
STATUTORY INSTRUMENTS

1995 No. 872

**The Housing Benefit and Council
tax Benefit (Subsidy) Order 1995**

PART III

COUNCIL TAX BENEFIT SUBSIDY

Interpretation of Part III

14.—(1) In this Part of this Order, unless the context otherwise requires—

“appropriate authority” means, in the case of an authority to which section 139(2) of the Act (arrangement for benefits) refers or, in the case of an authority in Scotland, a levying authority to which section 139(3) of the Act(1) refers;

“council tax benefit subsidy” means subsidy under section 140(2) of the Act;

“the Community Charge Benefits Regulations” means the Community Charge Benefits (General) Regulations 1989(3);

“the Council Tax Benefit Regulations” means the Council Tax Benefit (General) regulations 1992(4);

and other expressions used in this Order and in the Community Charge Benefits Regulations or the Council Tax Benefit Regulations, as the case may be, shall have the same meanings in this Order as in those Regulations.

(2) In this part of this Order “council tax benefit qualifying expenditure” means the total of council tax benefit and community charge benefits granted by the appropriate authority during the relevant year, less—

(a) the deductions specified in article 19; and

(b) where, under subsection (6) of section 139 of the Act(5) (arrangements council tax benefit), the appropriate authority has modified any part of the scheme administered by it, any amount by which the total of the council and community charge benefits which it granted under the scheme during the relevant year exceeds the total of those which it would have granted if the scheme had not been so modified.

(1) S.I. 1988/1890, amended by S.I. 1989/43, 361, 972 and 1990/127.

(2) Section 139 was amended by the Local Government Finance Act 1992, Schedule 9, paragraph 20.

(3) Section 140 was amended by the Local Government Finance Act 1992, Schedule 9, paragraph 21, but the section as originally enacted continues in force by virtue of the Local Government Finance Act 1992 (Community Charge Benefits) Savings and Transitional Order 1993 (S.I. 1993/232).

(4) S.I. 1989/1321, amended by S.I. 1990/834, 835, 1549, 1657, 1773, 1991/234, 849, 1599, 2742, 2910, 1992/432, 1026, 1101, 1326, 1385, 2148 and 1993/1105.

(5) S.I. 1992/1814, amended by S.I. 1993/349, 688, 963, 1150, 1249, 1540, 2118, 1994/470, 578, 1925, 2137 and 3061. Section 139(6) allows modification of the council tax benefit scheme so as to provide for the disregard from income of a war disablement pension or a war widow's pension; it was amended by the Local Government Finance Act 1992, Schedule 9, paragraph 20.

Amount of council tax benefit subsidy

15. The amount of an appropriate authority's council tax benefit subsidy for the relevant Year—
- (a) for the purposes of section 140(2)(6) of the Act (subsidy in respect of council tax benefit) shall be the amount or total of the amounts calculated in accordance with article 16;
 - (b) for the purposes of section 140(5)(7) of the Act (subsidy in respect of the costs of administering council tax benefit) may include an additional sum in respect of the costs of administering council tax benefit calculated in accordance with Schedules 1 and 2.

Council tax benefit

16.—(1) Subject to paragraph (2) for the purposes of section 140(2) of the Act, an appropriate authority's council tax benefit subsidy for the relevant year shall be—

- (a) in the case of an appropriate authority to which article 17 does not apply, 95 per cent. of its council tax benefit qualifying expenditure;
- (b) in the case of an appropriate authority to which that article is relevant an amount equal to the aggregate of—
 - (i) 95 per cent. of so much of its council tax benefit qualifying expenditure as remains after deducting the amount of expenditure attributable to the council tax benefit to which that article applies; plus
 - (ii) the appropriate amount calculated in respect of the council tax benefit under that article,

plus, in each case, the additions, where applicable, under articles 18 and 21(2), less, in each case, the deductions, where applicable, under articles 20 and 21(3).

(2) Where, during the relevant year there has been a period overrun in respect of council tax benefit, that authority's council tax benefit subsidy for that year shall be adjusted by deducting from the subsidy otherwise due under this article an amount equal to the percentage, as calculated in accordance with paragraph 4 of Schedule 4, of the council tax benefit qualifying expenditure for that authority.

Backdated benefit

17.—(1) Subject to paragraph (2), where —

- (a) during the relevant year an appropriate authority has—
 - (i) under paragraph (18) of regulation 60 of the Community Charge Benefits Regulations (time and manner in which claims are to be made), treated any claim for a community charge benefit as made on a day earlier than that on which it is made; or
 - (ii) under paragraph (16) of regulation 62 of the Council Tax Benefit Regulations (time and manner in which claims are to be made), treated any claim for council tax benefit as made on a day earlier than that on which it is made; and
- (b) any part of that appropriate authority's council tax benefit qualifying expenditure is attributable to such earlier period,

for the purposes of article 16(1)(b)(ii), the appropriate amount for the relevant year in respect of such part shall be 50 per cent. of the council tax benefit qualifying expenditure so attributable.

- (2) This article shall not apply in a case to which article 18(1)(b)(ii) applies.

(6) Section 140(2) was amended by the Local Government Finance Act 1992, Schedule 9, paragraph 21(2).

(7) Section 140(5) was amended by the Local Government Finance Act 1992, Schedule 9, paragraph 21(5).

Additions to council tax benefit subsidy

18.—(1) Subject to paragraphs (8) and (9), the additions referred to in article 16 are—

- (a) where, following the loss, destruction or non-receipt, or alleged loss, destruction or non-receipt of original instruments of payment, an appropriate authority makes duplicate payments and the original instruments have been or are subsequently encashed, an amount equal to 35 per cent. of the amount of the duplicate payments;
- (b) subject to paragraphs (2) and (3) where it is discovered by an appropriate authority, during the relevant year, that excess benefits have been allowed and an amount is to be deducted under article 20 in relation to those excess benefits, an amount equal to—
 - (i) where the excess benefits are allowed in consequence of a departmental error, 95 per cent. of that part of the excess benefits which have not been recovered by the appropriate authority;
 - (ii) where fraudulent excess benefits are allowed 95 per cent. of the excess benefits; or
 - (iii) except where head (i) or (ii) applies, 25 per cent. of the excess benefits;
- (c) where, during the relevant year, it is discovered that excess benefit in respect of which a deduction was made under article 19 of the 1994 Order (other than a deduction under sub-paragraph (1)(c) of that article) was fraudulent excess benefit, the difference, if any, between 95 per cent. of any such excess benefit and the amount of any council tax benefit subsidy that has been paid to that authority in respect of that excess benefit.

(2) The amount under paragraph (1)(b) shall not include an amount in relation to—

- (a) any excess benefit allowed in consequence of an error of the appropriate authority making the payment;
- (b) any technical excess benefit, or
- (c) any excess benefit allowed and discovered in the relevant year, as a result of a reduction in the amount of council tax a person is liable to pay.

(3) Where excess benefits are allowed in consequence of departmental error, but some or all of that excess benefit is recovered by the appropriate authority, no addition shall be applicable to that authority in respect of the amount so recovered.

(4) In paragraph (2)(a) “excess benefit allowed in consequence of an error of the appropriate authority making the payment” means excess benefits in consequence of a mistake made or something done or omitted to be done by the appropriate authority where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute to that mistake, act or omission.

(5) In paragraph (1)(b)(ii), in paragraph (3) and in article 19(1)(b) “excess benefits allowed in consequence of departmental error” means excess benefits in consequence of a mistake made or something done or omitted to be done by an officer of the Department of Social Security or the Department of Employment acting as such, or a decision of an adjudication officer, social security appeal tribunal or Social Security Commissioner appointed in accordance with sections 38(1), 40(1), 51(1) and 52(1) of the Act (appointment of adjudication officers, chairmen and members of social security appeal tribunals and Commissioners) where the claimant, a person acting on his behalf or any other person to whom the payment is made did not cause or materially contribute to that mistake, act or omission.

(6) In paragraph (2)(b) “technical excess benefit” means that part of excess benefits which occurs as a result of benefits being allowed in advance and

- (a) a change of circumstances reducing or eliminating entitlement to those benefits; or
- (b) the authority subsequently identifies recoverable excess benefits which arise otherwise than from a change in circumstances,

but shall not include any part of those excess benefits occurring before the benefit week next following the week in which the change is disclosed to the appropriate authority.

(7) In paragraph (1)(b)(ii) and (c), in article 19(1)(c) and in paragraph 1 of Schedule 8 “fraudulent excess benefit” means excess benefit in respect of a period falling wholly or partly after 31st March 1993 and which—

- (a) is so classified by an officer of the authority, designated for that purpose by the authority, after that date; and
- (b) occurs as a result of the award or continuation of benefit arising in consequence of—
 - (i) a breach of section 112 of the Act (false representations for obtaining benefit), or
 - (ii) knowingly failing to report a relevant change of circumstances, contrary to the requirements of regulation 63 of the Community Charge Benefits Regulations or, as the case may be, of regulation 65 of the Council Tax Benefit Regulations (duty to notify change of circumstances), with intent to obtain or retain such benefit.

(8) Except for paragraphs (1)(b)(ii), (1)(c) and (7), this article shall not apply to an award of benefit to which paragraph (18) of regulation 60 of the Community Charge Benefits Regulations or paragraph (16) of regulation 62 of the Council Tax Benefit Regulations (time and manner in which claims are to be made), as the case may be, applies.

(9) Any reference in this article to excess benefits shall not include any council tax benefit for any period overrun or any period immediately following expiry of the specified period determined under regulation 57 of the Council Tax Benefit Regulations (benefit period) except for so much of any such benefit to which the claimant would not have been entitled had a claim for that period been duly made and determined.

Deductions to be made in calculating subsidy in respect of council tax benefit

19.—(1) The deductions referred to in article 14(2) are, subject to paragraph (2), of the following amounts, namely where—

- (a) an appropriate authority has by virtue of regulation 58 of the Community Charge Benefits Regulations⁽⁸⁾, regulation 51(5), 54(4) or 60 of the Council Tax Benefit Regulations (increases of weekly amounts for exceptional circumstances)⁽⁹⁾ increased benefit in exceptional circumstances, the amount attributable to that increase;
- (b) during the relevant year an amount is recovered in relation to excess community charge benefit or excess council tax benefit, as the case may be, which was allowed in consequence of departmental error, within the meaning of article 18(5), and where the excess benefit had occurred and been discovered in one or more of the years ending 31st March 1991, 31st March 1992, 31st March 1993 or 31st March 1994, as the case may be, the amount so recovered;
- (c) during the relevant year fraudulent excess benefit, within the meaning of article 18(7), is identified, the amount so identified, but only to the extent that the amount of the excess benefits or any part of it has not been deducted from council tax benefit qualifying expenditure under article 19 of the 1994 Order;
- (d) subject to sub-paragraphs (b) and (c) of this paragraph, during the relevant year it is discovered by an appropriate authority that excess benefits have been allowed, the amount of the excess benefits, but only to the extent that—
 - (i) the amount of the excess benefits or any part of it has not been deducted from community charge benefit qualifying expenditure under article 15 of the 1991 Order

⁽⁸⁾ Regulation 58 was amended by S.I. 1990/834.

⁽⁹⁾ Regulation 60 was deleted and regulations 51(5) and 54(4) added by S.I. 1994/2137 as from 3/10/94.

- or article 16 of the 1992 Order or the 1993 Order, or from council tax benefit qualifying expenditure under article 19 of the 1994 Order, as the case may be; and
- (ii) the amount of the excess benefits or any part of it does not include an amount payable pursuant to either paragraph (18) of regulation 60 of the Community Charge Benefits Regulations or paragraph (16) of regulation 62 of the Council Tax Benefit Regulations (time and manner in which claims are to be made);
 - (e) during the relevant year any instrument of payment which was issued by an authority during that year is returned to that authority without being presented for payment or is found by that authority to have passed its date of validity without being presented for payment, the amount of any such instrument.
- (2) Where in relation to any amount of benefit a deduction falls to be made under two or more sub-paragraphs of paragraph (1), only the higher or highest or, where the amounts are equal, only one amount shall be deducted.

Deduction from council tax benefit subsidy

20. Where during the relevant year it is found by an appropriate authority that any instrument of payment issued by it during the period of 4 years ending on 31 st March 1994 has been returned to that authority without having been presented for payment or has passed its date of validity without having been presented for payment, the deduction referred to in article 16(1) shall be the amount of any council tax benefit subsidy that has been paid to that authority in respect of any such instrument.

Additions to and deductions from council tax benefit subsidy in respect of benefits savings

21.—(1) Where this article applies, the addition to or, as the case may be, deduction from council tax benefit subsidy referred to in article 16(1) shall be calculated in accordance with Part III of Schedule 8.

(2) This article applies in the case of an appropriate authority to which paragraph 5 of Schedule 8 applies and in such a case the addition shall be calculated in accordance with that paragraph.

(3) This article also applies in the case of an appropriate authority to which paragraph 7 of Schedule 8 applies and in such a case the deduction shall be calculated in accordance with that paragraph.