

## STATUTORY INSTRUMENTS

# 2006 No. 214

## The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006

### PART 12

#### Overpayments

##### Meaning of overpayment

**80.** In this Part, “overpayment” means any amount which has been paid by way of housing benefit and to which there was no entitlement under these Regulations (whether on the initial decision [<sup>F1</sup>or as subsequently revised or superseded or further revised or superseded]) and includes any amount paid on account under regulation 74 (payment on account of a rent allowance) which is in excess of the entitlement to housing benefit as subsequently decided.

##### Textual Amendments

- F1** Words in reg. 80 substituted by SI 2005/2904 reg. 2 (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 29\(3\)](#) (with regs. 2, 3, Sch. 3, Sch. 4)

##### Recoverable overpayments

**81.—(1)** Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4) this paragraph applies to an overpayment [<sup>F2</sup>which arose in consequence of] an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), “overpayment [<sup>F3</sup>which arose in consequence of an official error]” means an overpayment caused by a mistake made whether in the form of an act or omission by—

- (a) the relevant authority;
- (b) an officer or person acting for that authority;
- (c) an officer of—
  - (i) the Department for Work and Pensions;
  - (ii) Revenue and Customs,acting as such; or
- (d) a person providing services to the Department for Work and Pensions or to the Commissioners for Her Majesty's Revenue and Customs,

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.

(4) Where in consequence of an official error, a person has been awarded a rent rebate to which he was not entitled or which exceeded the benefit to which he was entitled, upon the award being revised [<sup>F4</sup>or superseded] any overpayment of benefit, which remains credited to him by the relevant authority in respect of a period after the date on which the revision [<sup>F4</sup>or supersession] took place, shall be recoverable.

#### Textual Amendments

- F2** Words in reg. 81(2) substituted by SI 2005/2904 reg. 4(2) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 29\(5\)\(b\)](#) (with regs. 2, 3, Sch. 3, Sch. 4)
- F3** Words in reg. 81(3) substituted by SI 2005/2904 reg. 4(3) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 29\(5\)\(c\)](#) (with regs. 2, 3, Sch. 3, Sch. 4)
- F4** Words in reg. 81(4) inserted by SI 2005/2904 reg. 4(4) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), [Sch. 2 para. 29\(5\)\(d\)](#) (with regs. 2, 3, Sch. 3, Sch. 4)

#### Person from whom recovery may be sought

**82.**—(1) For the purposes of section 75(3)(a) of the Administration Act <sup>F5</sup> (prescribed circumstances in which an amount recoverable shall not be recovered from the person to whom it was paid), the prescribed circumstance is—

- (a) housing benefit has been paid in accordance with regulation 76 (circumstances in which payment is to be made to the landlord) or regulation 77 (circumstances in which payment may be made to a landlord);
- (b) the landlord has notified the relevant authority or the Secretary of State in writing that he suspects that there has been an overpayment;
- [<sup>F6</sup>(bb) the relevant authority is satisfied that the overpayment did not occur as a result of any change of dwelling occupied by the claimant as his home;]
- (c) it appears to the relevant authority that, on the assumption that there has been an overpayment—
  - (i) there are grounds for instituting proceedings against any person for an offence under section 111A or 112(1) of the Administration Act <sup>F7</sup> (dishonest or false representations for obtaining benefit); or
  - (ii) there has been a deliberate failure to report a relevant change of circumstances contrary to the requirement of regulation 69 (duty to notify a change of circumstances) and the overpayment occurred as a result of that deliberate failure; and
- (d) the relevant authority is satisfied that the landlord—
  - (i) has not colluded with the claimant so as to cause the overpayment;
  - (ii) has not acted, or neglected to act, in such a way so as contribute to the period, or the amount, of the overpayment.

[<sup>F8</sup>(2) For the purposes of section 75(3)(b) of the Administration Act (recovery from such other person, as well as or instead of the person to whom the overpayment was made), where recovery of an overpayment is sought by a relevant authority—

- (a) subject to paragraph (1) and where sub-paragraph (b) or (c) does not apply, the overpayment is recoverable from the claimant as well as the person to whom the payment was made, if different;
- (b) in a case where an overpayment arose in consequence of a misrepresentation of or a failure to disclose a material fact (in either case, whether fraudulently or otherwise) by or on behalf of the claimant, or by or on behalf of any person to whom the payment was made, the overpayment is only recoverable from any person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made; or
- (c) in a case where an overpayment arose in consequence of an official error where the claimant, or a person acting on the claimant’s behalf, or any person to whom the payment was paid, or any person acting on their behalf, could reasonably have been expected, at the time of receipt of the payment or of any notice relating to that payment, to realise that it was an overpayment, the overpayment is only recoverable from any such person instead of, if different, the person to whom the payment was made.]

[<sup>F9</sup>(2A) Where an overpayment is made in a case where a relevant authority has determined a maximum rent ( LHA ) in accordance with regulation 13D (determination of a maximum rent ( LHA )), and the housing benefit payable exceeds the amount which the claimant is liable to pay his landlord by way of rent, the relevant authority must not recover from the landlord more than the landlord has received. ]

(3) For the purposes of [<sup>F10</sup>paragraphs (1) and (2A)], “landlord” shall have the same meaning as it has for the purposes of regulation 76.

[<sup>F11</sup>(3A) For the purposes of [<sup>F12</sup>paragraph (2)(c)], “overpayment arose in consequence of an official error” shall have the same meaning as in regulation 81(3) above].

<sup>F13</sup>(4) .....

**Textual Amendments**

- F5** Subsection (3) was substituted by the [Child Support, Pensions and Social Security Act 2000 \(c. 19\), section 71](#).
- F6** Reg. 82(1)(bb) inserted by SI 2005/2904 reg. 6(2) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\), reg. 1\(1\), Sch. 2 para. 29\(7\)\(b\)](#) (with [regs. 2, 3, Sch. 3, Sch. 4](#))
- F7** Section 111A was inserted by section 13 of the [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#) and section 112(1) was amended by paragraph 4(2) of Schedule 1 to the same Act and by paragraphs 1 and 6 of the Schedule 6 to the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#).
- F8** Reg. 82(2) substituted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\), regs. 1\(2\), 5\(2\)\(a\)](#)
- F9** Reg. 82(2A) inserted (7.4.2008) by [Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\), regs. 1, 3\(2\)\(a\)](#)
- F10** Words in reg. 82(3) substituted (7.4.2008) by [Housing Benefit \(Local Housing Allowance, Information Sharing and Miscellaneous\) Amendment Regulations 2008 \(S.I. 2008/586\), regs. 1, 3\(2\)\(b\)](#)
- F11** Reg. 82(3A) inserted by SI 2005/2904 reg. 6(4A) (as inserted) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\), reg. 1\(1\), Sch. 2 para. 29\(7\)\(e\)](#) (with [regs. 2, 3, Sch. 3, Sch. 4](#))
- F12** Words in reg. 82(3A) substituted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\), regs. 1\(2\), 5\(2\)\(b\)](#)
- F13** Reg. 82(4) omitted (6.4.2009) by virtue of [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\), regs. 1\(2\), 5\(2\)\(c\)](#)

**Method of recovery**

**83.**—(1) Without prejudice to any other method of recovery, [<sup>F14</sup>a relevant authority] may recover a recoverable overpayment from any person referred to in regulation 82 (persons from whom recovery may be sought) by deduction from any housing benefit to which that person is entitled (including arrears of entitlement after offsetting under regulation 79 (offsetting)) or, where it is unable to do so, may request the Secretary of State to recover any recoverable overpayment from the benefits prescribed in [<sup>F15</sup>regulation 86(1)] (recovery of overpayments from prescribed benefits).

[<sup>F16</sup>(1ZA) Where an overpayment is recoverable from a claimant who has one or more partners, a relevant authority may recover the overpayment by deduction from any housing benefit payable to the claimant’s partner, or where it is unable to do so, may request the Secretary of State to recover any recoverable overpayment from the benefits prescribed in regulation 86(1B) (recovery of overpayments from prescribed benefits), provided that the claimant and that partner were a couple both at the time of the overpayment and when the deduction is made.]

<sup>F17</sup>(1A) .....

(2) Subject to paragraphs <sup>F18</sup>... (4) and (5), where [<sup>F14</sup>a relevant authority] makes deductions permitted by paragraph (1) [<sup>F19</sup>or (1ZA)] from the housing benefit it is paying to a claimant [<sup>F20</sup>or a claimant’s partner] (other than deductions from arrears of entitlement), the deduction in respect of a benefit week shall be—

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

(3) Where [<sup>F21</sup>a relevant authority] makes deductions from housing benefit it is paying to a claimant [<sup>F22</sup>or a claimant’s partner, where the claimant has], in respect of the whole or part of the recoverable overpayment—

- (a) been found guilty of an offence whether under a statute or otherwise;
- (b) made an admission after caution of deception or fraud for the purpose of obtaining relevant benefit; or
- (c) agreed to pay a penalty under section 115A of the Administration Act <sup>F23</sup> and the agreement has not been withdrawn,

the amount deducted under paragraph (2) shall be not more than [<sup>F24</sup>five times] five per cent. of the personal allowance for a single claimant aged not less than 25, [<sup>F25</sup>that five per cent. being, where it is not a multiple of 5 pence, rounded to the next higher such multiple].

(4) Where, in the calculation of housing benefit, the amount of earnings or other income falling to be taken into account is reduced by reason of [<sup>F26</sup>paragraphs 2 to 5 and 7] of Schedule 4 (sums to be disregarded in the calculation of earnings)[<sup>F27</sup>, or paragraph 5A of that Schedule in a case where the amount of earnings to be disregarded under that paragraph is the amount referred to in regulation 45(2) of the Employment and Support Allowance Regulations<sup>F28</sup>, regulation 39(1)(a) of the Employment and Support Allowance Regulations 2013] or regulation 17(2) of the Social Security (Incapacity for Work) (General) Regulations 1995,] or paragraph 1 of Schedule 5 (sums to be disregarded in the calculation of income other than earnings), the deduction under paragraph (2) may be increased by not more than half the amount of the reduction.

(5) No deduction made under this regulation <sup>F29</sup>... shall be applied so as to reduce the housing benefit in respect of a benefit week to less than 50 pence.

(6) In this regulation—

“admission after caution” means—

- (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<sup>F30</sup>;
- (ii) in Scotland, admission after a caution has been administered, such admission being duly witnessed by two persons; and

“personal allowance for a single claimant aged not less than 25” means the amount specified in paragraph 1(1)(b) of column 2 of Schedule 3 to the Housing Benefit Regulations 2006 (applicable amounts).

(7) This regulation shall not apply in respect of an offence committed or an admission after caution or an agreement to pay a penalty made before 2nd October 2000.

#### Textual Amendments

- F14** Words in reg. 83(1)(2) substituted by SI 2005/2904 reg. 7(2) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(8)(b)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F15** Words in reg. 83(1) substituted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **5(3)(a)**
- F16** Reg. 83(1ZA) inserted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **5(3)(b)**
- F17** Reg. 83(1A) omitted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by virtue of [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/2608\)](#), reg. 1(2)(3), **3(3)(a)**
- F18** Word in reg. 83(2) omitted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by virtue of [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/2608\)](#), reg. 1(2)(3), **3(3)(b)**
- F19** Words in reg. 83(2) inserted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **5(3)(c)(i)**
- F20** Words in reg. 83(2) inserted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **5(3)(c)(ii)**
- F21** Words in reg. 83(3) substituted by SI 2005/2904 reg. 7(2) (as amended) (10.4.2006) by [The Housing Benefit and Council Tax Benefit \(Consequential Provisions\) Regulations 2006 \(S.I. 2006/217\)](#), reg. 1(1), **Sch. 2 para. 29(8)(b)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F22** Words in reg. 83(3) substituted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008 \(S.I. 2008/2824\)](#), regs. 1(2), **5(3)(d)**
- F23** Section 115A was inserted by the Social Security Administration (Fraud) Act (c. 47), section 15; sub-sections (7A) and (7B) were inserted by the [Social Security Fraud Act 2001 \(c. 11\)](#), **section 14**.
- F24** Words in reg. 83(3) substituted (1.4.2012) by [The Social Security \(Recovery\) \(Amendment\) Regulations 2012 \(S.I. 2012/645\)](#), regs. 1(1), **3(2)(a)**
- F25** Words in reg. 83(3) substituted (1.4.2012) by [The Social Security \(Recovery\) \(Amendment\) Regulations 2012 \(S.I. 2012/645\)](#), regs. 1(1), **3(2)(b)**
- F26** Words in reg. 83(4) substituted (19.5.2008) by [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2008 \(S.I. 2008/1042\)](#), regs. 1(2), **4(7)**
- F27** Words in reg. 83(4) inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/2608\)](#), reg. 1(2)(3), **3(3)(c)**
- F28** Words in reg. 83(4) inserted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **36(6)**
- F29** Words in reg. 83(5) omitted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by virtue of [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/2608\)](#), reg. 1(2)(3), **3(3)(d)**

**F30** 1984 c. 60.

### Diminution of capital

**84.**—(1) Where, in the case of a recoverable overpayment, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person's capital, or an error, other than one to which regulation 81(2) (effect of official error) refers, as to the amount of a person's capital, the overpayment was in respect of a period (“the overpayment period”) of more than 13 benefit weeks, the relevant authority shall, for the purposes only of calculating the amount of that overpayment—

- (a) at the end of the first 13 benefit weeks of the overpayment period, treat the amount of that capital as having been reduced by the amount of housing benefit overpaid during those 13 weeks;
- (b) at the end of each subsequent period of 13 benefit weeks, if any, of the overpayment period, treat the amount of that capital as having been further reduced by the amount of housing benefit overpaid during the immediately preceding 13 benefit weeks.

(2) Capital shall not be treated as reduced over any period other than 13 benefit weeks or in any circumstances other than those for which paragraph (1) provides.

### Sums to be deducted in calculating recoverable overpayments

**85.**—(1) Subject to paragraph (2), in calculating the amount of a recoverable overpayment, the relevant authority shall deduct any amount of housing benefit which should have been determined to be payable [<sup>F31</sup>to the person from whom the overpayment is recoverable or their partner] in respect of the whole or part of the overpayment period—

- (a) on the basis of the claim as presented to the authority;
- (b) on the basis of the claim as it would have appeared had any misrepresentation or non-disclosure been remedied before the decision; or
- (c) on the basis of the claim as it would have appeared if any change of circumstances [<sup>F32</sup>, except a change of the dwelling which the claimant occupies as his home,] had been notified at the time that change occurred.

(2) In the case of rent rebate only, in calculating the amount of a recoverable overpayment the relevant authority may deduct so much of any payment by way of rent in respect of the overpayment period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous determination.

#### Textual Amendments

**F31** Words in reg. 85(1) inserted (1.4.2012) by *The Social Security (Recovery) (Amendment) Regulations 2012* (S.I. 2012/645), regs. 1(1), **2(2)**

**F32** Words in reg. 85(1)(c) inserted by SI 2005/2904 reg. 8 (as amended) (10.4.2006) by *The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006* (S.I. 2006/217), reg. 1(1), **Sch. 2 para. 29(9)** (with regs. 2, 3, Sch. 3, Sch. 4)

### [<sup>F33</sup>Sums to be deducted in calculating recoverable overpayments where the claimant has changed dwelling

**85A.**—(1) This regulation applies where an overpayment has occurred in the following circumstances—

- (a) a claimant has moved from the dwelling previously occupied as his home (“dwelling A”) to another dwelling which he occupies as his home (“dwelling B”);
- (b) the claimant has been awarded housing benefit in the form of a rent allowance in respect of dwelling A to which he is not entitled because he is no longer occupying or treated as occupying dwelling A as his home;
- (c) housing benefit is paid to the same person in respect of the claimant’s occupation of dwelling B as it was paid to in respect of dwelling A; and
- (d) the same relevant authority is responsible for paying the housing benefit in respect of dwelling A and dwelling B.

(2) Where this regulation applies, in calculating the amount of the overpayment which is recoverable the relevant authority may at its discretion deduct an amount equal to the claimant’s weekly entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.

(3) Where a sum has been deducted under paragraph (2), an equivalent sum shall be treated as having been paid in respect of the claimant’s entitlement to housing benefit in respect of dwelling B for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit in respect of dwelling A.]

#### Textual Amendments

**F33** Reg. 85A inserted (1.4.2010 for specified purposes, 5.4.2010 in so far as not already in force) by [The Housing Benefit and Council Tax Benefit \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/2608\)](#), reg. 1(2)(3), **3(4)**

#### Recovery of overpayments from prescribed benefits

**86.**—(1) [<sup>F34</sup>Subject to paragraph (1B),] for the purposes of section 75(4) of the Administration Act (recovery of overpaid housing benefit by deduction from other benefits), the benefits prescribed by this regulation are—

- (a) any benefit except guardian's allowance;
- (b) income support under Part 7 of the Act;
- (c) any benefit payable under the legislation of any member State <sup>F35</sup>... concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No 1408/71<sup>F36</sup>, as amended from time to time, ]<sup>F37</sup> on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, [<sup>F38</sup>or in Article 3(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004, as amended from time to time, on the coordination of social security systems,] whether or not the benefit has been acquired by virtue of the provisions of [<sup>F39</sup>either Regulation, as amended from time to time];
- (d) a jobseeker's allowance;
- (e) state pension credit.
- [<sup>F40</sup>(f) an employment and support allowance.]
- [<sup>F41</sup>(g) personal independence payment.]
- [<sup>F42</sup>(ga) adult disability payment;]

[<sup>F43</sup>(h) universal credit.]

[<sup>F44</sup>(1A) For the purposes of paragraph (1)(c) the term “member State” shall be understood to include Switzerland in accordance with and subject to the provisions of Annex II of the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons, signed at Brussels on 21st June 1999 [<sup>F45</sup>(as amended from time to time)]. ]

[<sup>F46</sup>(1B) For the purposes of section 75(4) of the Administration Act, where recovery is sought from the claimant’s partner under regulation 83(1ZA), the benefits prescribed by this regulation are—

- (a) income support under Part 7 of the Act;
- (b) income-based jobseeker’s allowance;
- (c) state pension credit; and
- (d) income-related employment and support allowance.]

[<sup>F47</sup>(e) personal independence payment.]

[<sup>F48</sup>(ea) adult disability payment;]

[<sup>F49</sup>(f) universal credit.]

[<sup>F50</sup>(2) The Secretary of State shall, if requested to do so by an authority under regulation 83 (method of recovery), recover a recoverable overpayment by deduction from any of the benefits prescribed in paragraph (1) or (in the case of the claimant’s partner) any of the benefits prescribed in paragraph (1B) provided that the Secretary of State is satisfied that—

- (a) a recoverable overpayment has been made in consequence of a misrepresentation of or a failure to disclose a material fact (in either case whether fraudulently or otherwise), by a claimant or any other person to whom a payment of housing benefit has been made; and
- (b) the person from whom it is sought to recover the overpayment is receiving sufficient amounts of any of the benefits prescribed in paragraph (1) or (1B) (as the case may be) to enable deductions to be made for the recovery of the overpayment.]

(3) In paragraph (1)(a), “benefit” has the meaning it has in section 122(1) of the Act.

#### Textual Amendments

- F34** Words in reg. 86(1) inserted (6.4.2009) by [The Housing Benefit and Council Tax Benefit \(Amendment\) \(No. 2\) Regulations 2008](#) (S.I. 2008/2824), regs. 1(2), **5(4)(a)**
- F35** Words in [reg. 86\(1\)\(c\)](#) omitted (31.12.2020) by virtue of [The Social Security \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/128), [reg. 1\(2\)](#), **Sch. para. 9(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F36** Words in reg. 86(1)(c) inserted (15.11.2018) by [The Social Security \(Updating of EU References\) \(Amendment\) Regulations 2018](#) (S.I. 2018/1084), [reg. 1](#), **Sch. para. 11(1)(a)(i)**
- F37** 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. 1661/85 (O.J. No. L160, 20.6.1985) and Commission Regulation (EEC) No. 513/86 (O.J. No. L51, 28.2.1986).
- F38** Words in reg. 86(1)(c) inserted (15.11.2018) by [The Social Security \(Updating of EU References\) \(Amendment\) Regulations 2018](#) (S.I. 2018/1084), [reg. 1](#), **Sch. para. 11(1)(a)(ii)**
- F39** Words in reg. 86(1)(c) substituted (15.11.2018) by [The Social Security \(Updating of EU References\) \(Amendment\) Regulations 2018](#) (S.I. 2018/1084), [reg. 1](#), **Sch. para. 11(1)(a)(iii)**
- F40** Reg. 86(1)(f) added (27.10.2008) by [Employment and Support Allowance \(Consequential Provisions\) Regulations 2008](#) (S.I. 2008/1082), regs. 1, **39**
- F41** Reg. 86(1)(g) added (8.4.2013) by [The Social Security \(Overpayments and Recovery\) Regulations 2013](#) (S.I. 2013/384), regs. 1(2)(e), **34(2)(a)**



- F42** Reg. 86(1)(ga) inserted (21.3.2022) by The Social Security (Disability Assistance for Working Age People) (Consequential Amendments) Order 2022 (S.I. 2022/177), arts. 1(2), **10(6)(a)**
- F43** Reg. 86(1)(h) added (29.4.2013) by The Social Security (Overpayments and Recovery) Regulations 2013 (S.I. 2013/384), regs. 1(3), **34(2)(b)**
- F44** Reg. 86(1A) inserted by SI 2005/2904 reg. 9 (as amended) (10.4.2006) by The Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006 (S.I. 2006/217), reg. 1(1), **Sch. 2 para. 29(10)** (with regs. 2, 3, Sch. 3, Sch. 4)
- F45** Words in reg. 86(1A) inserted (15.11.2018) by The Social Security (Updating of EU References) (Amendment) Regulations 2018 (S.I. 2018/1084), reg. 1, **Sch. para. 11(1)(b)**
- F46** Reg. 86(1B) inserted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **5(4)(b)**
- F47** Reg. 86(1B)(e) added (8.4.2013) by The Social Security (Overpayments and Recovery) Regulations 2013 (S.I. 2013/384), regs. 1(2)(e), **34(2)(c)**
- F48** Reg. 86(1B)(ea) inserted (21.3.2022) by The Social Security (Disability Assistance for Working Age People) (Consequential Amendments) Order 2022 (S.I. 2022/177), arts. 1(2), **10(6)(b)**
- F49** Reg. 86(1B)(f) added (29.4.2013) by The Social Security (Overpayments and Recovery) Regulations 2013 (S.I. 2013/384), regs. 1(3), **34(2)(d)**
- F50** Reg. 86(2) substituted (6.4.2009) by The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 (S.I. 2008/2824), regs. 1(2), **5(4)(c)**

### Prescribed benefits

**87.**—(1) The benefits prescribed for the purposes of section 75(5) and (7) of the Administration Act <sup>F51</sup> (recovery of overpayments) are those set out in the following paragraphs.

(2) Prescribed benefits within section 75(5)(a) of the Administration 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 86(1) (recovery of overpayments from prescribed benefits), but only in cases where—
  - (i) an authority has, pursuant to regulation 83 (method of recovery), 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 (2)(a) and (b) of regulation 86.

(3) Housing benefit is prescribed for the purposes of section 75(5)(b) or (c) of the Administration 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 Administration Act (benefits recoverable from the county court or the sheriff court) are housing benefit and those benefits prescribed from time to time in regulation 86(1).

### Textual Amendments

- F51** Inserted by [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#), **section 16**.

### <sup>F52</sup>Recovery by deduction from earnings

**87A.**—(1) Any overpayment which is recoverable by virtue of regulation 81 may be recovered by a relevant authority 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 the recovery of overpayments by deduction from the earnings of a person specified in paragraph (1) by a relevant authority as it applies to the recovery of recoverable amounts by deduction from the earnings of persons under that Part of those Regulations by an appropriate authority.]

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**Textual Amendments**

**F52** Reg. 87A inserted (8.4.2013) by [The Social Security \(Overpayments and Recovery\) Regulations 2013 \(S.I. 2013/384\)](#), regs. 1(2)(e), **34(3)**

**Restrictions on recovery of rent and consequent notifications**

**88.**—(1) Where, pursuant to section 75(5)(b) of the Administration 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 recoverable 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 of the Administration Act <sup>F53</sup> (penalty as an alternative to prosecution); or
- (b) been convicted of an offence arising under the Act or any other enactment.

(3) In any case to which paragraph (2) applies or will apply when recovery is made 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 (“the sum”) is or will be 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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**Textual Amendments**

**F53** Section 115A was inserted by section 15 of the [Social Security Administration \(Fraud\) Act 1997 \(c. 47\)](#); sub-sections (7A) and (7B) were inserted by the [Social Security Fraud Act 2001 \(c. 11\)](#), [section 14](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, PART 12.