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STATUTORY INSTRUMENTS

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**2006 No. 213**

**The Housing Benefit Regulations 2006**

**PART 13**

**Overpayments**

**Meaning of overpayment**

**99.** 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 as subsequently revised or further revised) and includes any amount paid on account under regulation 93 (payment on account of a rent allowance) which is in excess of the entitlement to housing benefit as subsequently decided.

**Recoverable overpayments**

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

(2) Subject to paragraph (4) this paragraph applies to an overpayment caused by 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 caused by 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
  - (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 rent rebate to which he was not entitled or which exceeded the benefit to which he was entitled, upon the award being revised 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 took place, shall be recoverable.

**Person from whom recovery may be sought**

**101.**—(1) For the purposes of section 75(3)(a) of the Administration Act(1) (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 95 (circumstances in which payment is to be made to the landlord) or regulation 96 (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;
- (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(2) (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 88 (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 to contribute to the period, or the amount, of the overpayment.

(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), the prescribed person is—

- (a) in a case where the overpayment arose as a consequence of a misrepresentation or 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;
- (b) 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;
- (c) the claimant.

(3) For the purposes of paragraph (1), “landlord” shall have the same meaning as it has for the purposes of regulation 95.

(4) For the purposes of paragraph (2)(b), recovery of the overpayment may be by deduction from any housing benefit payable to a partner provided that the claimant and that partner were members of the same household both at the time of the overpayment and when the deduction is made.

**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 (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 98 (offsetting)) or, where it is

(1) Subsection (3) was substituted by the Child Support, Pensions and Social Security Act 2000 (c. 19), section 71.

(2) Section 111A was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 13; section 112(1) was amended by paragraph 4(2) of Schedule 1 to the same Act, by the Child Support, Pensions and Social Security Act 2000, section 67 and Schedule 6, paragraph 6

unable to do so, may request the Secretary of State to recover any recoverable overpayment from the benefits prescribed in regulation 105 (recovery of overpayments from prescribed benefits).

(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 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>(3)</sup> (penalty as an alternative to prosecution) 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 10 of Schedule 4 (sums to be disregarded in the calculation of earnings) or paragraph 14 or 15 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 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>(4)</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 (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.

### **Diminution of capital**

**103.**—(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 100(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”)

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<sup>(3)</sup> Section 115A was inserted by the [Social Security Administration \(Fraud\) Act \(c. 47\)](#), section 15.

<sup>(4)</sup> [1984 c. 60](#).

of more than 13 benefit weeks, the relevant authority shall, for the purpose 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**

**104.**—(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 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 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 decision.

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

**105.**—(1) 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 other than the United Kingdom concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No 1408/71 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;
- (d) a jobseeker's allowance;
- (e) state pension credit.

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

- (a) a recoverable overpayment of housing benefit has been made, in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulently or otherwise), by or on behalf of a claimant or any other person to whom a payment of housing benefit has been made; and
- (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 overpayment,

he shall, if requested to do so by an authority under regulation 102 (method of recovery), recover the overpayment by deduction from any of those benefits.

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

### **Prescribed benefits**

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

(2) Prescribed benefits within section 75(5) 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 105(1) (recovery of overpayments from prescribed benefits), but only in cases where—
  - (i) an authority has, pursuant to regulation 102 (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 (3)(a) and (b) of regulation 105.

(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 105(1).

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

**107.**—(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(6) (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 (“that 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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(5) Inserted by Social Security Administration (Fraud) Act 1997 (c. 47), section 16.

(6) Section 115A was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 15.