

**2005 No. 2904**

**SOCIAL SECURITY**

**The Housing Benefit and Council Tax Benefit (General)  
Amendment Regulations 2005**

<i>Made</i> - - - -	<i>17th October 2005</i>
<i>Laid before Parliament</i>	<i>24th October 2005</i>
<i>Coming into force</i> - -	<i>10th April 2006</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 75(1), (2), (3) and (4), 76(1), (2) and (3), 189(1), (4) and (6) and 191 of the Social Security Administration Act 1992(a) and of all other powers enabling him in that behalf, after consultation with organisations appearing to him to be representative of the authorities concerned(b), and after agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it(c), 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 Regulations 2005 and shall come into force on 10<sup>th</sup> April 2006.

(2) In these Regulations—

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

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

**Meaning of Overpayment**

2. In regulation 98 of the Housing Benefit Regulations for the words “as subsequently revised or further revised” there shall be substituted the words “or as subsequently revised or superseded or further revised or superseded”.

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(a) 1992 c. 5. Section 75(1) was amended by paragraph 3 of Schedule 1 and Schedule 2 to the Social Security Administration (Fraud) Act 1997 (c. 47). Section 76(1) was amended by paragraph 15(1) of Schedule 9 to the Local Government Finance Act 1992 (c. 14). Section 76(2) was amended by paragraph 15(2) of Schedule 9 and Schedule 14 to the Local Government Finance Act 1992. Section 191 is an interpretation provision and is cited because of the meaning ascribed to the word “prescribe”.

(b) See section 176(1)(a) of the Social Security Administration Act 1992.

(c) See section 173(1)(b) of the Social Security Administration Act 1992.

(d) S.I. 1992/1814; the relevant amending instruments are S.I. 2000/2331 and 2001/1605.

(e) S.I. 1987/1971; the relevant amending instruments are S.I. 2000/2331, 2001/1190 and 2001/1605.

### **Meaning of excess benefit**

3. In regulation 83 of the Council Tax Benefit Regulations for the words “as subsequently revised or further revised” there shall be substituted the words “or as subsequently revised or superseded or further revised or superseded”.

### **Recoverable overpayments**

4.—(1) Regulation 99 of the Housing Benefit Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In paragraph (2) for the words “caused by” there shall be substituted the words “which arose in consequence of”.

(3) In paragraph (3) for the words “caused by official error” there shall be substituted the words “which arose in consequence of an official error”.

(4) In paragraph (4) after the word “revised” there shall be inserted the words “or superseded” and after the word “revision” there shall be inserted the words “or supersession”.

### **Recoverable excess benefit**

5. In regulation 84(5) of the Council Tax Benefit Regulations after the word “revised” there shall be inserted the words “or superseded” and after the word “revision” there shall be inserted the words “or supersession”.

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

6.—(1) Regulation 101 of the Housing Benefit Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) After paragraph (1)(b), there shall be inserted the following sub-paragraph—

“(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;”.

(3) For paragraph (2) there shall be substituted the following paragraph—

“(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) the prescribed person from whom it is sought shall be—

(i) 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 any other person to whom housing benefit has been paid, the person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made;

(ii) in a case where an overpayment 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 has been made 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, that person instead of, if different, the person to whom the payment was made; or

(b) where sub-paragraphs (a)(i) and (ii) do not apply, the prescribed person from whom it is sought is—

(i) the claimant;

(ii) in a case where a recoverable overpayment is made to a claimant who has one or more partners, the claimant’s partner or any of his partners.”.

(4) After paragraph (3), there shall be inserted the following paragraph—

“(3A) For the purposes of paragraph (2)(a)(ii), “overpayment arose in consequence of an official error” shall have the same meaning as in regulation 99(3) above.”.

(5) In paragraph (4) for the words “paragraph (2)(b)” there shall be substituted the words “paragraph (2)(b)(ii)”.

### **Method of recovery**

7.—(1) Regulation 102 of the Housing Benefit Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In paragraphs (1), (2) and (3) for the words “an authority” there shall be substituted the words “a relevant authority”.

(3) After paragraph (1), there shall be inserted the following paragraph—

“(1A) Where—

- (a) a claimant has moved into a dwelling which he occupies as his home;
- (b) a recoverable overpayment of housing benefit is thereafter made direct to him in connection with the dwelling he occupied as his home immediately preceding the date he moved to that dwelling; and
- (c) the same relevant authority which made the recoverable overpayment is paying housing benefit to that claimant in respect of that new dwelling,

the relevant authority may at its discretion deduct from the housing benefit it is paying to the claimant in respect of a benefit week an amount equal to the claimant’s weekly entitlement to housing benefit at his new dwelling, and may do so for the number of benefit weeks equal to the number of weeks during which the claimant was overpaid housing benefit.”.

(4) In paragraph (2) after the word “paragraphs” there shall be inserted the reference “(1A),”.

(5) In paragraph (5) after the word “regulation” there shall be inserted the words “, except as made under paragraph (1A),”.

### **Sums to be deducted in calculating recoverable overpayments**

8. In regulation 104(1)(c) of the Housing Benefit Regulations after the words “change of circumstances” there shall be inserted the words “, except a change of the dwelling which the claimant occupies as his home,”.

### **Recovery of overpayments from prescribed benefits**

9. In regulation 105 of the Housing Benefit Regulations, after paragraph (1) there shall be inserted the following paragraph—

“(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.”(a).

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

10. In regulation 91(1)(b) of the Council Tax Benefit Regulations, after paragraph (1) there shall be inserted the following paragraph—

“(1A) For the purposes of paragraph (1)(b) 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.”.

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(a) Cm 4904.

Signed by authority of the Secretary of State for Work and Pensions.

17th October 2005

*James Plaskitt*  
Parliamentary Under Secretary of State,  
Department for Work and Pensions

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

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

Regulation 2 amends the meaning of “overpayment” in Part XII of the Housing Benefit Regulations, and the amendment in regulation 4(4) is consequential to this.

Regulation 3 amends the meaning of “excess benefit” in Part XI of the Council Tax Benefit Regulations, and the amendment in regulation 5 is consequential to this.

Regulation 4(2) and (3) amend the terminology used in respect of overpayments arising in consequence of official error.

Regulation 6 amends regulation 101 of the Housing Benefit Regulations. Regulation 6(2) inserts an additional condition in the list of prescribed circumstances that must be satisfied for an overpayment not to be recovered from the person to whom it was paid. Regulations 6(3) to (5) prescribe the person from whom recovery of an overpayment should be made in specified circumstances instead of the person to whom the payment was made.

Regulation 7 amends regulation 102 of the Housing Benefit Regulations. Regulation 7(2) amends the terminology used in respect of an authority administering housing benefit, and regulations 7(3) to (5) insert an additional method of recovery in the case of a claimant who changes his address.

Regulation 8 amends regulation 104(1)(c) of the Housing Benefit Regulations to ensure a claimant’s change of address is not treated as being a change of circumstances when calculating housing benefit payable in respect of the overpayment period.

Regulation 9 amends regulation 105 of the Housing Benefit Regulations to provide for recovery of overpaid housing benefit from benefits paid by Switzerland under Article 4(1) of Regulation (EEC) No 1408/71, following 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.

Regulation 10 makes the same amendment to regulation 91 of the Council Tax Benefit Regulations as regulation 9 makes to regulation 105 of the Housing Benefit Regulations.

These Regulations do not impose a charge on business.

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