

STATUTORY INSTRUMENTS

1988 No. 664

The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988

PART II

INTERIM PAYMENTS

Modifications etc. (not altering text)

C1 Modification of Part II, revoked with savings (1.4.13) by S.I. 2013/383, reg. 1(2)(a), 19(1)(2)

Making of interim payments

2.—(1) [^{F1}Subject to paragraph (1A),][^{F2}the Board may, in their discretion], make an interim payment, that is to say a payment on account of any benefit to which it appears to [^{F3}them] that a person is or may be entitled [^{F4}(or, where sub-paragraph (a) applies, entitled apart from satisfying the condition of making a claim)], 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^{F5}, including where it is impracticable to satisfy immediately the national insurance number requirements in section 1(1A) and (1B) of the Administration Act]; or
- (b) a claim for that benefit has been so made, but it is impracticable for it or a reference, [^{F6}revision, supersession], 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.

[^{F7}(1A) Paragraph (1) shall not apply pending the determination of an appeal.]

(2) [^{F8}Subject to paragraph (3),] 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.

[^{F9}(3) Where the recipient of an interim payment of disability living allowance—

- (a) is terminally ill within the meaning of section 35(2C) of the Social Security Act 1975; or
- (b) had an invalid carriage or other vehicle provided by the Secretary of State under section 5(2)(a) of the National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the National Health Service (Scotland) Act 1978,

the requirement to give notice in paragraph (2) of this regulation shall be omitted.]

[^{F10}(4) Where an interim payment of income support [^{F11}or income-related employment and support allowance] is made because a payment to which the recipient is entitled by way of child support maintenance under the Child Support Act 1991, or periodical payments under a maintenance

agreement within the meaning of section 9(1) of that Act or under a maintenance order within the meaning of section 107(15) of the Social Security Administration Act 1992, has not been made, the requirement in paragraph (2) of this regulation to give notice shall be omitted.]

Textual Amendments

- F1** Words in reg. 2(1) added (5.2.96) by S.I. 1996/30, reg. 1(1), 10(a)
- F2** Words in reg. 2(1) substituted (5.10.1999 with effect in accordance with reg. 1(2)) by [The Tax Credits \(Payments on Account, Overpayments and Recovery\) \(Amendment\) Regulations 1999 \(S.I. 1999/2571\)](#), regs. 1(1), **4(2)(a)**
- F3** Word in reg. 2(1) substituted (5.10.1999 with effect in accordance with reg. 1(2)) by [The Tax Credits \(Payments on Account, Overpayments and Recovery\) \(Amendment\) Regulations 1999 \(S.I. 1999/2571\)](#), regs. 1(1), **4(2)(b)**
- F4** Words in reg. 2(1) inserted (18.3.2005) by [Social Security, Child Support and Tax Credits \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/337\)](#), regs. 1, **10(3)(a)(i)**
- F5** Words in reg. 2(1)(a) inserted (18.3.2005) by [Social Security, Child Support and Tax Credits \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/337\)](#), regs. 1, **10(3)(a)(ii)**
- F6** Words in reg. 2(1)(b) substituted (5.10.1999 with effect in accordance with reg. 1(2)) by [The Tax Credits \(Payments on Account, Overpayments and Recovery\) \(Amendment\) Regulations 1999 \(S.I. 1999/2571\)](#), regs. 1(1), **4(2)(c)**
- F7** Reg. 2(1A) substituted (18.3.2005) by [Social Security, Child Support and Tax Credits \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/337\)](#), regs. 1, **10(3)(b)**
- F8** Words in reg. 2(2) added (6.4.92) by S.I. 1991/2742, reg. 1(1), 15(3)(a)
- F9** Reg. 2(3) inserted (6.4.92) by S.I. 1991/2742, reg. 1(1), 15(3)(b)
- F10** Reg. 2(4) inserted (5.4.93) by S.I. 1993/650, reg. 1(1), 2(1)
- F11** Words in reg. 2(4) inserted (27.10.2008) by [Employment and Support Allowance \(Consequential Provisions\) \(No.2\) Regulations 2008 \(S.I. 2008/1554\)](#), regs. 1(2)(b), **52(3)**

Modifications etc. (not altering text)

- C2** Reg. 2(1)(b) modified (1st June, 5th July, 6th September, 5th and 18th October and 29th November 1999) by the Social Security Act 1998, 1999/1958, 2422, 2739, 2860 and 3178, Sch.9 para. 2

Bringing interim payments into account

^{F12}3.—^{F13}(1) ^{F14}Subject to paragraph (2), where] it is practicable to do so and, where notice is required to be given under regulation 2(2), such notice has been given—

- (a) any interim payment, other than an interim payment made in the circumstances mentioned in regulation 2(4),—
- (i) which was made in anticipation of an award of benefit shall be offset by the adjudicating authority in reduction of the benefit to be awarded; and
- (ii) whether or not made in anticipation of an award, which is not offset under subparagraph (i) shall be deducted by the Secretary of State from—
- (a) the sum payable under the award of benefit on account of which the interim payment was made; or
- (b) any sum payable under any subsequent award of the same benefit to the same person; and
- (b) any interim payment made in the circumstances mentioned in regulation 2(4) shall be offset by the Secretary of State against any sum received by him in respect of arrears of child support maintenance payable to the person to whom the interim payment was made.]

[^{F15}(2) Where the interim payment mentioned in paragraph (1)(a) is a payment on account of tax credit, paragraph 1(a), but not paragraph 1(b), shall apply with the modification that, for the words “Secretary of State” there is substituted the word “Board”.]

Textual Amendments

- F12** Reg. 3 substituted (5.4.93) by S.I. 1993/650, reg. 1(1), 2(2)
- F13** Reg. 3(1): reg. 3 renumbered as reg. 3(1) (5.10.1999 with effect in accordance with reg. 1(2)) by [The Tax Credits \(Payments on Account, Overpayments and Recovery\) \(Amendment\) Regulations 1999 \(S.I. 1999/2571\)](#), regs. 1(1), **5(2)**
- F14** Words in reg. 3(1) substituted (5.10.1999 with effect in accordance with reg. 1(2)) by [The Tax Credits \(Payments on Account, Overpayments and Recovery\) \(Amendment\) Regulations 1999 \(S.I. 1999/2571\)](#), regs. 1(1), **5(2)**
- F15** Reg. 3(2) added (5.10.1999 with effect in accordance with reg. 1(2)) by [The Tax Credits \(Payments on Account, Overpayments and Recovery\) \(Amendment\) Regulations 1999 \(S.I. 1999/2571\)](#), regs. 1(1), **5(3)**

Recovery of overpaid interim payments

4.—(1) Where the adjudicating authority has determined that an interim payment has been overpaid in circumstances which fall within paragraph (3) and [^{F16}where notice is required to be given under regulation 2(2), such notice has been given], 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 has made a claim which is either defective or is not made on the form approved for the time being by the Secretary of State and the Secretary of State has not treated the claim as duly made under regulation 4(7) of the Claims and Payments Regulations, 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 that benefit on the claim is not payable, or
 - (iii) the claim has been withdrawn under regulation 5(2) of the Claims and Payments Regulations; 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 [^{F17}; or]
- (c) [^{F18}an interim payment of income support [^{F19}or income-related employment and support allowance] has been made under regulation 2(1)(b) in the circumstances mentioned in regulation 2(4).]

(4) For the purposes of this regulation a claim is defective if it is made on the form approved for the time being by the Secretary of State but is not completed in accordance with the instructions on the form.

[^{F20}(5) Where the interim payment is a payment on account of tax credit paragraphs (2) to (4) shall apply with the modification that for references to “the Secretary of State” there shall be substituted references to “the Board”.]

Textual Amendments

- F16** Words in reg. 4(1) substituted (5.4.93) by S.I. 1993/650, reg. 1(1), 2(3)(a)
- F17** Word in reg. 4(3)(b) inserted (5.4.93) by S.I. 1993/650, reg. 1(1), 2(3)(b)
- F18** Reg. 4(3)(c) inserted (5.4.93) by S.I. 1993/650, reg. 1(1), 2(3)(c)
- F19** Words in reg. 4(3)(c) inserted (27.10.2008) by [Employment and Support Allowance \(Consequential Provisions\) \(No.2\) Regulations 2008 \(S.I. 2008/1554\)](#), regs. 1(2)(b), **52(4)**
- F20** Reg. 4(5) added (5.10.1999 with effect in accordance with reg. 1(2)) by [The Tax Credits \(Payments on Account, Overpayments and Recovery\) \(Amendment\) Regulations 1999 \(S.I. 1999/2571\)](#), regs. 1(1), **6**

Changes to legislation:

There are currently no known outstanding effects for the The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988, PART II.