
STATUTORY INSTRUMENTS

1989 No. 507

**Community Charges (Deductions from
Income Support) (Scotland) Regulations 1989**

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Community Charges (Deductions from Income Support) (Scotland) Regulations 1989 and shall come into force on 8th April 1989.

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

“the 1975 Act” means the Social Security Act 1975⁽¹⁾;

“adjudication officer” means an officer appointed in accordance with section 97(1) of the 1975 Act;

“appropriate social security office” means an office of the Department of Social Security which is normally open to the public for the receipt of claims for income support and includes an office of the Department of Employment which is normally open to the public for the receipt of claims for unemployment benefit;

“Commissioner” means the Chief or any other Social Security Commissioner appointed in accordance with section 97(3) of the 1975 Act or section 13(5) of the Social Security Act 1980⁽²⁾, and includes a Tribunal of 3 Commissioners constituted in accordance with section 116 of the 1975 Act;

“couple” means a married or unmarried couple;

“debtor” means a person who is in arrears in respect of community charges and against whom a summary warrant or decree has been obtained;

“5 per cent. of the personal allowance for a single claimant aged not less than 25” and

“5 per cent. of the personal allowance for a couple where both members are aged not less than 18” means, in each case, where the percentage is not a multiple of 5 pence, the sum obtained by rounding that 5 per cent. to the next higher such multiple;

“income support” means income support within the meaning of the Social Security Act 1986⁽³⁾;

“payments to third parties” means direct payments to third parties in accordance with Schedule 9 to the Social Security (Claims and Payments) Regulations 1987⁽⁴⁾;

“single debtor” means a debtor who is not a member of a couple; and

“tribunal” means a social security appeal tribunal constituted in accordance with section 97(2) to (2E) of the 1975 Act⁽⁵⁾.

(1) 1975 c. 14.

(2) 1980 c. 30.

(3) 1986 c. 50.

(4) S.I.1987/1968, amended by S.I. 1988/522, 1725 and 1989/136.

(5) Sub-sections 97(2) to (2E) of the 1975 Act were substituted for sub-section 97(2) by the Health and Social Services and Social Security Ajudications Act 1983 (c. 41), Schedule 8, paragraph 2 and sub-section 97(2A) was substituted for sub-sections 97(2A) and (2B) by the Health and Social Security Act 1984 (c. 48), section 16(a).

(3) Any reference in these Regulations to community charges includes a reference to those charges as read with paragraph 11 of Schedule 5 to the Abolition of Domestic Rates Etc. (Scotland) Act 1987 and the Community Water Charges (Scotland) Regulations 1988.

(4) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation and Schedule bearing that number in the Regulations and any reference in a regulation or Schedule to a numbered paragraph is a reference to the paragraph of that regulation or Schedule having that number.

Deductions from income support

2.—(1) Without prejudice to their right to pursue any other means of recovering arrears of community charges, a levying authority may apply to the Secretary of State asking him to deduct sums from any amount payable to a debtor by way of income support.

(2) An application from a levying authority shall be in writing and shall contain the following particulars—

- (a) the name, address and date of birth of the debtor or where the summary warrant or decree names a couple, the names, address and dates of birth of both of them;
- (b) the name and place of the court at which the summary warrant or decree was obtained;
- (c) the date when the summary warrant or decree was obtained;
- (d) the total amount of the arrears specified in the summary warrant or decree;
- (e) the amount which the levying authority wishes to have deducted from income support.

(3) Where it appears to the Secretary of State that an application from a levying authority gives insufficient particulars to enable the debtor to be identified he may require the levying authority to furnish such further particulars as may reasonably be required.

(4) Subject to regulation 4(1), where the Secretary of State receives an application from a levying authority, he shall refer it to an adjudication officer who shall determine, so far as is practicable within 14 days of its submission to him, the following questions—

- (a) whether there is sufficient entitlement to income support so as to enable the Secretary of State to make any deduction—
 - (i) in the case of a single debtor or a debtor who is a member of a couple, at a rate of 5 per cent. of the personal allowance for a single claimant aged not less than 25⁽⁶⁾; or
 - (ii) in the case where the decree or summary warrant names a couple and income support is payable in respect of both of them at a rate of 5 per cent. of the personal allowance for a couple where both members are aged not less than 18⁽⁷⁾,

and if the amount payable by way of income support to the debtor were to be 10 pence or more after any such deduction, the adjudication officer shall determine that there is sufficient entitlement;

- (b) the priority of any sum to be deducted as against any payments to third parties where there is insufficient entitlement to income support to meet both the deduction in respect of arrears of community charges and those payments to third parties, the following priorities shall apply—
 - (i) any liability mentioned in paragraph 3 (housing costs) of Schedule 9 to the Social Security (Claims and Payments) Regulations 1987;
 - (ii) any liability mentioned in paragraph 5 (certain service charges for fuel, and rent) of Schedule 9 to those regulations;

⁽⁶⁾ See Schedule 2 to S.I. 1987/1967, paragraph 1(1)(c).

⁽⁷⁾ See Schedule 2 to S.I. 1987/1967, paragraph 1(3)(c).

- (iii) any liability mentioned in paragraph 6 of Schedule 9 to those regulations;
- (iv) any liability for arrears in respect of community charges.

(5) Subject to any right of appeal or review under these regulations, the decision of the adjudication officer shall be final.

Notification of decision

3. The Secretary of State shall notify the debtor in writing of the adjudication officer's decision as soon as practicable after he receives that decision and at the same time he shall notify the debtor of his right of appeal.

Circumstances, time of making and termination of deductions

4.—(1) The Secretary of State shall make deductions from income support in respect of community charges only—

- (a) where the debtor is entitled to income support throughout any benefit week; and
- (b) in respect of one application (the original application) at a time, and where, at the time he is making deductions under the original application, the Secretary of State receives one or more applications under regulation 2(1), he shall not refer them to the adjudication officer until he has ceased making deductions under the original application when he shall forthwith refer the applications to the adjudication officer in the chronological order in which they were made.

(2) The Secretary of State shall make deductions from income support in respect of arrears of community charges at a time which corresponds to the payment of income support to the debtor⁽⁸⁾ and he shall cease making deductions when—

- (a) a payment to a third party has priority;
- (b) there is insufficient entitlement to income support to enable him to make the deduction;
- (c) entitlement to income support ceases;
- (d) the summary warrant ceases to have effect or the decree is rescinded; or
- (e) the debt is discharged.

(3) Payments shall be made to the levying authority at such intervals as the Secretary of State may decide.

Appeal

5.—(1) Where the adjudication officer has decided a question under regulation 2(4), the debtor may appeal to a tribunal.

(2) An appeal lies to a Commissioner from any decision of a tribunal on the grounds that the decision of that tribunal was erroneous in point of law and the persons who may appeal are the debtor and the adjudication officer.

(3) If it appears to the Chief Commissioner or, in the case of his inability to act, to such other of the Commissioners as he may have nominated to act for that purpose, that an appeal falling to be heard by one of the Commissioners involves a question of law of special difficulty, he may direct that the appeal be dealt with, not by that Commissioner alone but by a Tribunal consisting of any 3 of the Commissioners.

⁽⁸⁾ See Schedule 7 to S.I. 1987/1968.

(4) An appeal on a question of law lies to the Court of Session from any decision of a Commissioner on a question of law with the leave of the Commissioner who gave the decision and the persons who may appeal are—

- (a) the debtor;
- (b) the adjudication officer; and
- (c) the Secretary of State.

Review

6.—(1) Any decision under these Regulations of an adjudication officer, a tribunal or a Commissioner may be reviewed at any time by an adjudication officer if—

- (a) the officer is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or
- (b) there has been a relevant change of circumstances since the decision was given.

(2) Any decision of an adjudication officer may be reviewed at any time by an adjudication officer on the grounds that the decision was erroneous in point of law.

(3) A question may be raised with a view to review under this regulation by means of an application in writing to an adjudication officer, stating the grounds of the application.

(4) On receipt of any such application the adjudication officer shall take it into consideration and, so far as is practicable, dispose of it within 14 days of its receipt.

(5) A decision given on review or a refusal to review a decision under this regulation shall be subject to appeal in the same manner as an original decision and regulation 5(1) and Schedule 2 shall apply with the necessary modifications in relation to a decision given on review as they apply to the original decision on a question.

Correction of accidental errors

7.—(1) Subject to regulation 9, accidental errors in any decision or record of a decision made under regulations 2(4), 5 and 6 and Schedule 2 may at any time be corrected by the person or tribunal by whom the decision was made or a person or tribunal of like status.

(2) A correction made to, or to the record of, a decision shall be deemed to be part of the decision or, of that record, and written notice of it shall be given as soon as practicable to every party to the proceedings.

Setting aside decisions on certain grounds

8.—(1) Subject to regulation 9, on application made by a party to the proceedings, a decision made under regulations 2(4), 5, 6 and Schedule 2 by an adjudication officer, tribunal or a Commissioner may be set aside by the person or tribunal by whom the decision was made, or by a person or tribunal of like status, in a case where it appears just to set that decision aside on the grounds that—

- (a) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by a party or their representative or was not received at the appropriate time by the person who gave the decision;
- (b) a party to the proceedings in which the decision was given or the party's representative was not present at the hearing relating to the proceedings; or
- (c) the interests of justice so require.

(2) An application under this regulation shall be made in accordance with regulation 10 and Schedule 1.

(3) Where an application to set aside is entertained under paragraph (1) every party to the proceedings shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is determined.

(4) Notice in writing of a determination on an application to set aside a decision shall be given to every party to the proceedings as soon as may be practicable and the notice shall contain a statement giving the reasons for the determination.

(5) For the purpose of determining under these Regulations an application to set aside, there shall be disregarded any provision in any enactment or instrument to the effect that any notice or other document required or authorised to be given or sent to any person shall be deemed to have been given or sent if it was sent to that person's last known notified address.

Provisions common to regulations 7 and 8

9.—(1) In calculating any time specified in Schedule 1 there shall be disregarded any day falling before the day on which notice was given of a correction of a decision or the record thereof pursuant to regulation 7 or on which notice is given that a determination of a decision shall not be set aside following an application under regulation 8, as the case may be.

(2) There shall be no appeal against a correction made under regulation 7 or a refusal to make such a correction or against a determination under regulation 8.

(3) Nothing in regulation 7 or 8 shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from these regulations.

Manner of making applications or appeals and time limits

10.—(1) Any application or appeal set out in Column (1) of Schedule 1 shall be made or given by sending or delivering it to the appropriate office within the specified time.

(2) In this regulation—

- (a) “appropriate office” means the office specified in Column (2) of Schedule 1 opposite the description of the relevant application or appeal listed in Column (1); and
- (b) “the specified time” means the time specified in Column (3) of that Schedule opposite the description of the relevant application or appeal so listed.

(3) The time specified by this regulation and Schedule 1 for the making of any application or appeal (except an application to the chairman of a tribunal for leave to appeal to a Commissioner) may be extended for special reasons, even though the time so specified may already have expired, and any application for an extension of time under this paragraph shall be made to and determined by the person to whom the application or appeal is sought to be made or, in the case of a tribunal, its chairman.

(4) An application under paragraph (3) for an extension of time which has been refused may not be renewed.

(5) Any application or appeal set out in Column 1 of Schedule 1 shall be in writing and shall contain:—

- (a) the name and address of the appellant or applicant;
- (b) the particulars of the grounds on which the appeal or application is to be made or given;
- (c) his address for service of documents if it is different to that in (a); and
- (d) in the case of an appeal to the Commissioner, subject to paragraph 21(2) of Schedule 2, the notice of appeal shall have annexed to it a copy of the determination granting leave to appeal and a copy of the decision against which leave to appeal has been granted.

(6) Where it appears to an adjudication officer, or chairman of a tribunal, or Commissioner that an application or appeal which is made to him, or the tribunal, gives insufficient particulars to enable the question at issue to be determined, he may require, and in the case of a Commissioner, direct that the person making the application or appeal shall furnish such further particulars as may reasonably be required.

(7) The conduct and procedure in relation to any application or appeal shall be in accordance with Schedule 2.

Manner and time for the service of notices etc.

11.—(1) Any notice or other document required or authorised to be given or sent to any person under these Regulations shall be deemed to have been given or sent if it was sent by post properly addressed and pre-paid to that party at his ordinary or last notified address.

(2) Any notice or other document required or authorised to be given to an appropriate social security office or office of the clerk to the tribunal shall be treated as having been so given or sent on the day that it is received in the appropriate social security office or office of the clerk to the tribunal.

(3) Any notice or document required to be given, sent or submitted to, or served on, a Commissioner—

- (a) shall be given, sent or submitted to the office of the Social Security Commissioners;
- (b) shall be deemed to have been given, sent or submitted if it was sent by post properly addressed and pre-paid to the office of the Social Security Commissioners.

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

15th March 1989

Nicholas Scott
Minister of State,
Department of Social Security