
STATUTORY INSTRUMENTS

1988 No. 664

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

PART III

OFFSETTING

Offsetting prior payment against subsequent award

5.—(1) Subject to [^{F1}paragraphs (1A)]^{F2}, (2A) and (6)] and] 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.

[^{F3}(1A) In paragraph (1) the reference to “any sum paid” shall, in relation to tax credit, include a reference to any amount or calculation of tax credit payable in respect of a period prior to the date of the subsequent determination, which is included in a start notification given by the Board to an employer, and for the payment of which the employer remains responsible.]

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

Case 1: Payment under an award which is revised, [^{F4}superseded] or varied Where a person has been paid a sum by way of benefit [^{F5}or by way of a shared additional pension under section 55A [^{F6}or 55AA] of the Contributions and Benefits Act] under an award which is subsequently varied on appeal or revised [^{F7}or superseded].

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 [^{F8}decided, on a revision, supersession or appeal], that another benefit [^{F9}or, as the case may be, universal credit] 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^{F10}, employment and support allowance for those persons with limited capability for work in relation to youth in accordance with paragraph 4 of Schedule 1 to the Welfare Reform Act 2007,]^{F11}or incapacity benefit for persons incapacitated in youth in accordance with section 30A(1)(b) and (2A) of the Contributions and Benefits Act] is subsequently determined to be payable to the child concerned; or
- (b) severe disablement allowance^{F12}, employment and support allowance for those persons with limited capability for work in relation to youth in accordance with paragraph 4 of Schedule 1 to the Welfare Reform Act 2007,]^{F11}or incapacity benefit for persons incapacitated in youth in accordance with section 30A(1)(b) and (2A) of the Contributions and Benefits Act] 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.

Case 5: Increase of benefit for partner Where a person has been paid a sum by way of an increase in respect of a partner (as defined in regulation 2 of the Income Support Regulations) and it is subsequently determined that that other person is entitled to benefit for that period.

[^{F13}*Case 6: Carer Support Payment* Where a person has been paid carer support payment for a period in respect of which any overlapping benefit is subsequently determined to be payable.]

[^{F14}(2A) In paragraph (2), Case 2 shall not apply where either—

- (a) the sum paid under the original award, or
- (b) the subsequent decision on the revision, supersession or appeal,

referred to in that Case (but not both) is or relates to tax credit.]

[^{F15}(2B) In paragraph (2), for the purposes of Case 6—

“carer support payment” means carer’s assistance given in accordance with the Carer’s Assistance (Carer Support Payment) (Scotland) Regulations 2023;

“overlapping benefit” means a benefit specified in paragraph (2C).

(2C) The following are overlapping benefits for the purposes of paragraph (2B)—

- (a) state pension or retirement pension;
- (b) incapacity benefit;
- (c) severe disablement allowance;
- (d) unemployability supplement that is paid with industrial injuries disablement benefit or war pension;
- (e) widowed parent’s allowance, widowed mother’s allowance or widow’s pension, excluding additional pension;
- (f) bereavement allowance;
- (g) war pension;
- (h) maternity allowance;
- (i) industrial death benefit;
- (j) contribution-based jobseeker’s allowance;
- (k) contributory employment and support allowance; and
- (l) training allowance.

(2D) For the purposes of paragraph (2C)—

“the 2003 Act” means the Income Tax (Earnings and Pensions) Act 2003;

“bereavement allowance” means an allowance referred to in section 39B of the Contributions and Benefits Act, subject to the transitional provisions specified in article 4 of the Pensions Act 2014 (Commencement No. 10) Order 2017;

“contribution-based jobseeker’s allowance” means an allowance under the 1995 Act, as amended by the provisions of Part 1 of Schedule 14 to the 2012 Act that remove references to an income-based allowance, and a contribution-based allowance under the 1995 Act, as that Act has effect apart from those provisions;

“contributory employment and support allowance” means an allowance under Part 1 of the 2007 Act, as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the 2012 Act that remove references to an income-related allowance, and a contributory allowance under Part 1 of the 2007 Act, as that Part has effect apart from those provisions;

“incapacity benefit” means a benefit referred to in section 30A of the Contributions and Benefits Act;

“industrial death benefit” means a benefit referred to in Part VI of Schedule 7 to the Contributions and Benefits Act;

“maternity allowance” means an allowance referred to in sections 35 and 35B of the Contributions and Benefits Act;

“Personal Injuries Scheme” means any scheme made under the Personal Injuries (Emergency Provisions) Act 1939 or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939;

“retirement pension” means a pension payable under Part II and Part III of the Contributions and Benefits Act, excluding any additional pension or graduated retirement benefit;

“Service Pensions Instrument” means any instrument described in paragraph (a) or (b) below in so far, but only in so far, as the pensions or other benefits provided by that instrument are not calculated or determined by reference to length of service, namely—

- (a) any instrument made in exercise of powers—
 - (i) referred to in section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977 (pensions or other benefits for disablement or death due to service in the armed forces of the Crown); or
 - (ii) under section 1 of the Polish Resettlement Act 1947 (pensions and other benefits for disablement or death due to service in certain Polish forces); or
- (b) any instrument under which a pension or other benefit may be paid to a person (not being a member of the armed forces of the Crown) out of public funds in respect of death or disablement, wound, injury or disease due to service in any nursing service or other auxiliary service of any of the armed forces of the Crown, or in any other organisation established under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council or the Air Council;

“state pension” means a pension payable under Part 1 of the Pensions Act 2014;

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Skills Development Scotland, Scottish Enterprise, Highlands and Islands Enterprise or the Welsh Ministers;
- (b) to a person (“P”) for P’s maintenance or in respect of a member of P’s family; and
- (c) for the period, or part of the period, during which P is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to P or so provided or approved by or on behalf of the Secretary of State, Skills Development Scotland, Scottish Enterprise, Highlands and Islands Enterprise or the Welsh Ministers,

but it does not include an allowance paid by any Government department to or in respect of P by reason of the fact that P is following a course of full-time education, other than under arrangements made under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990, or is training as a teacher;

“unemployability supplement” includes an increase on account of unemployability under any Personal Injuries Scheme or a Service Pensions Instrument;

“war disablement pension” means any retired pay or pension or allowance payable in respect of disablement under an instrument specified in section 639(2) of the 2003 Act;

“war pension” means a war disablement pension, a war widow’s pension or a war widower’s pension;

“war widow’s pension” means any pension or allowance payable to a woman as a widow or surviving civil partner under an instrument specified in section 639(2) of the 2003 Act in respect of the death or disablement of any person;

“war widower’s pension” means any pension or allowance payable to a man as a widower or surviving civil partner under an instrument specified in section 639(2) of the 2003 Act in respect of the death or disablement of any person;

“widowed mother’s allowance” means an allowance referred to in section 37 of the Contributions and Benefits Act;

“widowed parent’s allowance” means an allowance referred to in section 39A of the Contributions and Benefits Act;

“widow’s pension” means a pension referred to in section 38 of the Contributions and Benefits Act.]

(3) Where an amount has been deducted under regulation 13(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 income support^[F16], or state pension credit^[F17], or income-based jobseeker’s allowance^[F18] or an income-related employment and support 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.

^[F19](6) Subject to regulation 6, any sums under—

- (a) Schedule 5 or 5A to the Contributions and Benefits Act (pension increases or lump sum where entitlement to retirement pension or shared additional pension is deferred); or
- (b) Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005 (increases or lump sum where entitlement to graduated retirement benefit is deferred),

[sections 8 or 9 of the Pensions Act 2014; or

^{F20}(c)

- (d) Regulations under section 10 of that Act which make provision corresponding or similar to sections 8 or 9 of that Act,]

paid pursuant to a decision which is subsequently revised under section 9 of the Social Security Act 1998, superseded under section 10 of that Act or overturned on appeal, shall be offset against any sums due under the subsequent determination and, except to the extent that the sum exceeds the amount now due, shall be treated as properly paid on account of it.]

Textual Amendments

- F1** Words in reg. 5(1) 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), **7(2)**
- F2** Words in reg. 5(1) substituted (6.4.2006) by Social Security (Deferral of Retirement Pensions etc.) Regulations 2006 (S.I. 2006/516), regs. 1, **6(a)**
- F3** Reg. 5(1A) inserted (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), **7(3)**
- F4** Word in reg. 5(2) 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), **7(4)(a)**
- F5** Words in reg. 5(2) inserted (6.7.2005) by Social Security (Shared Additional Pension) (Miscellaneous Amendments) Regulations 2005 (S.I. 2005/1551), regs. 1(1)(a), **8** (with reg. 10)
- F6** Words in reg. 5(2) inserted (6.4.2016 coming into force in accordance with art. 1(2)(b)) by The Pensions Act 2014 (Consequential, Supplementary and Incidental Amendments) Order 2015 (S.I. 2015/1985), arts. 1(2)(b), **11(3)(a)**
- F7** Words in reg. 5(2) 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), **7(4)(b)**
- F8** Words in reg. 5(2) 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), **7(4)(c)**
- F9** Words in reg. 5(2) inserted (8.4.2013) by The Social Security (Overpayments and Recovery) Regulations 2013 (S.I. 2013/384), regs. 1(2)(c), **31(3)**
- F10** Words in reg. 5(2) inserted (28.6.2010) by Social Security (Miscellaneous Amendments) (No.3) Regulations 2010 (S.I. 2010/840), regs. 1, **3**
- F11** Words in reg. 5(2) inserted (6.4.2001) by The Social Security (Incapacity Benefit) Miscellaneous Amendments Regulations 2000 (S.I. 2000/3120), regs. 1, **5** (with reg. 6)
- F12** Words in reg. 5(2) inserted (28.6.2010) by Social Security (Miscellaneous Amendments) (No.3) Regulations 2010 (S.I. 2010/840), regs. 1, **3**
- F13** Words in reg. 5(2) inserted (26.3.2024) by The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (Consequential Amendments) Order 2024 (S.I. 2024/282), arts. 1(2), **2(2)**
- F14** Reg. 5(2A) inserted (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), **7(5)**
- F15** Reg. 5(2B)-(2D) inserted (26.3.2024) by The Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 (Consequential Amendments) Order 2024 (S.I. 2024/282), arts. 1(2), **2(3)**
- F16** Words in reg. 5(3) inserted (6.10.2003) by State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations 2002 (S.I. 2002/3019), regs. 1(2)(b), **24(5)**, 24(6)(a)
- F17** Words in reg. 5(3) inserted (7.10.1996) by The Social Security and Child Support (Jobseeker's Allowance) (Consequential Amendments) Regulations 1996 (S.I. 1996/1345), regs. 1, **23(5)**, 23(6)(a)
- F18** Words in reg. 5(3) inserted (27.10.2008) by Employment and Support Allowance (Consequential Provisions) (No.2) Regulations 2008 (S.I. 2008/1554), regs. 1(2)(b), **52(5)**
- F19** Reg. 5(6) added (6.4.2006) by Social Security (Deferral of Retirement Pensions etc.) Regulations 2006 (S.I. 2006/516), regs. 1, **6(b)**
- F20** Reg. 5(6)(c)(d) inserted (6.4.2016 coming into force in accordance with art. 1(2)(b)) by The Pensions Act 2014 (Consequential, Supplementary and Incidental Amendments) Order 2015 (S.I. 2015/1985), arts. 1(2)(b), **11(3)(b)**

Changes to legislation: *There are currently no known outstanding effects for the The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988, PART III. (See end of Document for details)*

Modifications etc. (not altering text)

C1 Reg. 5(2) 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. 3

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.

Changes to legislation:

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