acting for that authority or by an officer of the Department of Social Security or the Department of Employment acting as such where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake, act or omission.

**Person by whom recovery may be made**

**84.** The authority which paid the recoverable overpayment may recover it.

**Person from whom recovery may be sought**

**85.—(1)** Subject to paragraph (2) a recoverable overpayment shall be recoverable from either—

- (a) where the overpayment was in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) by or on behalf of the claimant or any other person to whom a payment of housing benefit may be made, the person who misrepresented or failed to disclose that material fact; or
- (b) in any other case, the claimant or the person to whom the overpayment was made.

(2) Where a recoverable overpayment is made to a claimant who has one or more partners, recovery of the overpayment may be made by deduction from any housing benefit payable to a partner, provided that the claimant and that partner were members of the same household both at the time of the overpayment and when the deduction is made.

### Methods of recovery

86. Without prejudice to any other method of recovery, an authority may recover any recoverable overpayments from any person referred to in regulation 85 by deduction from any housing benefit to which that person is entitled, or where it is unable to do so, may request the Secretary of State to recover the overpayment from the benefits prescribed in regulation 89, in accordance with the provisions of that regulation.

### Diminution of capital

87.—(1) Where in the case of a recoverable overpayment, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person's capital, or an error, other than one to which regulation 83(2) (effect of official error) refers, as to the amount of a person's capital, the overpayment was in respect of a period ("the overpayment period") of more than 13 benefit weeks, the appropriate authority shall, for the purpose only of calculating the amount of that overpayment—

- (a) at the end of the first 13 benefit weeks of the overpayment period, treat the amount of that capital as having been reduced by the amount of housing benefit overpaid during those 13 weeks;
- (b) at the end of each subsequent period of 13 benefit weeks, if any, of the overpayment period, treat the amount of that capital as having been further reduced by the amount of housing benefit overpaid during the immediately preceding 13 benefit weeks.

(2) Capital shall not be treated as reduced over any period other than 13 benefit weeks or in any circumstances other than those for which paragraph (1) provides.

### Sums to be deducted in calculating recoverable overpayments

88. In calculating the amount of a recoverable overpayment, the appropriate authority—

- (a) if it determines that a lesser amount was properly payable in respect of the whole or part of the overpayment period, shall deduct that amount; or
- (b) may deduct so much of any payment of personal community charge or collective community charge contribution in respect of the overpayment period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous determination.

### Recovery of overpayments from prescribed benefits

89.—(1) For the purposes of section 29(7) of the Act (recovery of overpaid housing benefit by deduction from other benefits), the benefits prescribed by this regulation are—

- (a) any benefit under the Social Security Act, except those specified in paragraph (2);
- (b) income support or family credit under Part II of the Act;
- (c) 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(1) 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.

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(1) 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).

(2) Benefits excepted from paragraph (1)(a) are guardian's allowance and attendance allowance in respect of a child under section 35(1) to (4) of the Social Security Act(2) as modified by regulation 6 of the Social Security (Attendance Allowance) (No. 2) Regulations 1975(3).

(3) Where the Secretary of State is satisfied that—

- (a) a recoverable overpayment of housing benefit has been made, in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulent or otherwise), by or on behalf of a claimant or any other person to whom a payment or housing benefit has been made; and
- (b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the overpayment, he shall, if requested to do so by an authority under regulation 86 (methods of recovery) recover the overpayment by deduction from any of those benefits.

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(2) Section 35 was amended by the National Health Service Act 1977 (c. 49), Schedule 15 paragraph 63, the Social Security Act 1979 (c. 18) section 2, the Social Security Act 1980 (c. 30), Schedule 1, Part II paragraph 8 and the Social Security Act 1988 (c. 7) section 1.

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