

1988 No. 142

SOCIAL SECURITY**The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988***Made* 8th April 1988*Coming into operation* 11th April 1988

ARRANGEMENT OF REGULATIONS

PART I

GENERAL

1. Citation, commencement and interpretation

PART II

INTERIM PAYMENTS

2. Making of interim payments
3. Bringing interim payments into account
4. Recovery of overpaid interim payments

PART III

OFFSETTING

5. Offsetting prior payment against subsequent award
6. Exception from offset of recoverable overpayment

PART IV

PREVENTION OF DUPLICATION OF PAYMENTS

7. Duplication and prescribed income
8. Duplication and prescribed payments
9. Duplication and maintenance payments
10. Conversion of payments made in a foreign currency

PART V

DIRECT CREDIT TRANSFER OVERPAYMENTS

11. Recovery of overpayments by automated or other direct credit transfer

PART VI

REVISION OF DETERMINATION AND CALCULATION OF AMOUNT
RECOVERABLE

12. Circumstances in which determination need not be revised
13. Sums to be deducted in calculating recoverable amounts
14. Quarterly diminution of capital

PART VII

THE PROCESS OF RECOVERY

15. Recovery by deduction from prescribed benefits
16. Limitations on deductions from prescribed benefits
17. Recovery from couples

PART VIII

RECOVERY BY DEDUCTION FROM EARNINGS FOLLOWING TRADE DISPUTE

18. Recovery by deduction from earnings
19. Award and protected earnings
20. Service and contents of deduction notices
21. Period for which deduction notice has effect
22. Effect of deduction notice
23. Increase of amount of award on appeal or review
24. Review of determination of protected earnings
25. Power to serve further deduction notice on resumption of employment
26. Right of Department to recover direct from claimant
27. Duties and liabilities of employers
28. Claimants to give notice of cessation or resumption of employment
29. Failure to notify

PART IX

REVOCATIONS, TRANSITIONAL PROVISIONS AND SAVINGS

30. Revocations
31. Transitional provisions and savings

SCHEDULE — Revocations

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 24A, 28, 52(1)(s) and (t), 54, 55 and 84(1) of the

Social Security (Northern Ireland) Order 1986(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988 and shall come into operation on 11th April 1988.

(2) In these regulations—

“the Act” means the Social Security (Northern Ireland) Act 1975(b);

“the Order” means the Social Security (Northern Ireland) Order 1986;

“adjudicating authority” means, as the case may be, the Chief or any other adjudication officer, a social security appeal tribunal, the Chief or any other Social Security Commissioner or a Tribunal of Commissioners;

“benefit” means any benefit under the Act(c), child benefit, family credit, income support and any payment under Article 33(2)(a) of the Order(d) (maternity and funeral expenses);

“child benefit” means benefit under Part II of the Child Benefit (Northern Ireland) Order 1975(e);

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(f);

“family credit” means family credit under Part III of the Order;

“guardian’s allowance” means an allowance under section 38 of the Act(g);

“income support” means income support under Part III of the Order and includes personal expenses addition, special transitional addition and

- (a) S.I. 1986/1888 (N.I. 18); Article 24A was inserted by paragraph 18 of Schedule 4 to the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)). Article 54 was amended by paragraph 13 of Schedule 3, paragraph 20 of Schedule 4 and Schedule 5 to the Social Security (Northern Ireland) Order 1988. Article 81(1) provides for section 155(1) to (3A) of the Social Security (Northern Ireland) Act 1975 (c. 15) (extent of powers) to apply to the enabling provisions under which these regulations are made; section 155(3A) of that Act was inserted by Article 63(1)
- (b) 1975 c. 15
- (c) Amendments altering the range of benefits available under this Act were made by Articles 2(3), 17, 18 and 24 of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)), Article 32 of the Social Security (Northern Ireland) Order 1982 (S.I. 1982/1084 (N.I. 16)), Articles 5 to 7 of, and Schedule 3 to, the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)) and Articles 37 to 43 of, and Schedule 3 and paragraph 13 of Schedule 4 to, the Social Security (Northern Ireland) Order 1986
- (d) Article 33(2)(a) was amended by Article 3 of the Social Fund (Maternity and Funeral Expenses) (Northern Ireland) Order 1987 (S.I. 1987/464 (N.I. 8))
- (e) S.I. 1975/1504 (N.I. 16)
- (f) S.R. 1987 No. 465; the relevant amending regulations are S.R. 1988 No. 67
- (g) Section 38 was amended by paragraph 13 of Schedule 4 to the Child Benefit (Northern Ireland) Order 1975 and Article 46 of the Social Security (Northern Ireland) Order 1986

transitional addition as defined in the Income Support (Transitional) Regulations (Northern Ireland) 1987(a);

“Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(b);

“severe disablement allowance” means an allowance under section 36 of the Act(c).

PART II

INTERIM PAYMENTS

Making of interim payments

2.—(1) The Department may, in its discretion, make an interim payment, that is to say a payment on account of any benefit to which it appears to the Department that a person is or may be entitled, in the following circumstances—

- (a) a claim for that benefit has not been made in accordance with the Claims and Payments Regulations and it is impracticable for such a claim to be made immediately;
- (b) a claim for that benefit has been so made, but it is impracticable for it or a reference, review, application or appeal which relates to it to be determined immediately; or
- (c) an award of that benefit has been made but it is impracticable for the beneficiary to be paid immediately, except by means of an interim payment.

(2) On or before the making of an interim payment the recipient shall be given notice in writing of his liability under this Part to have it brought into account and to repay any overpayment.

Bringing interim payments into account

3. Where it is practicable to do so and notice has been given as required by regulation 2(2), the interim payment shall be brought into account as follows—

- (a) any interim payment made in anticipation of an award of benefit shall be offset by the adjudicating authority in reduction of the benefit to be awarded; and
- (b) any interim payment (whether or not made in anticipation of an award) which is not offset under paragraph (a) shall be deducted by the Department from—
 - (i) the sum payable under the award of benefit on account of which the interim payment was made; or
 - (ii) any sum payable under any subsequent award of the same benefit to the same person.

(a) S.R. 1987 No. 460

(b) S.R. 1987 No. 459; the relevant amending regulations are S.R. 1988 No. 146

(c) Section 36 was amended by Article 5(1) of the Health and Social Security (Northern Ireland) Order 1984 and paragraph 2 of Schedule 4 to the Social Security (Northern Ireland) Order 1985 (S.I. 1985/1209 (N.I. 16))

Recovery of overpaid interim payments

4.—(1) Where the adjudicating authority has determined that an interim payment has been overpaid in circumstances which fall within paragraph (3) and that notice has been given as required by regulation 2(2), that authority shall determine the amount of the overpayment.

(2) The amount of the overpayment shall be recoverable by the Department by the same procedures and subject to the same conditions as if it were recoverable under Article 54(1) of the Order.

(3) The circumstances in which an interim payment may be determined to have been overpaid are as follows—

(a) an interim payment has been made under regulation 2(1)(a) or (b) but—

(i) the recipient has failed to make a claim in accordance with the Claims and Payments Regulations as soon as practicable or has made a claim which is either defective or is not made on the form approved for the time being by the Department and the Department has not treated the claim as duly made under regulation 4(7) of those regulations,

(ii) it has been determined that there is no entitlement on the claim, or that the entitlement is less than the amount of the interim payment, or that benefit on the claim is not payable, or

(iii) the claim has been withdrawn under regulation 5(2) of the Claims and Payments Regulations; or

(b) an interim payment has been made under regulation 2(1)(c) which exceeds the entitlement under the award of benefit on account of which the interim payment was made.

(4) For the purposes of this regulation a claim is defective if it is made on the form approved for the time being by the Department but is not completed in accordance with the instructions on the form.

PART III

OFFSETTING

Offsetting prior payment against subsequent award

5.—(1) Subject to regulation 6 (exception from offset of recoverable overpayment), any sum paid in respect of a period covered by a subsequent determination in any of the cases set out in paragraph (2) shall be offset against arrears of entitlement under the subsequent determination and, except to the extent that the sum exceeds the arrears, shall be treated as properly paid on account of them.

(2) Paragraph (1) applies in the following cases—

Case 1: Payment under an award which is revised, reversed or varied

Where a person has been paid a sum by way of benefit under an award which is subsequently varied on appeal or revised on a review.

Case 2: Award or payment of benefit in lieu

Where a person has been paid a sum by way of benefit under the original award and it is subsequently determined, on review or appeal, that another benefit should be awarded or is payable in lieu of the first.

Case 3: Child benefit and severe disablement allowance

Where either—

- (a) a person has been awarded and paid child benefit for a period in respect of which severe disablement allowance is subsequently determined to be payable to the child concerned; or
- (b) severe disablement allowance is awarded and paid for a period in respect of which child benefit is subsequently awarded to someone else, the child concerned in the subsequent determination being the beneficiary of the original award.

Case 4: Increase of benefit for dependant

Where a person has been paid a sum by way of an increase in respect of a dependent person under the original award and it is subsequently determined that that other person is entitled to benefit for that period, or that a third person is entitled to the increase for that period in priority to the beneficiary of the original award.

Case 5: Increase of benefit for partner

Where a person has been paid a sum by way of an increase in respect of a partner (as defined in regulation 2 of the Income Support Regulations) and it is subsequently determined that that other person is entitled to benefit for that period.

(3) Where an amount has been deducted under regulation 13(b) (sums to be deducted in calculating recoverable amounts) an equivalent sum shall be offset against any arrears of entitlement of that person under a subsequent award of income support for the period to which the deducted amount relates.

(4) Where child benefit which has been paid under an award in favour of a person (the original beneficiary) is subsequently awarded to someone else for any week, the benefit shall nevertheless be treated as properly paid if it was received by someone other than the original beneficiary, who—

- (a) either had the child living with him or was contributing towards the cost of providing for the child at a weekly rate which was not less than the weekly rate under the original award; and
- (b) could have been entitled to child benefit in respect of that child for that week had a claim been made in time.

(5) Any amount which is treated under paragraph (4) as properly paid shall be deducted from the amount payable to the beneficiary under the subsequent award.

Exception from offset of recoverable overpayment

6. No amount may be offset under regulation 5(1) which has been determined to be a recoverable overpayment for the purposes of Article 54(1) of the Order.

PART IV

PREVENTION OF DUPLICATION OF PAYMENTS

Duplication and prescribed income

7.—(1) For the purposes of Article 28(1) of the Order (recovery of amount of benefit awarded because prescribed income paid after prescribed date), a person's prescribed income is income required to be taken into account in accordance with Part V of the Income Support Regulations.

(2) The prescribed date in relation to any payment of income prescribed by paragraph (1) is—

- (a) where it is made in respect of a specific day or period, that day or the first day of the period;
- (b) where it is not so made, the day or the first day of the period to which it is fairly attributable.

Duplication and prescribed payments

8.—(1) For the purposes of Article 28(2) of the Order (recovery of amount of benefit awarded because prescribed payment not made on or before prescribed date), the payment of any of the following is a prescribed payment—

- (a) any benefit under the Act other than any gratuity or a widow's payment(a);
- (b) any child benefit;
- (c) any family credit;
- (d) any war disablement pension or war widow's pension(b) which is not in the form of a gratuity and any payment which the Department accepts as analogous to any such pension;
- (e) any allowance paid under the Job Release Act 1977(c);
- (f) any allowance payable by or on behalf of the Department of Economic Development to or in respect of a person for his maintenance for any period during which he is following a course of training or instruction provided or approved by that Department;
- (g) any payment of benefit 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(d), whether or not the benefit has been acquired by virtue of the provisions of that Regulation.

(a) See section 24 of the Social Security (Northern Ireland) Act 1975 as substituted by Article 37(1) of the Social Security (Northern Ireland) Order 1986 with effect from 11th April 1988

(b) "War disablement pension" and "war widow's pension" are each defined in Article 2(2) of the Social Security (Northern Ireland) Order 1986

(c) 1977 c. 8

(d) 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. 1660/85 (O.J. No. L160, 20.6.1985), 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)

(2) The prescribed date, in relation to any payment of benefit prescribed by paragraph (1) is the date by which receipt of or entitlement to that benefit would have to be notified to the Department if it were to be taken into account in determining, whether on review or otherwise, the amount of or entitlement to income support.

Duplication and maintenance payments

9. For the purposes of Article 28(3) of the Order (recovery of amount of benefit awarded because maintenance payments not made), the following benefits are prescribed—

- (a) child benefit;
- (b) increases for dependants of any benefit under the Act;
- (c) child's special allowance under section 31 of the Act(a); and
- (d) guardian's allowance.

Conversion of payments made in a foreign currency

10. Where a payment of income prescribed by regulation 7(1), or a payment prescribed by regulation 8(1), is made in a currency other than sterling, its value in sterling, for the purposes of Article 28 of the Order and this Part, shall be determined, after conversion by the Bank of England, or by any institution which is authorised under the Banking Act 1987(b), as the net sterling sum into which it is converted, after any banking charge or commission on the transaction has been deducted.

PART V

DIRECT CREDIT TRANSFER OVERPAYMENTS

Recovery of overpayments by automated or other direct credit transfer

11.—(1) Where it is determined by the adjudicating authority that a payment in excess of entitlement has been credited to a bank or other account under an arrangement for automated or other direct credit transfer made in accordance with regulation 21 of the Claims and Payments Regulations, and that the conditions prescribed by paragraph (2) are satisfied, the excess, or the specified part of it to which the Department's certificate relates, shall be recoverable under this regulation.

(2) The prescribed conditions for recoverability under paragraph (1) are as follows—

- (a) the Department has certified that the payment in excess of entitlement, or a specified part of it, is materially due to the arrangement for payments to be made by automated or other direct credit transfer; and
- (b) notice of the effect which this regulation would have, in the event of an overpayment, was given in writing to the beneficiary, or to a person acting for him, before he agreed to the arrangement.

(a) Section 31 was amended by paragraph 11 of Schedule 4 to the Child Benefit (Northern Ireland) Order 1975 and Article 18(2) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977 (S.I. 1977/610 (N.I. 11)). Child's special allowance is abolished except for existing beneficiaries by Article 41 of the Social Security (Northern Ireland) Order 1986 from 6th April 1987

(b) 1987 c. 22.

(3) Where the arrangement was agreed to before 6th April 1987, the condition prescribed by paragraph (2)(b) need not be satisfied in any case where the application for benefit to be paid by automated or other direct credit transfer contained a statement, or was accompanied by a written statement made by the applicant, which complied with the provisions of regulation 16A(3)(b) and (8) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1977(a) or, as the case may be, regulation 7(2)(b) and (6) of the Child Benefit (Claims and Payments) Regulations (Northern Ireland) 1985(b).

PART VI

REVISION OF DETERMINATION AND CALCULATION OF AMOUNT RECOVERABLE

Circumstances in which determination need not be revised

12. Article 54(4) of the Order (recoverability dependent on reversal, variation or revision of determination) shall not apply where the fact and circumstances of the misrepresentation or non-disclosure do not provide a basis for reviewing and revising the determination under which payment was made.

Sums to be deducted in calculating recoverable amounts

13. In calculating the amounts recoverable under Article 54(1) of the Order or regulation 11, where there has been an overpayment of benefit, the adjudicating authority shall deduct—

- (a) any amount which has been offset under Part III;
- (b) any additional amount of income support which was not payable under the original, or any other, determination, but which should have been determined to be payable—
 - (i) on the basis of the claim as presented to the adjudicating authority, or
 - (ii) on the basis of the claim as it would have appeared had the misrepresentation or non-disclosure been remedied before the determination,

but no other deduction shall be made in respect of any other entitlement to benefit which may be, or might have been, determined to exist.

Quarterly diminution of capital

14.—(1) For the purposes of Article 54(1) of the Order, where income support or family credit has been overpaid in consequence of a misrepresentation as to the capital a claimant possesses or a failure to disclose its existence, the adjudicating authority shall treat that capital as having been reduced at the end of each quarter from the start of the overpayment period by the amount overpaid by way of income support or family credit within that quarter.

(a) S.R. 1977 No. 351; regulation 16A was inserted by regulation 3 of S.R. 1982 No. 284 and is revoked by Schedule 9 to S.R. 1987 No. 465 from 11th April 1988

(b) S.R. 1985 No. 124; these provisions were revoked in part by the Schedule to S.R. 1987 No. 122

(2) Capital shall not be treated as reduced over any period other than a quarter or in any circumstances other than those for which paragraph (1) provides.

(3) In this regulation—

“a quarter” means a period of 13 weeks starting with the first day on which the overpayment period began and ending on the 90th consecutive day thereafter;

“overpayment period” is a period during which income support or family credit is overpaid in consequence of a misrepresentation as to capital or a failure to disclose its existence.

PART VII

THE PROCESS OF RECOVERY

Recovery by deduction from prescribed benefits

15.—(1) Subject to regulation 16, where any amount is recoverable under Article 28 or 54(1) of the Order, or under these regulations, that amount shall be recoverable by the Department from any of the benefits prescribed in paragraph (2) to which the person from whom the amount is determined to be recoverable is entitled.

(2) The following benefits are prescribed for the purposes of this regulation—

- (a) subject to regulation 16(1) and (2), any benefit under the Act;
- (b) subject to regulation 16(1) and (2), any child benefit;
- (c) any family credit;
- (d) subject to regulation 16, any income support.

Limitations on deductions from prescribed benefits

16.—(1) Deductions may not be made from entitlement to the benefits prescribed by paragraph (2) except as a means of recovering an overpayment of the benefit from which the deduction is to be made.

(2) The benefits prescribed for the purposes of paragraph (1) are guardian's allowance, attendance allowance in respect of a child arising under section 35(1) to (4) of the Act(a), as modified by regulation 10 of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1987(b), and child benefit.

(3) Regulation 15 shall apply without limitation to any payment of arrears of benefit other than any arrears caused by the operation of regulation 36(1) of the Claims and Payments Regulations (suspension of payments).

(4) Regulation 15 shall apply to the amount of income support to which a person is presently entitled only to the extent that there may, subject to paragraphs 8 and 9 of Schedule 8A to the Claims and Payments Regulations(c), be recovered in respect of any one benefit week—

(a) Section 35(1) to (4) was amended by Article 3 of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5))
(b) S.R. 1987 No. 413; the relevant amending regulations are S.R. 1988 No. 129
(c) Schedule 8A was inserted by the Schedule to S.R. 1988 No. 67

- (a) in a case to which paragraph (5) applies, not more than the amount there specified; and
- (b) in any other case, 3 times 5 per cent. of the personal allowance for a single claimant aged not less than 25, that 5 per cent. being, where it is not a multiple of 5 pence, rounded to the next higher such multiple.

(5) Where the person responsible for the misrepresentation of or failure to disclose a material fact has, by reason thereof, been found guilty of an offence under Article 56 of the Order or under any other enactment, or has made a written statement after caution in admission of deception or fraud for the purpose of obtaining benefit, the amount mentioned in paragraph (4)(a) shall be 4 times 5 per cent. of the personal allowance for a single claimant aged not less than 25, that 5 per cent. being, where it is not a multiple of 10 pence, rounded to the nearest such multiple or, if it is a multiple of 5 pence but not of 10 pence, the next higher multiple of 10 pence.

(6) Where, in the calculation of the income of a person to whom income support is payable, the amount of earnings or other income falling to be taken into account is reduced by paragraphs 4 to 9 of Schedule 8 to the Income Support Regulations (sums to be disregarded in the calculation of earnings) or paragraphs 15 and 16 of Schedule 9 to those regulations (sums to be disregarded in the calculation of income other than earnings), the weekly amount applicable under paragraph (4) may be increased by not more than half the amount of the reduction.

(7) Regulation 15 shall not be applied to a specified benefit so as to reduce the benefit in any one benefit week to less than 10 pence.

(8) In this regulation—

“benefit week” means the week corresponding to the week in respect of which the benefit is paid;

“personal allowance for a single claimant aged not less than 25” means the amount specified in column (2) of paragraph 1(1)(c) of Schedule 2 to the Income Support Regulations;

“specified benefit” means income support, unemployment benefit, sickness benefit, invalidity benefit, retirement pension, severe disablement allowance, widow’s pension or widowed mother’s allowance;

“written statement after caution” means a written statement made in accordance with the Judges’ Rules.

Recovery from couples

17. In the case of an overpayment of income support or family credit to one of a married or unmarried couple, the amount recoverable by deduction, in accordance with regulation 15, may be recovered by deduction from income support or family credit payable to either of them, provided that the two of them are a married or unmarried couple at the date of the deduction.

PART VIII

RECOVERY BY DEDUCTIONS FROM EARNINGS FOLLOWING TRADE DISPUTE

Recovery by deductions from earnings

18.—(1) Any sum paid to a person on an award of income support made to him by virtue of Article 24A of the Order (effect of return to work after a trade dispute) shall be recoverable from him in accordance with this Part.

(2) In this Part—

“available earnings” means the earnings, including any remuneration paid by or on behalf of an employer to an employee who is for the time being unable to work owing to sickness, which remain payable to a claimant on any pay-day after deduction by his employer of all amounts lawfully deductible by the employer otherwise than by virtue of a deduction notice;

“claimant” means a person to whom an award is made by virtue of Article 24A of the Order;

“deduction notice” means a notice under regulation 20 or 25;

“employment” means employment (including employment which has been suspended but not terminated) in remunerative work;

“pay-day” means an occasion on which earnings are paid to a claimant;

“protected earnings” means protected earnings as determined by an adjudicating authority, in accordance with regulation 19(3), under regulation 19(1) or 24;

“recoverable amount” means the amount (determined in accordance with regulation 20(3) or (5) or regulation 25(2)(a)) by reference to which deductions are to be made by an employer from a claimant’s earnings by virtue of a deduction notice;

“repaid by the claimant” means paid by the claimant directly to the Department by way of repayment of income support otherwise recoverable under this Part.

(3) Any notice or other document required or authorised to be given or sent to any person under the provisions of this Part shall be deemed to have been given or sent if it was sent by post to that person in accordance with paragraph (6) of regulation 27 where that regulation applies and, in any other case, at his ordinary or last known address or in the case of an employer at the place of business where the claimant to which it relates is employed, and if so sent to have been given or sent on the day on which it was posted.

Award and protected earnings

19.—(1) Where an adjudicating authority determines that a person claiming income support is entitled by virtue of Article 24A of the Order (effect of return to work after a trade dispute) and makes an award to him accordingly the authority shall determine the claimant’s protected earnings (that is to say the amount below which his actual earnings must not be reduced by any deduction made under this Part).

(2) The adjudicating authority shall include in its decision—

- (a) the amount of income support awarded together with a statement that the claimant is a person entitled by virtue of Article 24A of the Order and that accordingly any sum paid to him on that award will be recoverable from him as provided in this Part;
 - (b) the amount of the claimant's protected earnings; and
 - (c) a statement of the claimant's duty under regulation 28 (duty to give notice of cessation or resumption of employment).
- (3) The protected earnings of the claimant shall be the sum determined by—
- (a) taking the sum specified in paragraph (4),
 - (b) adding the sum specified in paragraph (5), and
 - (c) subtracting from the result any child benefit which falls to be taken into account in calculating his income for the purposes of Part V of the Income Support Regulations.
- (4) The sum referred to in paragraph (3)(a) shall be the aggregate of the amounts calculated under regulation 17(a) to (d), 18(a) to (e), 20 or 21, as the case may be, of the Income Support Regulations.
- (5) The sum referred to in paragraph (3)(b) shall be £27 except where the sum referred to in paragraph (3)(a) includes an amount calculated under regulation 20 of the Income Support Regulations in which case the sum shall be £8.

Service and contents of deduction notices

20.—(1) Where an amount of income support has not already been repaid by the claimant, the Department shall serve a deduction notice on the employer of the claimant.

(2) A deduction notice shall contain the following particulars—

- (a) particulars enabling the employer to identify the claimant;
- (b) the recoverable amount;
- (c) the claimant's protected earnings as specified in the decision of the adjudicating authority under regulation 19.

(3) Subject to paragraph (5), the recoverable amount shall be—

- (a) the amount specified in the decision of the adjudicating authority under regulation 19 as having been awarded to the claimant by way of income support; reduced by
- (b) the amount (if any) which has been repaid by the claimant before the date of the deduction notice.

(4) If a further award relating to the claimant is made, the Department shall cancel the deduction notice (giving written notice of the cancellation to the employer and the claimant) and serve on the employer a further deduction notice.

(5) The recoverable amount to be specified in the further deduction notice shall be the sum of—

- (a) the amount determined by applying paragraph (3) to the further award; and
- (b) the recoverable amount specified in the cancelled deduction notice less any part of that amount which before the date of the further notice

has already been deducted by virtue of the cancelled notice or repaid by the claimant.

Period for which deduction notice has effect

21.—(1) A deduction notice shall come into force when it is served on the employer of the claimant to whom it relates and shall cease to have effect as soon as any of the following conditions is fulfilled—

- (a) the notice is cancelled by virtue of regulation 20(4) or paragraph (2);
- (b) the claimant ceases to be in the employment of the person on whom the notice was served;
- (c) the aggregate of—
 - (i) any part of the recoverable amount repaid by the claimant on or after the date of the deduction notice, and
 - (ii) the total amount deducted by virtue of the notice,reaches the recoverable amount;
- (d) there has elapsed a period of 26 weeks beginning with the date of the notice.

(2) The Department may at any time give a direction in writing, cancelling a deduction notice and—

- (a) it shall cause a copy of the direction to be served on the employer concerned and on the claimant;
- (b) the direction shall take effect when a copy of it is served on the employer concerned.

Effect of deduction notice

22.—(1) While a deduction notice is in force paragraphs (2) to (6) shall apply as regards any relevant pay-day.

(2) Where a claimant's earnings include any bonus, commission or other similar payment which is paid other than on a day on which the remainder of his earnings is paid, then in order to calculate his available earnings for the purposes of this regulation any such bonus, commission or other similar payment shall be treated as being paid to him on the next day of payment of the remainder of his earnings instead of on the day of actual payment.

(3) If on a relevant pay-day a claimant's available earnings—

- (a) do not exceed his protected earnings by at least £1, no deduction shall be made;
- (b) do exceed his protected earnings by at least £1, his employer shall deduct from the claimant's available earnings one half of the excess over his protected earnings,

so however that where earnings are paid other than weekly the amount of the protected earnings and the figure of £1 shall be adjusted accordingly, in particular—

- (c) where earnings are paid monthly, they shall for this purpose be treated as paid every 5 weeks (and the protected earnings and the figure of £1 accordingly multiplied by 5);

- (d) where earnings are paid daily, the protected earnings and the figure of £1 shall be divided by 5,

and if, in any case to which sub-paragraph (c) or (d) does not apply, there is doubt as to the adjustment to be made this shall be determined by the Department on the application of the employer or the claimant.

(4) Where on a relevant pay-day earnings are payable to the claimant in respect of more than one pay-day, the amount of the protected earnings and the figure of £1 referred to in paragraph (3), adjusted where appropriate in accordance with the provisions of that paragraph, shall be multiplied by the number of pay-days to which the earnings relate.

(5) Notwithstanding anything in paragraph (3)—

- (a) the employer shall not make a deduction on a relevant pay-day if the claimant satisfies him that up to that day he has not obtained payment of the income support to which the deduction notice relates;
- (b) the employer shall not on any relevant pay-day deduct from the claimant's earnings by virtue of the deduction notice an amount greater than the excess of the recoverable amount over the aggregate of all such amounts as, in relation to that notice, are mentioned in regulation 21(1)(c)(i) and (ii); and
- (c) where the amount of any deduction which by this regulation the employer is required to make would otherwise include a fraction of 1 penny, that amount shall be reduced by that fraction.

(6) For the purpose of this regulation "relevant pay-day" means any pay-day beginning with—

- (a) the first pay-day falling after the expiration of the period of one month from the date on which the deduction notice comes into force; or
- (b) if the employer so chooses, any earlier pay-day after the notice has come into force.

Increase of amount of award on appeal or review

23. If the amount of an award is increased, whether on appeal or on review by an adjudicating authority, this Part shall have effect as if on the date on which the amount of the award was increased—

- (a) the amount of the increase was the recoverable amount; and
- (b) the claimant's protected earnings were the earnings subsequently reviewed under regulation 24.

Review of determination of protected earnings

24.—(1) A determination of a claimant's protected earnings, whether made under regulation 19(1) or under this regulation, may be reviewed by an adjudicating authority if the authority is satisfied that the determination was based on a mistake as to the law or was made in ignorance of, or was based on a mistake as to, some material fact.

(2) Where the claimant's protected earnings are reviewed under paragraph (1) the Department shall give the employer written notice varying the deduction notice by substituting for the amount of the protected earnings as

there specified (or as previously reviewed under this regulation) the amount of the protected earnings determined on review.

(3) Variation of a deduction notice under paragraph (2) shall take effect either from the end of the period of 10 working days beginning with the day on which notice of the variation is given to the employer or, if the employer so chooses, at any earlier time after notice is given.

Power to serve further deduction notice on resumption of employment

25.—(1) Where a deduction notice has ceased to have effect by reason of the claimant ceasing to be in the employment of the person on whom the notice was served, the Department may, if it thinks fit, serve a further deduction notice on any person by whom the claimant is for the time being employed.

(2) Notwithstanding anything in the foregoing provisions of these regulations, in any such deduction notice—

(a) the recoverable amount shall be equal to the recoverable amount as specified in the previous deduction notice less the aggregate of—

(i) the total of any amounts required to be deducted by virtue of that notice, and

(ii) any additional part of that recoverable amount repaid by the claimant on or after the date of that notice,

or, where this regulation applies in respect of more than one such previous notice, the aggregate of the amounts as so calculated in respect of each such notice;

(b) the amount specified as the claimant's protected earnings shall be the same as that so specified in the last deduction notice relating to him which was previously in force or as subsequently reviewed under regulation 24.

Right of Department to recover direct from claimant

26. Where the Department has received a decision of the adjudicating authority under regulation 19 and it is at any time not practicable for it, by means of a deduction notice, to effect recovery of the recoverable amount or of so much of that amount as remains to be recovered from the claimant, the amount which remains to be recovered shall, by virtue of this regulation, be recoverable from the claimant by the Department.

Duties and liabilities of employers

27.—(1) An employer shall keep a record of the available earnings of each claimant who is an employee in respect of whom a deduction notice is in force and of the payments which he makes in pursuance of the notice.

(2) A record of every deduction made by an employer under a deduction notice on any pay-day shall be given or sent by him to the Department, together with payment of the amount deducted, by not later than the 19th day of the following month.

(3) Where by reason only of the circumstances mentioned in regulation 22(5)(a) the employer makes no deduction from a claimant's weekly earnings on any pay-day he shall within 10 working days after that pay-day give notice of that fact to the Department.

(4) Where a deduction notice is cancelled by virtue of regulation 20(4) or 21(2) or ceases to have effect by virtue of regulation 21(1) the employer shall within 10 working days after the date on which the notice is cancelled or, as the case may be, ceases to have effect—

- (a) return the notice to the Department and, where regulation 21(1) applies, give notice of the reason for its return;
- (b) give notice, in relation to each relevant pay-day (as defined in regulation 22(6)), of the available earnings of the claimant and of any deduction made from those earnings.

(5) If on any relevant pay-day to which regulation 22(3)(b) applies the employer makes no deduction from a claimant's available earnings, or makes a smaller deduction than he was thereby required to make, and in consequence any amount is not deducted while the deduction notice, or any further notice which under regulation 20(4) cancels that notice, has effect—

- (a) the amount which is not deducted shall, without prejudice to any other method of recovery from the claimant or otherwise, be recoverable from the employer by the Department; and
- (b) any amount so recovered shall, for the purposes of these regulations, be deemed to have been repaid by the claimant.

(6) All records and notices to which this regulation applies shall be given or sent to the Department, on a form approved by it, at such office of the Department as it may direct.

Claimants to give notice of cessation or resumption of employment

28.—(1) Where a claimant ceases to be in the employment of a person on whom a deduction notice relating to him has been duly served knowing that the full amount of the recoverable amount has not been deducted from his earnings or otherwise recovered by the Department, he shall give notice within 10 working days to the Department of his address and of the date of such cessation of employment.

(2) Where on or after such cessation the claimant resumes employment (whether with the same or some other employer), he shall within 10 working days give notice to the Department of the name of the employer and of the address of his place of employment:

Failure to notify

29. If a person contravenes or fails to comply with any requirement under regulation 27 or 28 to give notice of any matter to the Department, he shall be guilty of an offence under the Order and liable on summary conviction to a penalty not exceeding—

- (a) for any one offence, £400; or
- (b) for an offence of continuing any such contravention or failure after conviction, £40 for each day on which it is so continued.

PART IX

REVOCATIONS, TRANSITIONAL PROVISIONS AND SAVINGS

Revocations

30. Subject to regulation 31(3), the regulations set out in column (1) of the Schedule are revoked to the extent mentioned in column (3) of that Schedule.

Transitional provisions and savings

31.—(1) These regulations shall apply to any question relating to the repayment or recoverability of family income supplement and supplementary benefit as though the definition of “benefit” in regulation 1(2) included references to both those benefits and as though any reference in Part VIII to income support was a reference to income support and supplementary benefit.

(2) Anything done or begun under the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1987(a) or Part IV of the Supplementary Benefit (Trade Disputes and Recovery from Earnings) Regulations (Northern Ireland) 1980(b) shall be deemed to have been done or, as the case may be, continued under the corresponding provisions of these regulations.

(3) Where this regulation applies—

- (a) regulation 3(b)(ii) shall have effect as though for “the same benefit” there were substituted “income support”, if the interim payment was of supplementary benefit, and “family credit”, if the interim payment was of family income supplement;
- (b) regulation 13(b) shall have effect as though for “income support” there were substituted “supplementary benefit”.

(4) In this Part—

“family income supplement” means benefit under the Family Income Supplements Act (Northern Ireland) 1971(c);

“supplementary benefit” means benefit under Part II of the Supplementary Benefits (Northern Ireland) Order 1977(d).

Sealed with the Official Seal of the Department of Health and Social Services on 8th April 1988.

(L.S.)

A. N. Burns

Assistant Secretary

(a) S.R. 1987 No. 122

(b) S.R. 1980 No. 417; the relevant amending regulations are S.R. 1981 No. 215, S.R. 1982 No. 240, S.R. 1983 Nos. 191 and 290 and S.R. 1984 No. 174

(c) 1971 c. 8 (N.I.)

(d) S.I. 1977/2156 (N.I. 27); provisions of the Supplementary Benefits (Northern Ireland) Order 1977, as amended by Article 7 of, and Part I of Schedule 2 to, the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)), are set out in Part II of that Schedule

SCHEDULE

Regulation 30

Regulations Revoked

| Column (1) <i>Citation</i> | Column (2) <i>Reference</i> | Column (3) <i>Extent of revocation</i> |
|---|--------------------------------|---|
| The Supplementary Benefit (Trade Disputes and Recovery from Earnings) Regulations (Northern Ireland) 1980 | S.R. 1980 No. 417 | Regulations 12 to 23 |
| The Supplementary Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 1981 | S.R. 1981 No. 215 | Regulation 8(6) and (7) |
| The Supplementary Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 1982 | S.R. 1982 No. 240 | Regulation 2(3) |
| The Supplementary Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 1983 | S.R. 1983 No. 191 | Regulation 8(3) |
| The Supplementary Benefit (Housing Benefits) (Miscellaneous Consequential Amendments) Regulations (Northern Ireland) 1983 | S.R. 1983 No. 290 | Regulation 5 |
| The Social Security (Adjudication) (Consequential Amendments) Regulations (Northern Ireland) 1984 | S.R. 1984 No. 174 | Regulation 18 |
| The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1987 | S.R. 1987 No. 122 | Regulations 2 to 18 and 20(1) |

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations, which come into operation on 11th April 1988, replace, with amendments, the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1987 and Part IV of the Supplementary Benefit (Trade Disputes and Recovery from Earnings) Regulations (Northern Ireland) 1980.

The main amendments are consequential upon the introduction of family credit and income support. Other amendments—

- (1) take account of the change in the assessment of capital for income support (tariff income) in calculating overpayments flowing from a misrepresentation as to claimant's capital (regulation 14);
- (2) relate to the amount of income support which can be deducted in respect of overpayment of benefit (regulation 16(4));
- (3) provide that, in the calculation of a claimant's protected earnings, housing costs are calculated at a fixed rate (regulation 19).

The regulations contain transitional provisions which enable recovery of supplementary benefit and family income supplement to continue to be made by including those benefits in the definition of "benefit" and provide for continuity of action done or begun under the regulations which are revoked.

Article 24A of the Social Security (Northern Ireland) Order 1986 is one of the enabling provisions under which the regulations are made. It is inserted into that Order by paragraph 17 of Schedule 4 to the Social Security (Northern Ireland) Order 1988 and is brought into operation from 11th April 1988 by the Social Security (1988 Order) (Commencement No. 1) Order (Northern Ireland) 1988 (S.R. 1988 No. 126 (C. 6)).

The regulations correspond to provision contained in regulations made by the Secretary of State for Social Services in relation to Great Britain and accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980 (c. 30), are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.