

1988 No. 664

SOCIAL SECURITY

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

Made - - - -

30th March 1988

Laid before Parliament

11th April 1988

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Whereas a draft of the following Regulations was laid before Parliament in accordance with the provisions of section 83(3)(b) of the Social Security Act 1986(a) and approved by resolution of each House of Parliament.

Now, therefore, the Secretary of State for Social Services, in exercise of the powers conferred on him by sections 23(8), 27, 51(1)(t) and (u), 52, 83(1), 84(1) and 89 of that Act(b) and all other powers enabling him in that behalf, by this instrument, which contains only regulations made under the sections of the

(a) 1986 c. 50.

(b) Section 83(1) provides for section 166(1) to (3A) of the Social Security Act 1975 (c. 14) (extent of powers) to apply to regulation-making powers conferred by the Social Security Act 1986 and section 84 is cited because of the meaning ascribed to the words "prescribed" and "regulations".

Social Security Act 1986 specified above and provisions consequential on those sections and which is made before the end of a period of 12 months from the commencement of those sections, makes the following Regulations:

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 and shall come into force on 11th April 1988.

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

▶¹“the 1995 Act” means the Jobseekers Act 1995(a);

“the 2007 Act” means the Welfare Reform Act 2007(b);

“the 2012 Act” means the Welfare Reform Act 2012(c);◀

“the Act” means the Social Security Act 1986;

▶²“the Administration Act” means the Social Security Administration Act 1992(d)◀

▶³“adjudicating authority” means, as the case may require, the Secretary of State,

▶⁴the First -tier Tribunal or the Upper Tribunal;◀◀

[▶⁵“adjudicating authority” means, as the case may require, the Board, an officer of the Board, an appeal tribunal constituted under section 7 of the Social Security Act 1998, the Chief Social Security Commissioner or any other Social Security Commissioner, or a tribunal consisting of three or more of such Commissioners in accordance with section 16(7) of that Act;◀]

“benefit” means ▶⁶a ▶⁷jobseeker’s allowance, state pension credit ▶¹personal independence payment,◀▶⁸, an employment and support allowance◀ and◀◀ any benefit under the Social Security Act 1975(e), child benefit, ▶⁹disabled person’s tax credit, working families’ tax credit◀, income support and ▶¹⁰any social fund payment under sections 32(2)(a) and 32(2A)(f) of the Act◀▶¹¹and any incapacity benefit under sections 30A(1) and (5) of the Contributions and Benefits Act◀;

▶¹²“bereavement benefit” means a benefit referred to in section 20(1)(ea) of the Contributions and Benefits Act;

“bereavement payment” means the sum specified in Part II of Schedule 4 to the Contributions and Benefit Act and referred to in section 36 of that Act(g)◀;

▶¹³“the Board” means the Commissioners of Inland Revenue◀;

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

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(i);

¹Defns. of “the 2012 Act”, “the 1995 Act”, “the 2007 Act” & words in defn. of “benefit” inserted by reg. 31(2)(a) & (b) of S.I. 2013/384 as from 4.3.13.

²Defn of “the Administration Act” inserted by reg. 10(2) of S.I. 2005/337 as from 18.03.05.

³Defn. of “adjudicating authority” substituted by para. 1 of Sch. 9 to S.I. 1999/3178 as from 29.11.99.

⁴Words substituted in reg. 1(2), defn. of “adjudicating authority” by art. 44 of S.I. 2008/2683 as from 3.11.08.

⁵For tax credit purposes only, defn. of “adjudicating authority” in square brackets substituted by reg. 3(a) of S.I. 1999/2571 as from 5.10.99.

⁶Words inserted in defn. of “benefit” by reg. 23(2)(a) of S.I. 1996/1345 as from 7.10.96.

⁷Words substituted in defn. of “benefit” by reg. 24(2)(a) of S.I. 2002/3019 as from 6.10.03.

⁸Words inserted in defn. of “benefit” by reg. 52(2)(a) of S.I. 2008/1554 as from 27.10.08.

⁹Words substituted in defn. of “benefit” by reg. 3(b) of S.I. 1999/2571 as from 5.10.99.

¹⁰Words substituted in defn. of “benefit” in reg. 1(2) by reg. 4 of S.I. 1988/1725 from 7.11.88. to 26.2.89 inclusive, and by reg. 3 of S.I. 1989/136 as from 27.2.89.

¹¹Words inserted in defn. of “benefit” in reg. 1(2) by reg. 21(2)(a) of S.I. 1995/829 as from 13.4.95.

¹²Defns. of “bereavement benefit” & “bereavement payment” inserted by reg. 10(2) of S.I. 2000/1483 as from 9.4.01.

¹³Defn. of “the Board” inserted by reg. 3(c) of S.I.1999/2571 as from 5.10.99.

(a) 1995 c. 18.

(b) 2007 c. 5.

(c) 2012 c. 5.

(d) 1992 c. 5.

(e) 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), section 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.

(f) Section 32(2A) of the Social Security Act 1986 (c. 50) was inserted by section 11 of and Schedule 3, paragraph 2 to the Social Security Act 1988 (c. 7).

(g) Section 36 was substituted by section 54(1) of the Welfare Reform and Pensions Act 1999.

(h) 1975 c. 61.

(i) S.I. 1987/1968.

Reg. 1

¹Defn. of “Contributions and Benefits Act” inserted into reg. 1(2) by reg. 21(2)(b) of S.I. 1995/829 as from 13.4.95.

²Defn. of “disability living allowance” inserted by reg. 15(2)(b) of S.I. 1991/2742 as from 6.4.92.

³Defns. of “disabled person’s tax credit” inserted and “family credit” omitted by reg. 3(d) and (e) of S.I. 1999/2571 as from 5.10.99.

⁴Defns. of “employment and support allowance”, “jobseeker’s allowance”, “personal independence payment” and “universal credit” inserted by reg. 31(2)(d)-(g) of S.I. 2013/384 as from 4.3.13.

⁵Defn. of “the Employment and Support Allowance Regulations” and “the Welfare Reform Act” inserted by reg. 52(2)(b)-(c) of S.I. 2008/1554 as from 27.10.08.

⁶Defn. of “jobseeker’s allowance” inserted by reg. 23(2)(b) of S.I. 1996/1345 as from 7.10.96.

⁷Defns. of “start notification”, “tax credit” and “working families’ tax credit” inserted by reg. 3(f) of S.I. 1999/2571 as from 5.10.99.

⁸Defns. of “state pension credit” & “the State Pension Credit Regulations” inserted by reg. 24(2)(b) of S.I. 2002/3019 as from 6.10.03.

▶¹“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;◀

▶²“disability living allowance” means a disability living allowance under section 37ZA of the Social Security Act 1975(a);◀

▶³“disabled person’s tax credit” means a disabled person’s tax credit under section 129 of the Contributions and Benefits Act and, in relation to things done, or falling to be done, prior to 5th October 1999, shall include a reference to disability working allowance;◀

▶⁴“employment and support allowance” means, for the purposes of Parts 3 to 6, employment and support allowance under Part 1 of the 2007 Act as that Part has effect apart from the amendments made by Schedule 3, and Part 1 of Schedule 14, to the 2012 Act that remove preferences to an income-related allowance;◀

▶⁵“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;◀

▶³◀

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

“income support” means income support under Part II of the Act and includes personal expenses addition, special transitional addition and transitional addition as defined in the Income Support (Transitional) Regulations 1987(c);

“Income Support Regulations” means the Income Support (General) Regulations 1987(d);

▶⁴“jobseeker’s allowance” means, for the purposes of Parts 3 to 6, jobseeker’s allowance under the 1995 Act as that Act has effect apart from the amendments made by Part 1 of Schedule 14 to the 2012 Act that remove references to an income-based allowance;◀

▶⁶“Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996(e);◀

▶⁴“personal independence payment” means the allowance under Part 4 of the 2012 Act;◀

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

▶⁷“start notification” means a notification of entitlement to tax credit furnished to an employer by the Board, referred to in section 6(2)(a) of the Tax Credits Act 1999;

▶⁸“state pension credit” means the benefit payable under the State Pension Credit Act 2002;

“the State Pension Credit Regulations” means the State Pension Credit Regulations 2002(g);◀

“tax credit” means working families’ tax credit or disabled person’s tax credit;

▶⁴“universal credit” means universal credit under Part 1 of the 2012 Act;◀

▶⁵“the Welfare Reform Act” means the Welfare Reform Act 2007;◀

“working families’ tax credit” means working families’ tax credit under section 128 of the Contributions and Benefits Act and, in relation to things done, or falling to be done, prior to 5th October 1999, shall include a reference to family credit.◀

(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.

(a) 1975 c. 14; section 37ZA was inserted by the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21), section 1(2).

(b) 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.

(c) S.I. 1987/1969.

(d) S.I. 1987/1967.

(e) S.I. 1996/207.

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

(g) S.I. 2002/1792.

Part II Interim Payments regs. 2-4 is revoked by reg. 19(1), subject to paragraph (2), of S.I. 2013/383 as from 1.4.13. Pt. II is reproduced here due to the savings provisions detailed in reg. 19(2) of that S.I. at page 1.6569 in the Law Relating to Social Security

PART II

INTERIM PAYMENTS

Making of interim payments

2.—(1) ¹Subject to paragraph (1A), ²the Secretary of State may, in his discretion [²the 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 him [³them] that a person is or may be entitled, ⁴(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 ⁵, 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 ⁶an 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.

⁷(1A) Paragraph (1) shall not apply pending the determination of an appeal.

(2) ⁸Subject 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.

⁹(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(a); 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(b) or under section 46 of the National Health Service (Scotland) Act 1978(c),

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

¹⁰(4) Where an interim payment of income support ¹¹or 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(d), 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.

Bringing interim payments into account

¹²3.—¹³(1) 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),—

¹Words inserted into reg. 2(1) by reg. 10(a) of S.I. 1996/30 as from 5.2.96.

²Defns. of “state pension credit” & “the State Pension Credit Regulations” inserted by reg. 24(2)(b) of S.I. 2002/3019 as from 6.10.03.

³For tax credit purposes only, the words in reg. 2(1) in square brackets substituted by reg. 4(2) of S.I. 1999/2571 as from 5.10.99.

⁴Words inserted in Reg. 2(1) by reg. 10(3)(a)(i) of S.I. 2005/337 as from 18.03.05.

⁵Words inserted in Reg. 2(1)(a) by reg. 10(3)(a) (ii) of S.I. 2005/337 as from 18.03.05.

⁶Words substituted in reg. 2(1)(b) for various benefits by S.I.'s 1999/1958, 1999/2422, 1999/2739 and 1999/2860, and for all other benefits by para. 2 of Sch. 9 to S.I. 1999/3178 as from 29.11.99.

⁷Reg. 2(1A) substituted by reg. 10(3)(a)(i) and (ii) of S.I. 2005/337 as from 18.03.05.

⁸Words inserted in reg. 2(2) by reg. 15(3)(a) of S.I. 1991/2742 as from 6.4.92.

⁹Para. (3) inserted into reg. 2 by reg. 15(3)(b) of S.I. 1991/2742 as from 6.4.92.

¹⁰Reg. 2(4) inserted by reg. 2(1) of S.I. 1993/650 as from 5.4.93.

¹¹Words inserted in reg. 2(4) by reg. 52(3) of S.I. 2008/1554 as from 27.10.08.

¹²Reg. 3 substituted by reg. 2(2) of S.I. 1993/650 as from 5.4.93.

¹³Words substituted in reg. 3 by reg. 5(2) of S.I. 1999/2571 as from 5.10.99.

(a) Section 35(2C) was inserted by the Social Security Act 1990 (c. 27), section 1(1).

(b) 1977 c. 49.

(c) 1978 c. 29.

(d) 1991 c. 48.

Regs. 3-4

- (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 sub-paragraph (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.◀

¹Reg. 3(2) added by reg. 5(3) of S.I. 1999/2571 as from 5.10.99.

▶¹(2) Where the interim payment 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”.◀

²Words substituted in reg. 4(1) by reg. 2(3)(a) of S.I. 1993/650 as from 5.4.93.

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 ▶²where 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 ▶³; or
- (c) an interim payment of income support ▶⁴or 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.

▶⁵(5) Where the interim payment is a payment on account to 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”.◀

³Word “or” and sub-para. (c) added to reg. 4(3) by reg. 2(3)(b) and (c) of S.I. 1993/650 as from 5.4.93.
⁴Words inserted in reg. 4(3)(c) by reg. 52(4) of S.I. 2008/1554 as from 27.10.08.

⁵Reg. 4(5) added by reg. 6 of S.I. 1999/2571 as from 5.10.99.

PART III OFFSETTING

Offsetting prior payment against subsequent award

5.—(1) Subject to ¹paragraphs (1A) ², (2A) and (6) and ³regulation 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.

¹Words inserted in reg. 5(1) by reg. 7(2) of S.I. 1999/2571 as from 5.10.99.

²Words substituted in reg. 5(1) by reg. 6(a) of S.I. 2006/516 as from 6.4.06.

³(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.

³Para. (1A) added to reg. 5 by reg. 7(3) of S.I. 1999/2571 as from 5.10.99.

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

⁴*Case 1: Payment pursuant to a decision which is revised or superseded, or overturned on appeal*

⁴Words substituted and deleted in reg. 5(2) for various benefits by S.I.’s 1999/1958, 1999/2422, 1999/2739 and 1999/2860, and for all other benefits by para. 3 of Sch. 9 to S.I. 1999/3178 as from 29.11.99.

Where a person has been paid a sum by way of benefit ⁵or by way of a shared additional pension under section 55A of the Contributions and Benefits Act ⁶pursuant to a decision which is subsequently revised under section 9 of the Social Security Act 1998, superseded by a decision under section 10 of that Act or overturned on appeal.

⁵Words inserted in reg. 5(2) by reg. 8 of S.I. 2005/1551 as from 6.7.05.

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, ⁷that another benefit ⁸or, as the case may be, universal credit ⁹should be awarded or is payable in lieu of the first.

⁶Words inserted in reg. 5(2) by reg. 31(3) of S.I. 2013/384 as from 4.3.13.

Case 3: Child benefit and severe disablement allowance

Where either—

(a) a person has been awarded and paid child benefit ¹⁰or by way of a shared additional pension under section 55A of the Contributions and Benefits Act ¹¹for a period in respect of which severe disablement allowance ¹², 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, ¹³or incapacity benefit for persons incapacitated in youth in accordance with section 30A(1)(b) and (2A) of the Contributions and Benefits Act ¹⁴(a) ¹⁵is subsequently determined to be payable to the child concerned and Benefits Act; or

⁷Words inserted in reg. 5(2) by reg. 8 of S.I. 2005/1551 as from 6.7.05.

⁸Words inserted in Case 3 sub-paras. (a) & (b) of reg. 5(2) by reg. 3 of S.I. 2010/840 as from 28.6.10.

(b) severe disablement allowance ¹⁶, 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, ¹⁷or incapacity benefit for persons incapacitated in youth in accordance with section 30A(1)(b) and (2A) of the Contributions and Benefits Act ¹⁸(a) ¹⁹is 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.

⁹Words inserted in reg. 5(2) by reg. 5 of S.I. 2000/3120 as from 6.4.01.

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.

(a) 1992 c. 4. Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18), and section 64(1) of the Welfare Reform and Pensions Act 1999 (c. 30) amended subsection (1) and inserted subsection (2A).

Regs. 5-6*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 other person is entitled to benefit for that period.

¹Para. (2A) added to reg. 5 by reg. 7(5) of S.I. 1999/2571 as from 5.10.99.

►¹(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 the Case (but not both) is or relates to tax credit.◄

²Words inserted in reg. 5(3) by reg. 24(6)(a) of S.I. 2002/3019 as from 6.10.03.

(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 ►², or state pension credit◄ ►³, or income-based jobseeker's allowance ►⁴ or an income-related employment and support allowance◄◄ for the period to which the deducted amount relates.

³Words inserted in reg. 5(3) by reg. 23(5) and (6)(a) of S.I. 1996/1345 as from 7.10.96.

⁴Words inserted in reg. 5(3) by reg. 52(5) of S.I. 2008/1554 as from 27.10.08.

(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.

⁵Para. (6) added to reg. 5 by reg. 6(b) of S.I. 2006/516 as from 6.4.06.

►⁵(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),

paid pursuant to a decision which is subsequently revised under section 9 of the Social Security Act 1998(a), 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.◄

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.

(a) 1998 c. 14.

PART IV

PREVENTION OF DUPLICATION OF PAYMENTS

Duplication and prescribed income

7.—¹(1) For the purposes of section 74(1) of the Social Security Administration Act 1992 (►²income support, state pension credit and◄►³income-based jobseeker's allowance, income-related employment and support allowance◄ and other payments), a person's prescribed income is—

- (a) income required to be taken into account in accordance with Part V of the Income Support Regulations ►⁴or, as the case may be, Part VIII of the Jobseeker's Allowance Regulations◄►²or Part III of the State Pension Credit Regulations ►⁵or Part 10 of the Employment and Support Allowance Regulations◄◄, except for the income specified in sub-paragraph (b); and
- (b) income which, if it were actually paid, would be required to be taken into account in accordance with Chapter VIIA of Part V of the Income Support Regulations ►⁶or, as the case may be, Chapter VIII of Part VIII of the Jobseeker's Allowance Regulations◄ (child support maintenance) ►⁵or Chapter 9 of Part 10 of the Employment and Support Allowance Regulations (child support)◄; but only in so far as it relates to the period beginning with the effective date of the maintenance assessment under which it is payable, as determined in accordance with regulation 30 of the Child Support (Maintenance Assessment Procedure) Regulations 1992(a), and ending with the first day which is a day specified by the Secretary of State under regulation 4(1) of the Child Support (Collection and Enforcement) Regulations 1992(b) as being a day on which payment of child support maintenance under that maintenance assessment is due.◄

(2) The prescribed date in relation to any payment of income prescribed by ►⁷paragraph (1)(a)◄ 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.

►⁸(3) Subject to paragraph (4), the prescribed date in relation to any payment of income prescribed by paragraph (1)(b) is the last day of the maintenance period, determined in accordance with regulation 33 of the Child Support (Maintenance Assessment Procedure) Regulations 1992, to which it relates.

(4) Where the period referred to in paragraph (1)(b) does not consist of a number of complete maintenance periods the prescribed date in relation to income prescribed by that sub-paragraph which relates to any part of that period which is not a complete maintenance period is the last day of that period.◄

Duplication and prescribed payments

8.—(1) For the purposes of section ►⁹74(2) of the Administration Act◄ 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 prescribed payment—

- (a) any benefit under the Social Security Act 1975(c) other than any gratuity or a widow's payment(d);
- ¹⁰(aa) any personal independence payment;◄
- (b) any child benefit;
- (c) ►¹¹◄
- (d) any war disablement pension or war widow's pension(e) which is not in the form of a gratuity and any payment which the Secretary of State accepts as analogous to any such pension;

¹Reg. 7(1) substituted by reg. 2(4)(a) of S.I. 1993/650 as from 19.4.93 in relation to reg. 7(1)(b), 5.4.93 otherwise.

²Words substituted & inserted in para. (1) & (1)(a) of reg. 7 by reg. 24(2)(b) of S.I. 2002/3019 as from 6.10.03.

³Words substituted in reg. 7(1) by reg. 22 of S.I. 2008/2428 as from 27.10.08.

⁴Words inserted in para. (1)(a) of reg. 7(1) by reg. 23(3)(a) and (b) of S.I. 1996/1345 as from 7.10.96.

⁵Words inserted in reg. 7(1)(a) and (b) by reg. 52(6) of S.I. 2008/1554 as from 27.10.08.

⁶Words inserted in reg. 7(1)(b) by reg. 23(3)(c) of S.I. 1996/1345 as from 7.10.96.

⁷Words substituted in reg. 7(2) by reg. 2(4)(b) of S.I. 1993/650 as from 5.4.93.

⁸Paras. (3) and (4) inserted in reg. 7 by reg. 2(4)(c) of S.I. 1993/650 as from 19.4.93.

⁹Words substituted in reg. 8(1) by reg. 10(4)(a) of S.I. 2005/337 as from 18.03.05.

¹⁰Sub-para. (1)(aa) inserted by reg. 31(4)(a) of S.I. 2013/384 as from 5.4.13.

¹¹Sub-para. (c) deleted by reg. 8 of S.I. 1999/2571 as from 5.10.99.

(a) S.I. 1992/1813.

(b) S.I. 1992/1989.

(c) 1975 c. 14.

(d) Section 24 of the Social Security Act 1975 inserted by section 36 of the Act.

(e) "War disablement pension" and "war widow's pension" are each defined in section 84(1) of the Social Security Act 1986 (c. 50).

Regs. 8-10

¹Words added to reg. 8(1)(f) by art. 14 of S.I. 1991/387 as from 1.4.91.

²Words in reg. 8(1)(f) substituted for the Training Commission by virtue of Employment Act 1989 (c. 38), Sch. 5, paras. 1 & 4, as from 16.11.89.

³Sub-para. (h) deleted by reg. 8 of S.I. 1999/2571 as from 5.10.99.

⁴Sub-para. (i) inserted by reg. 10(3) of S.I. 2000/1483 as from 9.4.01.

⁵Sub-para. (j) inserted by reg. 10(4)(b) of S.I. 2005/337 as from 18.3.05.

⁶Sub-para. (k) inserted by reg. 2 of S.I. 2005/3476 as from 19.1.06.

⁷Sub-para. (l) added by reg. 52(7)(a) of S.I. 2008/1554 as from 27.10.08.

⁸Words substituted in reg. 8(2) for various benefits by S.I.s 1999/1958, 1999/2422, 1999/2739 and 1999/2860, and for all other benefits by para. 4 of Sch. 9 to S.I. 1999/3178 as from 29.11.99.

⁹Words inserted in reg. 8(2) by reg. 31(4)(b) of S.I. 2013/384 as from 4.3.13.

¹⁰Words inserted in reg. 8(2) by reg. 24(6)(b) of S.I. 2002/3019 as from 6.10.03.

¹¹Words inserted in reg. 8(2) by reg. 23(5) and 6(b) of S.I. 1996/1345 as from 7.10.96.

¹²Words in para. (2) added by reg. 52(7)(b) of S.I. 2008/1554 as from 27.10.08.

¹³Reg. 10 renumbered 10(1), words substituted in 10(1) & paras. 10(2) & 10(3) inserted by art. 389 of S.I. 2001/3649 as from 1.12.01.

- (e) any allowance paid under the Job Release Act 1977(a);
- (f) any allowance payable by or on behalf of ►¹Scottish Enterprise, Highlands and Islands Enterprise or ◀►²the Secretary of State◀ 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 ►¹Scottish Enterprise, Highlands and Islands Enterprise or ►²◀ the Secretary of State◀;
- (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(b), whether or not the benefit has been acquired by virtue of the provisions of that Regulation;
- (h) ►³◀
- ⁴(i) any bereavement benefit other than bereavement payment;◀
- ⁵(j) any contribution-based jobseekers' allowance within the meaning of section 1(4) of the Jobseekers Act 1975(c);◀
- ⁶(k) payments under the Financial Assistance Scheme Regulations 2005(d);◀
- ⁷(l) a contributory employment and support allowance◀.

(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 ►⁸by way of revision or supersession◀ or otherwise, the amount of or entitlement to income support ►⁹universal credit◀ ►¹⁰, or state pension credit◀ ►¹¹, or income-based jobseeker's allowance ►¹²or income-related employment and support allowance◀.

Duplication and maintenance payments

9. 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(e); and
- (d) guardian's allowance.

Conversion of payments made in a foreign currency

10.►¹³—(1)◀ Where a payment of income prescribed by regulation 7(1), or a payment prescribed by regulation 8(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, or by ►¹³any authorised deposit-taker◀, as the net sterling sum into which it is converted, after any banking charge or commission on the transaction has been deducted.

►¹³(2) In this regulation “authorised deposit-taker” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits; or

(a) 1977 c. 8.

(b) 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).

(c) 1995 c. 18.

(d) S.I. 2005/1986.

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

- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.

(3) Paragraph (2) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act. ◀

PART V

DIRECT CREDIT TRANSFER OVERPAYMENTS

Recovery of overpayments by automated or other direct credit transfer

▶¹11.—(A1) This regulation applies only in respect of payments of benefit to which section 71 of the Administration Act applies. ◀

¹Regulation 11(A1) inserted by reg. 31(5) of S.I. 2013/384 as from 4.3.13.

(1) ▶²Subject to paragraph (4), 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 automated or other direct credit transfer made in accordance with regulation 21 of the Claims and Payments Regulations 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.

²Words substituted in reg. 11(1) by reg. 9(2) of S.I. 1999/2571 as from 5.10.99.

(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 automated or other direct transfer; and

▶³(b) notice of the effect which this regulation would have, in the event of an overpayment, was given to the beneficiary or to a person acting for him—

³Sub-para. (b) of reg. 11(2) substituted by reg. 3 of S.I. 2005/34 as from 2.5.05.

- (i) in writing, where the claim was made in writing; or
- (ii) either orally or in writing, where the claim was made by telephone ▶⁴before the arrangement came into effect ◀. ◀

⁴Words substituted in reg. 11(2)(b) by reg. 16 of S.I. 2012/757 as from 1.4.12.

(3) Where the arrangement was agreed to before 6th April 1987 the condition prescribed by paragraph 2(b) need not be satisfied in any case where the application for benefit to be paid by automated or other 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(a).

▶⁵(4) Where the payment mentioned in paragraph (1) is a payment of tax credit, paragraphs (1) and (2) shall apply with the modifications that—

⁵Para. (4) added to reg. 11 by reg. 9(3) of S.I. 1999/2571 as from 5.10.99.

- (a) in paragraph (1) for the words “Secretary of State’s” there is substituted the word “Board’s”, and
- (b) in paragraph (2) for the words “Secretary of State” there is substituted the word “Board”. ◀

(a) Both sets of provisions are in part revoked by the Social Security (Payments on account, Overpayments and Recovery) Regulations 1987 (S.I. 1987/491) and the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968).

PART VI

▶◀ CALCULATION OF AMOUNT RECOVERABLE

¹Words omitted from the heading to Part VI & heading for reg. 12 & substituted in reg. 12 for various benefits by S.I.s 1999/1958, 1999/2422, 1999/2739 and 1999/2860, and all other benefits by para. 5 & 6 of Sch. 9 to S.I. 1999/3178 as from 29.11.99.

²Words substituted in reg. 12 by reg. 10(5) of S.I. 2005/337 as from 13.03.05.

³Reg. 13(1) substituted by reg. 31(6) of S.I. 2013/384 as from 4.3.13.

⁴Para. (2) added to reg. 13 by reg. 11(3) of S.I. 1999/2571 as from 5.10.99.

Circumstances in which determination need not be ▶¹reversed, varied, revised or superseded◀

12. ▶²Section 71(5) or (5A)(a) of the Administration Act◀ (recoverability dependent on reversal, ▶¹variation, revision or supersession◀ of determination) shall not apply where the fact and circumstances of the misrepresentation or non-disclosure do not provide a basis ▶¹for the decision pursuant to which the payment was made to be revised under section 9 of the Social Security Act 1998 or superseded under section 10 of that Act.◀

Sums to be deducted in calculating recoverable amounts

13.—▶³(1) Subject to paragraphs (1C) and (2), in calculating the amount recoverable under section 71(1) of the Administration Act or under regulation 11 (“the overpayment”), the adjudicating authority must deduct—

- (a) any amount which has been offset under Part 3;
- (b) any additional amount of a benefit specified in paragraph (1A) which was not payable under the original, or any other, determination but which should have been determined to be payable in respect of all or part of the overpayment period to the claimant or their partner—
 - (i) on the basis of the claim as presented to the adjudicating authority, or
 - (ii) on the basis that any misrepresentation or failure to disclose a material fact had been remedied prior to the award being made.

(1A) The specified benefits are—

- (a) universal credit;
- (b) income support;
- (c) state pension credit;
- (d) income-based jobseeker’s allowance; and
- (e) income-related employment and support allowance.

(1B) In paragraph (1), “overpayment period” means the period over which the overpayment accrued.

(1C) No other deduction is to be made in respect of any other entitlement to benefit which may be, or might have been, determined to exist.◀

▶⁴(2) Paragraph (1) shall apply to tax credit only where both—

- (a) the overpayment of benefit referred to in that paragraph, and
- (b) the amount referred to in sub-paragraph (a) of that paragraph,

are tax credit, and with the modification that sub-paragraph (b) of that paragraph is omitted.◀

(a) Regulation 12 was amended by S.I. 1999/3178 and 2003/492.

Quarterly diminution of capital

14.—(1) For the purposes of section 53(1) of the Act, where income support ►¹, or state pension credit◀►², or income-based jobseeker’s allowance ►³, or income-related employment and support allowance◀◀►⁴working families’ tax credit or disabled person’s tax credit◀ has been overpaid in consequence of a misrepresentation as to the capital a claimant possesses or a failure to disclose its existence, the adjudicating authority shall treat that capital as having been reduced at the end of each quarter from the start of the overpayment period by the amount overpaid by way of income support ►¹, or state pension credit◀►², or income-based jobseeker’s allowance ►³, or income-related employment and support allowance◀◀►⁴working families’ tax credit or disabled person’s tax credit◀ within that quarter.

¹Words inserted in reg. 14(1) by regs. 24(6)(d) of S.I. 2002/3019 as from 6.10.03.

²Words inserted in reg. 14(1) by reg. 23(5) and (6)(d) of S.I. 1996/1345 as from 7.10.96.

³Words inserted in reg. 14 by reg. 52(9) of S.I. 2008/1554 as from 27.10.08.

⁴Words substituted in reg. 14 by reg. 12 of S.I. 1999/2571 as from 5.10.99.

(2) Capital 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;

“overpayment period” is a period during which income support ►⁵or an income-based jobseeker’s allowance, ►⁴, or income-related employment and support allowance◀◀►⁵working families’ tax credit or disabled person’s tax credit◀ is overpaid in consequence of a misrepresentation as to capital or a failure to disclose its existence.

⁵Words inserted in reg. 14(3) by reg. 3(2) of S.I. 1996/2519 as from 7.10.96.

PART VII

THE PROCESS OF RECOVERY

Recovery by deduction from prescribed benefits

15.—(1) Subject to regulation 16, where any amount is recoverable under sections 27 or 53(1) of the Act, or under these Regulations, that amount shall be recoverable by the Secretary of State from any of the benefits prescribed by the next paragraph to which the person to whom ¹the amount is determined[◀] to be recoverable is entitled.

¹Words in reg. 15(1) substituted by reg. 2(3) of S.I. 1988/688 as from 11.4.88.

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

- (a) subject to paragraphs (1) and (2) of regulation 16, any benefit under the Social Security Act 1975(a);
- (b) subject to paragraphs (1) and (2) of regulation 16, any child benefit;
- (c) ²◀;
- (d) subject to regulation 16, any income support ³an employment and support allowance, ⁴◀, or state pension credit ⁵◀ or a jobseeker's allowance[◀];
- (e) ²◀;
- ⁶(f) any incapacity benefit.◀
- ⁷(g) personal independence payment;
- (h) universal credit.◀

²Sub-para. (c) and (e) deleted by reg. 13 of S.I. 1999/2571 as from 5.10.99.

³Words in reg. 15(2)(d) inserted and sub-para. (e) & (f) added to reg. 16(4A) by reg. 52(10) and (11) of S.I. 2008/1554 as from 27.10.08.

⁴Words inserted in reg. 15(2)(d) by reg. 24(6)(e) of S.I. 2002/3019 as from 6.10.03.

⁵Words substituted in reg. 15(2)(d) by reg. 3(3) of S.I. 1996/2519 as from 7.10.96. (Reg. 23(5) and (6)(e) of S.I. 1996/1345 did not therefore take effect.)

⁶Sub-para. (f) inserted into reg. 15(2) by reg. 21(3) of S.I. 1995/829 as from 13.4.95.

⁷Reg. 15(2), sub-para. (g) and (h) and reg. 16(2A) inserted by reg. 31(7) & (8) of S.I. 2013/384 as from 4.3.13.

⁸Word in reg. 16(2) substituted by reg. 2(4) of S.I. 1988/688 as from 11.4.88.

⁹Words deleted from reg. 16(2) by reg. 15(7) of S.I. 1991/2742 as from 6.4.92.

¹⁰Words substituted in reg. 16(3) by reg. 10(6) of S.I. 2005/337 as from 18.03.05.

¹¹Words substituted in reg. 16(4) by reg. 3(4)(a) of S.I. 1996/2519 as from 7.10.96. (Reg. 23(4)(a) of S.I. 1996/1345 did not therefore take effect.)

¹²Reg. 16(4A) inserted by reg. 3(4)(b) of S.I. 1996/2519 as from 7.10.96.

¹³Sub-para. (d) inserted in reg. 16(4A) by reg. 24(4)(a) of S.I. 2002/3019 as from 6.10.03.

Limitations on deductions from prescribed benefits

16.—(1) Deductions may not be made from entitlement to the benefits prescribed by paragraph (2) except as a means of recovering an overpayment of the benefit from which the deduction is to be made.

(2) The benefits ⁸prescribed[◀] for the purposes of paragraph (1) are guardian's allowance, ⁹◀ and child benefit.

⁷(2A) Paragraphs (3) to (7) do not apply where a paragraph (7A) applies.◀

(3) Regulation 15 shall apply without limitation to any payment of arrears of benefit other than any arrears caused by the operation of ¹⁰regulation 20 of the Social Security and Child Support (Decision and Appeals) Regulations 1999(b) making of payments which have been suspended.◀

(4) Regulation 15 shall apply to the amount of ¹¹benefit[◀] to which a person is presently entitled only to the extent that there may, subject to paragraph 8 and 9 of Schedule 9 to the Claims and Payments Regulations, be recovered in respect of any one benefit week—

- (a) in a case to which paragraph (5) applies, not more than the amount there specified; and
- (b) in any other case, 3 times 5 per cent. of the personal allowance for a single claimant aged not less than 25, that 5 per cent. being, where it is not a multiple of 5 pence, rounded to the next higher such multiple.

¹²(4A) Paragraph (4) shall apply to the following benefits—

- (a) income support;
- (b) an income-based jobseeker's allowance;
- (c) where, if there was to entitlement to a contribution-based jobseeker's allowance, there would be entitlement to an income-based jobseeker's allowance at the same rate, a contribution-based jobseeker's allowance;◀
- ¹³(d) state pension credit;◀
- ³(e) an income-related employment and support allowance;
- (f) where, if there was no entitlement to a contributory employment and support allowance, there would be entitlement to an income-related employment and support allowance at the same rate, a contributory employment and support allowance.◀

(a) 1975 c. 14.

(b) S.I. 1999/991.

Reg. 16

¹Reg. 16(5) substituted by reg. 2(2) of S.I. 2000/2336 as from 2.10.00.

►¹(5) Where a person responsible for the misrepresentation of or failure to disclose a material fact has, by reason thereof—

- (a) been found guilty of an offence whether under statute or otherwise; or
- (b) made an admission after caution of deception or fraud for the purpose of obtaining benefit; or
- (c) agreed to pay a penalty under section 115A of the Social Security Administration Act 1992(a) and the agreement has not been withdrawn,

²Words substituted in reg. 16(5) by reg. 3(1) of S.I. 2012/645 as from 1.4.12.

the amount mentioned in paragraph (4)(a) shall be ►²5 times◄ 5 per cent. of the personal allowance for a single claimant aged not less than 25, that per cent. being, ►²where it is not a multiple of 5 pence, rounded to the next higher such multiple◄◄

³Para. (5A) inserted by reg. 3(4)(c) of S.I. 1996/2519 as from 7.10.96.

►³(5A) Regulation 15 shall apply to an amount of a contribution-based jobseeker's allowance, other than a contribution-based jobseeker's allowance to which paragraph (4) applies in accordance with paragraph (4A)(c), to which a person is presently entitled only to the extent that there may, subject to paragraphs 8 and 9 of Schedule 9 to the Claims and Payments Regulations be recovered in respect of any one benefit week a sum equal to one third of the age-related amount applicable to the claimant under section 4(1)(a) of the Jobseekers Act 1995(b).◄

⁴Para.(5B) inserted by reg. 3(4)(c) of S.I. 1996/2519 as from 7.10.96.

►⁴(5B) For the purposes of paragraph (5A) where the sum that would otherwise fall to be deducted includes a fraction of a penny, the sum to be deducted shall be rounded down to the nearest whole penny.◄

⁵Words substituted in reg. 16(6) by reg. 23(4)(b) of S.I. 1996/1345 as from 7.10.96.

(6) ►⁵Where—

- (a) in the calculation of the income of a person to whom income support is payable, the amount of earnings or other income falling to be taken into account is reduced by paragraphs 4 to 9 of Schedule 8 to the Income Support Regulations (sums to be disregarded in the calculation of earnings) or paragraphs 15 and 16 of Schedule 9 to those Regulations (sums to be disregarded in the calculation of income other than earnings); or
- (b) in the calculation of the income of a person to whom income-based jobseeker's allowance is payable, the amount of earnings or other income falling to be taken into account is reduced by paragraphs 5 to 12 of Schedule 6 to the Jobseeker's Allowance Regulations (sums to be disregarded in the calculation of earnings) or paragraphs 15 and 17 of Schedule 7 to those Regulations (sums to be disregarded in the calculation of income other than earnings); ►⁶ or
- (c) in the calculation of the income of a person to whom state pension credit is payable, the amount of earnings or other income falling to be taken into account is reduced in accordance with paragraph 1 of Schedule 4 (sums to be disregarded in the calculation of income other than capital), or Schedule 6 (sums disregarded from claimant's earnings) to the State Pension Credit Regulations;◄ ►⁷or
- d) in the calculation of the income of a person to whom income-related employment and support allowance is payable, the amount of earnings or other income falling to be taken into account is reduced by paragraph 7 of Schedule 7 to the Employment and Support Allowance Regulations (sums to be disregarded in the calculation of earnings) or paragraphs 16 and 17 of Schedule 8 to those Regulations (sums to be disregarded in the calculation of income other than earnings),◄

⁶Word & sub-para. (c) added to reg. 16(6) by reg. 24(4)(b) of S.I. 2002/3019 as from 6.10.03.

⁷Sub-para. (d) added to reg. 16(6) by reg. 52(11)(b) of S.I. 2008/1554 as from 27.10.08.

the weekly amount◄ applicable under paragraph (4) may be increased by not more than half the amount of the reduction►⁸◄.

⁸Words omitted in reg. 16(6) by Sch. 3, reg. 2 of S.I. 2013/380 as from 4.3.13.

(7) Regulation 15 shall not be applied to a specified benefit so as to reduce the benefit in any one benefit week to less than 10 pence.

⁹Defn. of "admission after caution" inserted by reg. 2(3) of S.I. 2000/2336 as from 2.10.00.

►⁹"admission after caution" means—

- (a) Section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).
- (b) 1995 c. 18.

- (i) in England and Wales, an admission after a caution has been administered in accordance with a Code issued under the Police and Criminal Evidence Act 1984(a);
- (ii) in Scotland, an admission after caution has been administered, such admission being duly witnessed by two persons;◀

“benefit week” means the week corresponding to the week in respect of which the benefit is paid;

▶¹“personal allowance for a single claimant aged not less than 25” means—

- (a) in the case of a person who is entitled to ▶²an employment and support allowance,◀ income support or state pension credit, the amount for the time being specified in paragraph 1(1)(e) of column (2) of Schedule 2 to the Income Support Regulations; or
- (b) in the case of a person who is entitled to income-based jobseeker’s allowance, the amount for the time being specified in paragraph 1(1)(e) of column (2) of Schedule 1 to the Jobseeker’s Allowance Regulations;◀

▶³“specified benefit” means—

- (a) a jobseeker’s allowance;
- (b) income support when paid alone or together with any incapacity benefit, retirement pension or severe disablement allowance in a combined payment in respect of any period;
- (c) if incapacity benefit, retirement pension or severe disablement allowance is paid concurrently with income support in respect of any period but not in a combined payment, income support and such of those benefits as are paid concurrently;
- (d) state pension credit when paid alone or together with any retirement pension, incapacity benefit or severe disablement allowance in a combined payment in respect of any period; ▶³◀
- (e) if retirement pension, incapacity benefit or severe disablement allowance is paid concurrently with state pension credit in respect of any period but not in a combined payment, state pension credit and such of those benefits as are paid concurrently; ▶³and
- (f) or income-related employment and support allowance◀

but does not include any sum payable by way of child maintenance bonus in accordance with section 10 of the Child Support Act 1995(b) and the Social Security (Child Maintenance Bonus) Regulations 1996(c).◀

▶⁴◀

▶⁵(7A) This paragraph applies where the benefit from which the deduction is to be made under regulation 15 is universal credit.

(7B) Where paragraph (7A) applies, regulation 11 of the Social Security (Overpayments and Recovery) Regulations 2013 applies in relation to those deductions as it applies to deductions from universal credit for the recovery of recoverable amounts under those Regulations.◀

Recovery from couples

17. In the case of an overpayment of income support ▶⁶, or state pension credit◀▶⁷, or income-based jobseeker’s allowance ▶⁸or income-related employment and support allowance◀◀▶⁹◀ to one of ▶¹⁰a couple◀, the amount recoverable by deduction, in accordance with regulation 15, may be recovered by deduction from income support ▶⁶, or state pension credit◀ ▶⁷, or income-based jobseeker’s allowance ▶⁸or income-related employment and support allowance◀◀▶⁹◀ payable to either of them, provided that the two of them are ▶¹⁰a couple◀ at the date of the deduction.

¹Defn. of “personal allowance ...” substituted by reg. 24(4)(c)(i) of S.I. 2002/3019 as from 6.10.03.

²Words substituted in defn. of “personal allowance for a single claimant aged not less than 25” and words omitted and added by reg. 52(11)(c) of S.I. 2008/1554.

³Defn. of “specified benefit” substituted by reg. 24(4)(c)(ii) of S.I. 2002/3019 as from 6.10.03.

⁴Defn. of “written statement after caution” omitted by reg. 2(3) of S.I. 2000/2366 as from 2.10.00.

⁵Reg. 16(7A) and (7B) inserted by reg. 31(8)(b) of S.I. 2013/384 as from 4.3.13.

⁶Words inserted in reg. 17 by reg. 24(6)(f) of S.I. 2002/3019 as from 6.10.03.

⁷Words inserted in reg. 17 by reg. 23(5) and (6)(f) of S.I. 1996/1345 as from 7.10.96.

⁸Words inserted in reg. 17 by reg. 52(12) of S.I. 2008/1554 as from 6.10.08.

⁹Words omitted from reg. 17 by reg. 14 of S.I. 1996/2571 as from 5.10.99.

¹⁰Words in reg. 17 substituted by para. 18 of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

(a) 1984 c. 60.

(b) 1995 c. 34.

(c) S.I. 1996/3195.

PART VIII

RECOVERY BY DEDUCTIONS FROM EARNINGS FOLLOWING TRADE DISPUTE

Recovery by deductions from earnings

18.—(1) Any sum paid to a person on an award of income support made to him by virtue of section 23(8) of the Act (effect of return to work after a trade dispute) shall be recoverable from him in accordance with this Part of these Regulations.

(2) In this Part, unless the context otherwise requires—

“available earnings” means the earnings, including any remuneration paid by or on behalf of an employer to an employee who is for the time being unable to work owing to sickness, which remain payable to a claimant on any pay-day after deduction by his employer of all amounts lawfully deductible by the employer otherwise than by virtue of a deduction notice;

“claimant” means a person to whom an award is made by virtue of section 23(8) of the Act;

“deduction notice” means a notice under regulation 20 or 25;

“employment” means employment (including employment which has been suspended but not terminated) in remunerative work, and related expressions shall be construed accordingly;

“pay-day” means an occasion on which earnings are paid to a claimant;

“protected earnings” means protected earnings as determined by an adjudicating authority, in accordance with regulation 19(2), under regulation 19(1)(a) or 24;

“recoverable amount” means the amount (determined in accordance with regulation 20(3) or (5) or regulation 25(2)(a)) by reference to which deductions are to be made by an employer from a claimant’s earnings by virtue of a deduction notice;

“repaid by the claimant” means paid by the claimant directly to the Secretary of State by way of repayment of income support otherwise recoverable under this Part of these Regulations.

(3) Any notice or other document required or authorised to be given or sent to any person under the provisions of this Part shall be deemed to have been given or sent if it was sent by post to that person in accordance with paragraph (6) of regulation 27 where that regulation applies and, in any other case, at his ordinary or last known address or in the case of an employer at the place of business where the claimant to which it relates is employed, and if so sent to have been given or sent on the day on which it was posted.

Award and protected earnings

19.—(1) Where an adjudicating authority determines that a person claiming income support is entitled by virtue of section 23(8) of the Act (effect of return to work after a trade dispute) and makes an award to him accordingly he shall determine the claimant’s protected earnings (that is to say the amount below which his actual earnings must not be reduced by any deduction made under this Part).

(2) The adjudicating authority shall include in his decision—

(a) the amount of income support awarded together with a statement that the claimant is a person entitled by virtue of section 23(8) of the Act and that accordingly any sum paid to him on that award will be recoverable from him as provided in this Part;

(b) the amount of the claimant’s protected earnings, and

(c) a statement of the claimant’s duty under regulation 28 (duty to give notice of cessation or resumption of employment).

►¹(3) The protected earnings of the claimant shall be the sum determined by—

(a) taking the sum specified in paragraph (4),

¹Reg. 19(3) substituted by reg. 2(5) of S.I. 1988/668 as from 11.4.88.

- (b) adding the sum specified in paragraph (5), and
- (c) subtracting from the result any child benefit which falls to be taken into account in calculating his income for the purposes of Part V of the Income Support Regulations.◀

(4) The sum referred to in paragraph (3)(a) shall be the aggregate of the amounts calculated under regulation 17(a) to (d), 18(a) to (e), 20 or 21, as the case may be, of the Income Support Regulations.

(5) The sum referred to in paragraph (3)(b) shall be £27 except where the sum referred to in paragraph (3)(a) includes an amount calculated under regulation 20 in which case the sum shall be £8.

Service and contents of deduction notices

20.—(1) Where the amount of income support has not already been repaid by the claimant, the Secretary of State shall serve a deduction notice on the employer of the claimant.

- (2) A deduction notice shall contain the following particulars—
 - (a) particulars enabling the employer to identify the claimant;
 - (b) the recoverable amount;
 - (c) the claimants protected earnings as specified in the notification of award.
- (3) Subject to paragraph (5), the recoverable amount shall be—
 - (a) the amount specified in the decision as having been awarded to the claimant by way of income support; reduced by
 - (b) the amount (if any) which has been repaid by the claimant before the date of the deduction notice.

(4) If a further award relating to the claimant is made the Secretary of State shall cancel the deduction notice (giving written notice of the cancellation to the employer and the claimant) and serve on the employer a further deduction notice.

- (5) The recoverable amount to be specified in the further deduction notice shall be the sum of—
 - (a) the amount determined by applying paragraph (3) to the further award; and
 - (b) the recoverable amount specified in the cancelled deduction notice less any part of that amount which before the date of the further notice has already been deducted by virtue of the cancelled notice or repaid by the claimant.

Period for which deduction notice has effect

21.—(1) A deduction notice shall come into force when it is served on the employer of the claimant to whom it relates and shall cease to have effect as soon as any of the following conditions is fulfilled—

- (a) the notice is cancelled by virtue of regulation 20(4) or paragraph (2) of this regulation; (b) the claimant ceases to be in the employment of the person on whom the notice was served;
- (c) the aggregate of—
 - (i) any part of the recoverable amount repaid by the claimant on or after the date of the deduction notice, and
 - (ii) the total amount deducted by virtue of the notice,reaches the recoverable amount;
- (d) there has elapsed a period of 26 weeks beginning with the date of the notice.

(2) The Secretary of State may at any time give a direction in writing cancelling a deduction notice and—

- (a) he shall cause a copy of the direction to be served on the employer concerned and on the claimant;

- (b) the direction shall take effect when a copy of it is served on the employer concerned.

Effect of deduction notice

22.—(1) While a deduction notice is in force the following provisions of this regulation shall apply as regards any relevant pay-day.

(2) Where a claimant's earnings include any bonus, commission or other similar payment which is paid other than on a day on which the remainder of his earnings is paid, then in order to calculate his available earnings for the purposes of this regulation any such bonus, commission or other similar payment shall be treated as being paid to him on the next day of payment of the remainder of his earnings instead of on the day of actual payment.

(3) If on a relevant pay-day the claimant's available earnings—

- (a) do not exceed his protected earnings by at least £1, no deduction shall be made;
- (b) do exceed his protected earnings by at least £1, his employer shall deduct from the claimant's available earnings one half of the excess over his protected earnings,

so however that where earnings are paid other than weekly the amount of the protected earnings and the figure of £1 shall be adjusted accordingly, in particular—

- (c) where earnings are paid monthly, they shall for this purpose be treated as paid every five weeks (and the protected earnings and the figure of £1 accordingly multiplied by five);
- (d) where earnings are paid daily, the protected earnings and the figure of £1 shall be divided by five,

and if, in any case to which sub-paragraph (c) or (d) does not apply, there is doubt as to the adjustment to be made this shall be determined by the Secretary of State on the application of the employer or the claimant.

(4) Where on a relevant pay-day earnings are payable to the claimant in respect of more than one pay-day the amount of the protected earnings and the figure of £1 referred to in the preceding paragraph, adjusted where appropriate in accordance with the provisions of that paragraph, shall be multiplied by the number of pay-days to which the earnings relate.

(5) Notwithstanding anything in paragraph (3)—

- (a) the employer shall not make a deduction on a relevant pay-day if the claimant satisfies him that up to that day he has not obtained payment of the income support to which the deduction notice relates;
- (b) the employer shall not on any relevant pay-day deduct from the claimant's earnings by virtue of the deduction notice an amount greater than the excess of the recoverable amount over the aggregate of all such amounts as, in relation to that notice, are mentioned in regulation 2(1)(c)(i) and (ii); and
- (c) where the amount of any deduction which by this regulation the employer is required to make would otherwise include a fraction of 1p, that amount shall be reduced by that fraction.

(6) For the purpose of this regulation "relevant pay-day" means any pay-day beginning with—

- (a) the first pay-day falling after the expiration of the period of one month from the date on which the deduction notice comes into force; or
- (b) if the employer so chooses, any earlier pay-day after the notice has come into force.

Increase of amount of award on appeal or ►¹otherwise◄

23. If the amount of the award is increased, whether on appeal or ►¹otherwise◄, this Part shall have effect as if on the date on which the amount of the award was increased—

- (a) the amount of the increase was the recoverable amount; and
- (b) the claimant's protected earnings ►¹, where a notice of variation of protected earnings is given under regulation 24, were the earnings stated in that notice.◄

¹Words substituted in heading and in reg. 23 by para. 7 of Sch. 9 to S.I. 1999/3178 as from 29.11.99.

►¹Notice of variation of protected earnings◄

24. ►¹◄

►¹(2) The Secretary of State shall give a claimant's employer written notice varying the deduction notice where a decision as to a claimant's protected earnings is revised or superseded.◄

(3) Variation of a deduction notice under paragraph (2) shall take effect either from the end of the period of 10 working days beginning with the day on which notice of the variation is given to the employer or, if the employer so chooses, at any earlier time after notice is given.

¹Words substituted in heading to reg. 24, para. (1) omitted and para. (2) substituted by para. 8 of Sch. 9 to S.I. 1999/3178 as from 29.11.99.

Power to serve further deduction notice on resumption of employment

25.—(1) Where a deduction notice has ceased to have effect by reason of the claimant ceasing to be in the employment of the person on whom the notice was served, the Secretary of State may, if he thinks fit, serve a further deduction notice on any person by whom the claimant is for the time being employed.

(2) Notwithstanding anything in the foregoing provisions of these Regulations, in any such deduction notice—

- (a) the recoverable amount shall be equal to the recoverable amount as specified in the previous deduction notice less the aggregate of—
 - (i) the total of any amounts required to be deducted by virtue of that notice, and
 - (ii) any additional part of that recoverable amount repaid by the claimant on or after the date of that notice,or, where this regulation applies in respect of more than one such previous notice, the aggregate of the amounts as so calculated in respect of each such notice;
- (b) the amount specified as the claimant's protected earnings shall be the same as that so specified in the last deduction notice relating to him which was previously in force or as subsequently ►²varied◄.

²Words substituted in reg. 25(2)(b) & 26 by para. 9 of Sch. 9 & 10 to S.I. 1999/3178 as from 29.11.99.

Right of Secretary of State to recover direct from claimant

26. Where ►², at any time, it is not practicable for the Secretary of State◄ by means of a deduction notice, to effect recovery of the recoverable amount or of so much of that amount as remains to be recovered from the claimant, the amount which remains to be recovered shall, by virtue of this regulation, be recoverable from the claimant by the Secretary of State.

Duties and liabilities of employers

27.—(1) An employer shall keep a record of the available earnings of each claimant who is an employee in respect of whom a deduction notice is in force and of the payments which he makes in pursuance of the notice.

(2) A record of every deduction made by an employer under a deduction notice on any pay-day shall be given or sent by him to the Secretary of State, together with payment of the amount deducted, by not later than the 19th day of the following month.

(3) Where by reason only of the circumstances mentioned in regulation 22(5)(a) the employer makes no deduction from a claimant's weekly earnings on any pay-day he shall within 10 working days after that pay-day give notice of that fact to the Secretary of State.

(4) Where a deduction notice is cancelled by virtue of regulation 20(4) or 21(2) or ceases to have effect by virtue of regulation 21(1) the employer shall within 10 working days after the date on which the notice is cancelled or, as the case may be, ceases to have effect—

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- (a) return the notice to the Secretary of State and, where regulation 21(1) applies, give notice of the reason for its return;
- (b) give notice, in relation to each relevant pay-day (as defined in regulation 22(6)), of the available earnings of the claimant and of any deduction made from those earnings.

(5) If on any pay-day to which regulation 22(3)(b) applies the employer makes no deduction from a claimant's available earnings, or makes a smaller deduction than he was thereby required to make, and in consequence any amount is not deducted while the deduction notice, or any further notice which under regulation 20(4) cancels that notice, has effect—

- (a) the amount which is not deductible shall, without prejudice to any other method of recovery from the claimant or otherwise, be recoverable from the employer by the Secretary of State; and
- (b) any amount so recovered shall, for the purposes of these Regulations, be deemed to have been repaid by the claimant.

(6) All records and notices to which this regulation applies shall be given or sent to the Secretary of State, on a form approved by him, at such office of the ►¹Department of Social Security◄ as he may direct.

¹Words in reg. 27(6) substituted by virtue of art. 3(4) of S.I.1988/1843 as from 28.11.88.

Claimants to give notice of cessation or resumption of employment

28.—(1) Where a claimant ceases to be in the employment of a person on whom a deduction notice relating to him has been duly served knowing that the full amount of the recoverable amount has not been deducted from his earnings or otherwise recovered by the Secretary of State, he shall give notice within 10 working days to the Secretary of State of his address and of the date of such cessation of employment.

(2) Where on or after such cessation the claimant resumes employment (whether with the same or some other employer) he shall within 10 working days give notice to the Secretary of State of the name of the employer and of the address of his place of employment.

Failure to notify

29. If a person fails to comply with any requirement under regulation 27 or 28 to give notice of any matter to the Secretary of State he shall be guilty of an offence and liable on summary conviction to a fine not exceeding—

- (a) for any one offence, level 3 on the standard scale; or
- (b) for an offence of continuing any such contravention, £40 for each day on which it is so continued.

²Part 8A inserted by reg. 31(9) of S.I. 2013/384 as from 4.3.13.

►²**PART 8A****RECOVERY BY DEDUCTION FROM EARNINGS:
OTHER CASES****Recovery by deduction from earnings: other cases**

29A.—(1) Any amount which is recoverable by virtue of section 71(1) or (4), 71ZA or 78(1) of the Administration Act may be recovered by the Secretary of State by deduction from the earnings of the person from whom it is recoverable.

(2) Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013 applies in relation to recovery by deduction from the earnings of a person specified in paragraph (1) by the Secretary of State as it applies to recovery by deduction from the earnings of persons of recoverable amounts under that Part of those Regulations by an appropriate authority.◄

PART IX

REVOCATION, TRANSITIONAL PROVISIONS AND SAVINGS

Revocation

30. Subject to regulation 31(3), the Social Security (Payments on account, Overpayments and Recovery) Regulations 1987(**a**) are hereby revoked except for regulations 19 and The Schedule thereto and 20(2) and (3) which shall continue in force.

Transitional provisions

31.—(1) These Regulations shall apply to any question relating to the repayment of recoverability of family income supplement and supplementary benefit as though the definition of “benefit” in regulation 1(2) included references to both those benefits and as though any reference in Part VIII to income support was a reference to income support and supplementary benefit.

(2) Anything done or begun under the Social Security (Payments on account, Overpayments and Recovery) Regulations 1987 or Part IV of the Supplementary benefit (Trade Disputes and Recovery from Earnings) Regulations 1980(**b**) shall be deemed to have been done or, as the case may be, continued under the corresponding provision of these Regulations.

(3) Where this regulation applies—

- (a) regulation 3(b)(ii) shall have effect as though for the words “the same benefit” there was substituted the words “income support” if the interim payment was of supplementary benefit and “family credit” if the interim payment was of family income supplement;
- (b) regulation 13(b) shall have effect as though for the words “income support” there were substituted the words “supplementary benefit”.

(4) In this Part—

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

“supplementary benefit” means benefit under part I of the Supplementary benefits Act 1976(**d**).

Signed by authority of the Secretary of State for Social Services.

30th March 1988

Michael Portillo
Parliamentary Under-Secretary of State,
Department of Health and Social Security

(a) 1987/491.
(b) 1980/1641.
(c) 1970 c. 55.
(d) 1976 c. 71.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament, come into force on 11th April 1988 and replace, with amendments, the Social Security (Payments on account, Overpayments and Recovery) Regulations 1987 (S.I. 1987/491) and Part IV of the Supplementary benefit (Trade Disputes and Recovery from Earnings) Regulations 1980 (S.I. 1980/1641) which cease to have effect.

The main amendments are consequential upon the introduction of family credit and income support. Other amendments—

(1) take account of the change in the assessment of capital for income support (tariff income) in calculating overpayments flowing from a misrepresentation as to claimant's capital (regulation 14);

(2) relate to the amount of income support which can be deducted in respect of overpayment of benefit (regulation 16(4));

(3) provide that, in the calculation of a claimant's protected earnings, housing costs are calculated at a fixed rate (regulation 19).

The Regulations contain transitional provisions which enable recovery of supplementary benefit and family income supplement to continue to be made by including those benefits in the definition of "benefit" and provide for continuity of action done or begun under the regulations which are revoked.

The Regulations are made under provisions of the Social Security Act 1986 none of which has yet been in force for 12 months. Accordingly, the Regulations are exempt, by section 61(5) of the Social Security Act 1986, from reference to the Social Security Advisory Committee and have not been so referred.