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STATUTORY INSTRUMENTS

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**1997 No. 2435**

**SOCIAL SECURITY**

**The Housing Benefit (Recovery of  
Overpayments) Regulations 1997**

<i>Made</i>	- - - -	<i>8th October 1997</i>
<i>Laid before Parliament</i>		<i>13th October 1997</i>
<i>Coming into force</i>	- -	<i>3rd November 1997</i>

The Secretary of State for Social Security, in exercise of powers conferred on her by sections 5(1)(i), 63(1) and (2), 75(3) to (7), 189(4) to (6) and 191 of the Social Security Administration Act 1992<sup>(1)</sup> and of all other powers enabling her in that behalf by this instrument, which contains only regulations made by virtue of or consequential upon section 16 of the Social Security Administration (Fraud) Act 1997<sup>(2)</sup> and is made before the end of the period of six months from the coming into force of that section and after consultation with organisations appearing to her to be representative of the authorities concerned<sup>(3)</sup>, hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations, which may be cited as the Housing Benefit (Recovery of Overpayments) Regulations 1997, shall come into force on 3rd November 1997, immediately following the coming into force of the Housing Benefit and Council Tax Benefit (General) Amendment (No. 2) Regulations 1997<sup>(4)</sup>.

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

(a) “the Act” means the Social Security Administration Act 1992;

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987<sup>(5)</sup>;

and other expressions used in these Regulations and in the Housing Benefit Regulations shall have the same meanings in these Regulations as in the Housing Benefit Regulations; and

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(1) 1992 c. 5; subsections (5) to (7) were added to section 75 by section 16 of the Social Security Administration (Fraud) Act 1997 (c. 47); section 191 is an interpretation provision and is cited because of the meaning there ascribed to the word “prescribe”.  
(2) 1997 c. 47; see section 173(5)(b) of the Social Security Administration Act 1992.  
(3) See the Social Security Administration Act 1992 (c. 5), section 176(1).  
(4) S.I. 1997/2434.  
(5) S.I. 1987/1971.

- (b) a reference to a numbered regulation is to the regulation in these Regulations bearing that number and a reference in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

### **Prescribed benefits**

2.—(1) The benefits prescribed for the purposes of section 75(5) and (7) of the Act (recovery of overpayments)(6) are those set out in the following paragraphs.

(2) Prescribed benefits within section 75(5)(a) of the Act (benefits to which a landlord or agent is entitled) are—

- (a) housing benefit; and
- (b) those benefits prescribed from time to time in regulation 105(1) of the Housing Benefit Regulations (recovery of overpayments from prescribed benefits)(7), but only in cases where—
  - (i) an authority has, pursuant to regulation 102 of the Housing Benefit Regulations (method of recovery of overpayments), requested the Secretary of State to recover an overpayment of housing benefit from such benefits; and
  - (ii) the Secretary of State is satisfied as to the matters prescribed in paragraph (3)(a) and (b) of regulation 105 of the Housing Benefit Regulations.

(3) Housing benefit is prescribed for the purposes of section 75(5)(b) or (c) of the Act (benefits paid to a landlord or agent to discharge an obligation owed by another person).

(4) Prescribed benefits within section 75(7) of the Act (benefits recoverable from the county court or by the sheriff court) are housing benefit and those benefits prescribed from time to time in regulation 105(1) of the Housing Benefit Regulations.

### **Restriction on recovery of rent and consequent notifications**

3.—(1) Where, pursuant to section 75(5)(b) of the Act, an amount has been recovered by deduction from housing benefit paid to a person (referred to as “the landlord” in this regulation) to discharge (in whole or in part) an obligation owed to him by the person on whose behalf the recoverable amount was paid (referred to as “the tenant” in this regulation) that obligation shall, in a case to which paragraph (2) applies, be taken to be discharged by the amount of the deduction.

(2) This paragraph applies in a case where the amount recovered from the landlord relates to an overpayment of housing benefit in relation to which the landlord has—

- (a) agreed to pay a penalty pursuant to section 115A(4) of the Act (penalty as an alternative to prosecution)(8); or
- (b) been convicted of an offence arising under the Act or any other enactment.

(3) In any case to which paragraph (2) applies the authority that has determined that there is an overpayment and that it is recoverable from the landlord shall notify both the landlord and the tenant that—

- (a) the overpayment that it has recovered or that it has determined to recover (“that sum”) was one to which paragraph (2) applies; and
- (b) the landlord has no right in relation to that sum against the tenant, and that his obligation to the landlord shall be taken to be discharged by the amount so recovered.

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(6) Subsections (5) to (7) were added to section 75 by section 16 of the Social Security Administration (Fraud) Act 1997 (c. 47).

(7) Regulation 105 has been amended by S.I. 1988/1971, 1991/2742 and 1996/1510.

(8) Section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997.

### **Amendment of Schedule 6 to the Housing Benefit Regulations**

4.—(1) Schedule 6 to the Housing Benefit Regulations (matters in the notice of determination) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph 11 of Part IV of Schedule 6 (awards where direct payments made to landlords), after sub-paragraph (b)(9), there shall be inserted a new sub-paragraph (c)—

“(c) informing both landlords and claimants that where a payment of housing benefit is recoverable from a landlord and the recovery is made from housing benefit payable to the landlord to discharge (in whole or in part) an obligation owed to him by a claimant, then, in a case where that claimant is not the person on whose behalf the recoverable amount was paid, that obligation shall nonetheless be taken to be discharged by the amount so recovered.”

(3) In paragraph 11A of Part IV of Schedule 6(10) for the words “In this Part” there shall be substituted the words “In this Schedule.”

(4) Paragraph 14 of Part VII of the Schedule (notice where recoverable overpayment) shall be renumbered as sub-paragraph (1) of paragraph 14 and, after that sub-paragraph, there shall be inserted a new sub-paragraph (2)—

“(2) In a case where it is—

- (a) determined that there is a recoverable overpayment;
- (b) determined that that overpayment is recoverable from a landlord; and
- (c) decided that recovery of that overpayment is to be made by deduction from a rent allowance paid to that landlord to discharge (in whole or in part) an obligation owed to him by a claimant (“claimant A”), not being the claimant on whose behalf the recoverable amount was paid,

the notice of determination to that landlord shall identify both—

- (i) the person on whose behalf the recoverable amount was paid to that landlord; and
- (ii) the claimant.”

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

8th October 1997

*John Y. Denham*  
Parliamentary Under-Secretary of  
State, Department of Social Security

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(9) Paragraph 11 was amended and sub-paragraph (b) inserted by S.I. 1997/2434.  
(10) Paragraph 11A was inserted by S.I. 1997/2434.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement provisions of the Social Security Administration (Fraud) Act 1997 in relation to the recovery of overpayments of housing benefit.

Regulation 2 prescribes from which benefits such recovery may be made.

Regulation 3 provides that where the overpayment is being recovered from the landlord of a claimant in relation to whose claim for housing benefit that overpayment arose, the liability of that claimant to that landlord shall nonetheless continue to be discharged to the extent of the overpayment recovered in cases where the landlord has either agreed to pay a penalty as an alternative to prosecution or has been prosecuted in relation to that overpayment and that both that landlord and that claimant shall be notified of this.

Regulation 4 amends Schedule 6 to the Housing Benefit (General) Regulations 1987 (S.I.1987/1971), which provides for the content of notices of determination. It requires authorities, when determining to make payments of housing benefit to a claimant's landlord, to inform both landlords and claimants that overpayments of housing benefit due from that landlord, in relation to such benefit paid in respect of other claimants, may be recovered from that landlord by deduction from such direct payments, but that the obligation of the claimant, in respect of whom that benefit is being paid, shall nonetheless be discharged to the value of the benefit that would, were it not for that recovery, have been paid. It also requires authorities, when notifying a landlord that an overpayment is recoverable from him and is to be made by deduction of direct payments made to him, to identify both the person on whose behalf the recoverable amount was paid to that landlord and the claimant from whose directly paid benefit the recovery is to be made.

These Regulations do not impose a charge on businesses.