
STATUTORY INSTRUMENTS

2003 No. 492

**The Child Benefit and Guardian's Allowance
(Administration) Regulations 2003**

PART 5

OVERPAYMENTS AND RECOVERY

Offsetting prior payments of child benefit and guardian's allowance against arrears payable by virtue of a subsequent determination

38.—(1) Subject to regulation 40, in either of the cases specified in paragraphs (2) and (3)—

- (a) a sum of child benefit paid for a period covered by a subsequent determination shall be offset against any arrears of entitlement to the benefit payable for that period by virtue of the subsequent determination;
- (b) a sum of guardian's allowance paid for a period covered by a subsequent determination shall be offset against any arrears of entitlement to the allowance payable for that period by virtue of the subsequent determination,

and, except to the extent that it exceeds them, the sum so paid shall be treated as properly paid on account of the arrears.

(2) The case specified in this paragraph is where a person has been paid a sum pursuant to a determination which subsequently—

- (a) is revised under section 9 or superseded under section 10 of the Social Security Act 1998;
- (b) is revised under Article 10 or superseded under Article 11 of the Social Security (Northern Ireland) Order 1998; or
- (c) is overturned on appeal.

(3) The case specified in this paragraph is where a person has been paid a sum for a period by way of an increase in respect of a dependent person and it is subsequently determined that—

- (a) the dependent person is entitled to the benefit or allowance for that period; or
- (b) a third person is entitled to the increase for that period in priority to the person who has been paid.

(4) Where child benefit which has been paid under an award in favour of a person ("the first claimant") is subsequently awarded to another ("the second claimant") for any week, the benefit shall nevertheless be treated as properly paid if it was received by someone (other than the first claimant) who—

- (a) had [^{F1}the child or qualifying young person] living with him or was contributing towards the cost of providing for [^{F1}the child or qualifying young person] 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 [^{F2}that child or qualifying young person] for that week had a claim been made in time.

Changes to legislation: There are currently no known outstanding effects for the The Child Benefit and Guardian's Allowance (Administration) Regulations 2003, Section 38. (See end of Document for details)

(5) Any amount which is treated under paragraph (4) as properly paid shall be deducted from the amount payable to the second claimant under the subsequent award.

Textual Amendments

- F1** Words in [reg. 38\(4\)\(a\)](#) substituted (10.4.2006) by [The Child Benefit and Guardian's Allowance \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/203\)](#), regs. 1, [2\(7\)\(a\)](#)
- F2** Words in [reg. 38\(4\)\(b\)](#) substituted (10.4.2006) by [The Child Benefit and Guardian's Allowance \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/203\)](#), regs. 1, [2\(7\)\(b\)](#)

Commencement Information

- I1** [Reg. 38](#) in force at 7.4.2003, see [reg. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Child Benefit and Guardian's Allowance (Administration) Regulations 2003, Section 38.