

---

STATUTORY INSTRUMENTS

---

**2006 No. 216**

**The Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006**

**PART 10**

**Excess benefit**

**Meaning of excess benefit**

**67.** In this Part “excess benefit” means any amount which as been allowed by way of council tax benefit and to which there was no entitlement under these Regulations (whether on the initial decision as subsequently revised or further revised) and includes any excess which arises by reason of—

- (a) a reduction in the amount a person is liable to pay in respect of council tax in consequence of—
  - (i) regulations made under section 13(1) of the 1992 Act (reduction in the amount of a person’s council tax); or
  - (ii) any discount to which that tax is subject by virtue of section 11 or 79 of that Act;
- (b) a substitution under sections 31 or 60 or, in Scotland, section 94 of the 1992 Act (substituted amounts) of a lesser amount for an amount of council tax previously set by the relevant authority under section 30(2) or, in Scotland section 93(3) of that Act (amount set for council tax).

**Recoverable excess benefit**

**68.**—(1) Any excess benefit, except benefit to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraph (4) and (5) and excepting any excess benefit arising in consequence of a reduction in tax or substitution to which regulation 67 refers, this paragraph applies to excess benefit allowed in consequence of an official error, where the claimant or a person acting on his behalf or any other person to whom the excess benefit is allowed could not, at the time the benefit was allowed or upon the receipt of any notice relating to the allowance of that benefit, reasonably have been expected to realise that it was excess benefit.

(3) In paragraph (2), “excess benefit allowed 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; or

---

(1) Amended by the Local Government Act 1999 (c. 27), section 30 and Schedule 1, paragraphs 2 and 3; modified by S.I.1993/22.

(2) Amended by the Greater London Authority Act 1999 (c. 29), section 81.

(3) Amended by the Local Government etc. (Scotland) Act 1994 (c. 39) section 180(2) and Schedule 14; and by the Local Government in Scotland Act 2003 asp 1, section 41.

(ii) the Commissioners for Her Majesty's Revenue and Customs,  
acting as such; or

(d) a person providing services to the Department or to the Commissioners referred to in (c), 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) Paragraph (2) shall not apply with respect to excess benefit to which regulation 67(a) and (b) refers.

(5) Where in consequence of an official error a person has been awarded excess benefit, upon the award being revised any excess benefit which remains credited to him by the relevant authority in respect of a period after the date of the revision, shall be recoverable.

#### **Authority by which recovery may be made**

69. The relevant authority which allowed the recoverable excess benefit may recover it.

#### **Persons from whom recovery may be sought**

70.—(1) Subject to paragraph (2), recoverable excess benefit shall be due from the claimant or the person to whom the excess benefit was allowed.

(2) Where recoverable excess benefit is allowed to a claimant who has one or more partners, recovery of the excess may be made by deduction from any council tax benefit allowed to a partner, provided the claimant and that partner were members of the same household both at the time the excess benefit is allowed and when the deduction is made.

#### **Methods of recovery**

71.—(1) Without prejudice to any other method of recovery a relevant authority may recover any recoverable excess benefit due from any person referred to in regulation 70 (person from whom recovery may be sought) by any of the methods specified in paragraph (2) and (3) or any combination of those methods.

(2) Excess benefit may be recovered either—

- (a) by payment by or on behalf of the person to whom regulation 70(1) refers; or
- (b) by an addition being made by the relevant authority to any amount payable in respect of the council tax concerned.

(3) Where recoverable excess benefit due from any person cannot be recovered by either of the methods specified in paragraph (2), the relevant authority may request the Secretary of State to recover the outstanding excess from the benefits prescribed in regulation 75 in accordance with the provisions of that regulation.

#### **Further provision as to recovery of excess benefit**

72. In addition to the methods for recovery of excess benefit which are specified in regulation 71, any sum or part of a sum which is due from the person concerned and which is not paid within 21 days of his being notified of the amount that is due, shall be recoverable in a court of competent jurisdiction by the authority to which the excess benefit is due.

#### **Diminution of capital**

73.—(1) Where in the case of recoverable excess benefit, 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 68(2) (effect of official error) refers, as to the amount of a person's capital, the excess benefit was in respect of a period ("the excess benefit period") of more than 13 benefit weeks, the relevant authority shall, for the purpose only of calculating the amount of excess—

- (a) at the end of the first 13 benefit weeks of the excess benefit period, treat the amount of the capital as having been reduced by the amount of excess council tax benefit allowed during those 13 weeks;
- (b) at the end of each subsequent period of 13 benefit weeks, if any, of the excess benefit period, treat the amount of that capital as having been further reduced by the amount of excess council tax benefit allowed 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 excess benefit**

**74.**—(1) In calculating the amount of recoverable excess benefit, the relevant authority shall deduct any amount of council tax benefit which should have been determined to be payable 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 had been notified at the time that change occurred.

(2) In calculating the amount of recoverable excess benefit, the relevant authority may deduct so much of any payment of council tax in respect of the excess benefit period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous decision.

#### **Recovery of excess benefit from prescribed benefits**

**75.**—(1) For the purposes of section 76(3)(c) of the Administration Act (deduction of excess council tax benefit from prescribed benefits), the benefits prescribed by this regulation are—

- (a) any benefit payable under the Act, except guardian's allowance or housing benefit;
- (b) any benefit payable 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(4) on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation;
- (c) a jobseeker's allowance;
- (d) state pension credit.

(2) Where the Secretary of State is satisfied that—

- (a) recoverable excess benefit has been allowed in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulent or otherwise), by a claimant or any other person to whom council tax benefit has been allowed; and

---

(4) 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).

- (b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the excess,

he shall, if requested to do so by a relevant authority under regulation 71 (methods of recovery) recover the excess by deduction from any of those benefits.