
STATUTORY INSTRUMENTS

2000 No. 2331

SOCIAL SECURITY

**The Housing Benefit and Council Tax Benefit
(General) Amendment (No. 4) Regulations 2000**

Made - - - - 30th August 2000
Laid before Parliament 4th September 2000
Coming into force - - 2nd October 2000

The Secretary of State for Social Security, in exercise of the powers conferred by sections 123(1)(d) and (e), 137(1) and 175(1) to (5) of the Social Security Contributions and Benefits Act 1992(1) and sections 75(1) to (4), 76(1) to (3) and 189(1) and (4) to (6) of the Social Security Administration Act 1992(2) and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned(3) and after reference to the Social Security Advisory Committee(4), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit and Council Tax Benefit (General) Amendment (No. 4) Regulations 2000 and shall come into force on 2nd October 2000.

(2) In these Regulations—

“the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992(5); and

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(6).

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- (1) 1992 c. 4; section 123(1)(e) was substituted by the Local Government Finance Act 1992 (c. 14), Schedule 9, paragraph 1; section 175 was amended by the Social Security (Incapacity for Work) Act 1994, Schedule 1, paragraph 36 and the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), Schedule 3, paragraph 29. Section 137(1) is an interpretation provision and is cited because of the meaning ascribed to the word “prescribed”.
- (2) 1992 c. 5; section 75(1) was amended by the Social Security Administration (Fraud) Act 1997 (c. 47), Schedule 1, paragraph 3 and Schedule 2; section 76(1) to (3) was amended by the Local Government Finance Act 1992, Schedule 9, paragraph 15 and the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 175; section 189(1) and (3) to (7) was amended by the Social Security Act 1998 (c. 14), Schedule 7, paragraph 109 and Schedule 8 and the Social Security Contributions (Transfer of Functions, etc.) Act 1999, Schedule 3, paragraph 57.
- (3) See section 176(1)(a) of the Social Security Administration Act 1992 as amended by the Local Government Finance Act 1992 (c. 14), Schedule 9, paragraph 23 and the Housing Act 1996 (c. 52), Schedule 13, paragraph 3.
- (4) See section 172(1) of the Social Security Administration Act 1992.
- (5) S.I. 1992/1814.
- (6) S.I. 1987/1971.

Amendment of regulation 97 of the Housing Benefit Regulations

2. Regulation 97 of the Housing Benefit Regulations (offsetting)(7) shall be amended by inserting, after paragraph (1), the following paragraph—

“(1A) Where an amount has been deducted under regulation 104(1) an equivalent sum shall be offset against any arrears of entitlement under the subsequent determination except to the extent that the sum exceeds the arrears and shall be treated as properly payable on account of them.”.

Revocation of regulation 100 of the Housing Benefit Regulations

3. Regulation 100 of the Housing Benefit Regulations (person by whom recovery may be made) is revoked.

Substitution of regulation 102 of the Housing Benefit Regulations

4.—(1) For regulation 102 of the Housing Benefit Regulations (method of recovery) there shall be substituted the following regulation—

“Method of recovery

102.—(1) Without prejudice to any other method of recovery, an authority may recover a recoverable overpayment from any person referred to in regulation 101 by deduction from any housing benefit to which that person is entitled (including arrears of entitlement after offsetting under regulation 97) 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 105.

(2) Subject to paragraphs (4) and (5), where an authority makes deductions permitted by paragraph (1) from the housing benefit it is paying to a claimant (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 three 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 an authority makes deductions from housing benefit it is paying to a claimant who has, in respect of the whole or part of the recoverable overpayment,—

- (a) been found guilty of an offence whether under 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 and the agreement has not been withdrawn,

the amount deducted under paragraph (2) shall be not more than four times five per cent. of the personal allowance for a single claimant aged not less than 25, but where that five per cent. is not a multiple of 10 pence, it shall be rounded to the nearest 10 pence or, if it is a multiple of 5 pence but not of 10 pence, the next higher multiple of 10 pence.

(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 paragraphs 3 to 8 of Schedule 3 (sums to be disregarded in the calculation of earnings) or paragraph 13 or 14 of Schedule 4

(7) S.I. 1987/1971; the relevant amendment is S.I. 1992/432.

(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 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⁽⁸⁾;
- (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)(c) of column 2 of Schedule 2.”

(2) The amendment made by paragraph (1) of 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 these Regulations came into force.

Substitution of regulation 104 of the Housing Benefit Regulations

5. For regulation 104 of the Housing Benefit Regulations (sums to be deducted in calculating recoverable overpayments) there shall be substituted the following regulation—

“Sums to be deducted in calculating recoverable overpayments

104.—(1) Subject to paragraph (3), in calculating the amount of a recoverable overpayment, the appropriate authority shall deduct any amount of housing 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 determination; 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) For the purposes of paragraph (1)(c), where the change of circumstances is the cessation of entitlement to income support or income-based jobseeker’s allowance the deduction shall be made as if that change of circumstances had not ended the benefit period.

(3) In the case of rent rebate only, in calculating the amount of a recoverable overpayment the appropriate 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.”

Amendment of regulation 82 of the Council Tax Benefit Regulations

6. Regulation 82 of the Council Tax Benefit Regulations (offsetting) shall be amended by inserting, after paragraph (1), the following paragraph—

“(1A) Where an amount has been deducted under regulation 90(1) an equivalent sum shall be offset against any arrears of entitlement under the subsequent determination.”

(8) 1984 c. 60.

Substitution of regulation 90 of the Council Tax Benefit Regulations

7. For regulation 90 of the Council Tax Benefit Regulations (sums to be deducted in calculating recoverable excess benefit) there shall be substituted the following regulation—

“Sums to be deducted in calculating recoverable excess benefit

90.—(1) In calculating the amount of recoverable excess benefit, the appropriate 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 determination; 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) For the purposes of paragraph (1)(c), where the change of circumstances is the cessation of entitlement to income support or income-based jobseeker’s allowance the deduction shall be made as if that change of circumstances had not ended the benefit period.

(3) In calculating the amount of recoverable excess benefit, the appropriate 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 determination.”.

Amendment of regulation 91 of the Council Tax Benefit Regulations

8. Sub-paragraph (a) of paragraph (1) of regulation 91 of the Council Tax Benefit Regulations (recovery of excess benefit from prescribed benefits) shall be amended by adding after the words “except guardian’s allowance” the words “or housing benefit”.

30th August 2000

Alistair Darling
Secretary of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Housing Benefit (General) Regulations 1987 (S.I.1987/1971) (“the Housing Benefit Regulations”) and the Council Tax Benefit (General) Regulations 1992 (S.I.1992/1814) (“the Council Tax Benefit Regulations”).

Regulation 2 amends regulation 97 of the Housing Benefit Regulations to permit offsetting of amounts deducted in the process of calculating a recoverable overpayment under regulation 104.

Regulation 3 revokes regulation 100 of the Housing Benefit Regulations. The power of the authority to recover overpayments is set out in section 75 of the Social Security Administration Act 1992.

Regulation 4 replaces regulation 102 with a new regulation. The substituted regulation sets a standard maximum rate of recovery of overpayments where a local authority chooses to recover from ongoing entitlement to housing benefit being paid to a person as a claimant. A higher rate of deduction may be applied when deducting from housing benefit payable to a claimant who has been implicated in fraud in respect of that overpayment or where specified income or earnings disregards have been applied in calculating the housing benefit.

Regulation 5 replaces regulation 104 of the Housing Benefit Regulations with a new regulation which specifies more precisely the deductions to be made in calculating a recoverable overpayment.

Regulations 6 to 8 amend the Council Tax Benefit Regulations. Regulation 6 amends regulation 82 in a similar manner to the amendment made to regulation 97 of the Housing Benefit Regulations.

Regulation 7 replaces regulation 90 of the Council Tax Benefit Regulations to specify more precisely the deductions to be made in calculating recoverable excess benefit in a similar manner to regulation 104 of the Housing Benefit Regulations (as substituted by these Regulations).

Regulation 8 amends regulation 91 of the Council Tax Benefit Regulations to prevent the recovery of excess council tax benefit by deductions from housing benefit.

These Regulations do not impose a charge on business.