
STATUTORY INSTRUMENTS

1988 No. 664

SOCIAL SECURITY

**The Social Security (Payments on account,
Overpayments and Recovery) Regulations 1988**

Made - - - - 30th March 1988
Coming into force - - 11th April 1988

Whereas a draft of the following Regulations was laid before Parliament in accordance with the provisions of section 83(3)(b) of the Social Security Act 1986⁽¹⁾ and approved by resolution of each House of Parliament.

Now, therefore, the Secretary of State for Social Services, in exercise of the powers conferred on him by sections 23(8), 27, 51(1)(t) and (u), 53, 83(1), 84(1) and 89 of that Act⁽²⁾ and all other powers enabling him in that behalf, by this instrument, which contains only regulations made under the sections of the Social Security Act 1986 specified above and provisions consequential on those sections and which is made before the end of a period of 12 months from the commencement of those sections, 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 1988 and shall come into force on 11th April 1988.

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

“the Act” means the Social Security Act 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;

(1) 1986 c. 50.

(2) Section 83(1) provides for section 166(1) to (3A) of the Social Security Act 1975 (c. 14) (extent of powers) to apply to regulation-making powers conferred by the Social Security Act 1986 and section 84 is cited because of the meaning ascribed to the words “prescribed” and “regulations”.

“benefit” means any benefit under the Social Security Act 1975(3), child benefit, family credit, income support and any payment under section 32(2)(a) of the Act (maternity and funeral expenses);

“child benefit” means benefit under Part I of the Child Benefit Act 1975(4);

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(5);

“family credit” means family credit under Part II of the Act;

“guardian’s allowance” means an allowance under section 38 of the Social Security Act 1975(6);

“income support” means income support under Part II of the Act and includes personal expenses addition, special transitional addition and transitional addition as defined in the Income Support (Transitional) Regulations 1987(7);

“Income Support Regulations” means the Income Support (General) Regulations 1987(8);

“severe disablement allowance” means an allowance under section 36 of the Social Security Act 1975(9).

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

PART II

INTERIM PAYMENTS

Making of interim payments

2.—(1) The Secretary of State may, in his discretion, make an interim payment, that is to say a payment on account of any benefit to which it appears to him 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; or
- (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.

(3) 1975 c. 14; amendments altering the range of benefits available under this Act were made by the Social Security Pensions Act 1975 (c. 60), sections 15, 16, 22 and 66(2), the Social Security and Housing Benefits Act 1982 (c. 24), section 39, the Health and Social Security Act 1984 (c. 48), sections 11 to 13 and Schedule 5 and the Social Security Act 1986 (c. 50) sections 36 to 42, Schedule 3 and Schedule 4, paragraph 13.

(4) 1975 c. 61.

(5) S.I. 1987/1968.

(6) 1975 c. 14; section 38 was amended by the Child Benefit Act 1975 (c. 61), Schedule 4, paragraph 12(a) and (c) and by the Social Security Act 1986 (c. 50), section 45.

(7) S.I. 1987/1969.

(8) S.I. 1987/1967.

(9) 1975 c. 14; section 36 was substituted by section 11 of the Health and Social Security Act 1984 (c. 48).

(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 Secretary of State 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.

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 Secretary of State by the same procedures and subject to the same conditions as if it were recoverable under section 53(1) of the Act.

(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 Secretary of State and the Secretary of State has not treated the claim as duly made under regulation 4(7) of the Claims and Payments Regulations, or
 - (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 Secretary of State 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 section 53(1) of the Act.

PART IV

PREVENTION OF DUPLICATION OF PAYMENTS

Duplication and prescribed income

7.—(1) For the purposes of section 27(1) of the Act (recovery of amount of benefit awarded because prescribed income not paid on 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 section 27(2) of the Act (recovery of amount of benefit awarded because prescribed payment not made on prescribed date), the payment of any of the following is a prescribed payment—

- (a) any benefit under the Social Security Act 1975⁽¹⁰⁾ other than any gratuity or a widow's payment⁽¹¹⁾;
- (b) any child benefit;
- (c) any family credit;
- (d) any war disablement pension or war widow's pension⁽¹²⁾ which is not in the form of a gratuity and any payment which the Secretary of State accepts as analogous to any such pension;
- (e) any allowance paid under the Job Release Act 1977⁽¹³⁾;
- (f) any allowance payable by or on behalf of the Manpower Services Commission 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 Commission;
- (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

(10) 1975 c. 14.

(11) Section 24 of the Social Security Act 1975 inserted by section 36 of the Act.

(12) "War disablement pension" and "war widow's pension" are each defined in section 84(1) of the Social Security Act 1986 (c. 50).

(13) 1977 c. 8.

Community(14), whether or not the benefit has been acquired by virtue of the provisions of that Regulation.

(2) The prescribed date, in relation to any payment prescribed by paragraph (1) is the date by which receipt of or entitlement to that benefit would have to be notified to the Secretary of State 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 section 27(3) of the Act (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 Social Security Act 1975;
- (c) child's special allowance under section 31 of the Social Security Act 1975(15); 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 section 27 of the Act and this Part, shall be determined, after conversion by the Bank of England, or by any bank which is a recognised bank for the purposes of the Banking Act 1979(16), 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 Secretary of State's certificate relates, shall be recoverable under this regulation.

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

- (a) the Secretary of State 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.

(14) 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. L57, 28.2.1986).

(15) 1975 c. 14; child's special allowance is abolished except for existing beneficiaries by Social Security Act 1986 (c. 50), section 40.

(16) 1979 c. 37.

(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 1979 or, as the case may be, regulation 7(2)(b) and (6) of the Child Benefit (Claims and Payments) Regulations 1984(17).

PART VI

REVISION OF DETERMINATION AND CALCULATION OF AMOUNT RECOVERABLE

Circumstances in which determination need not be revised

12. Section 53(4) of the Act (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 section 53(1) of the Act 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.

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 section 53(1) of the Act, 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.

(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;

(17) Both sets of provisions are in part revoked by the Social Security (Payments on account, Overpayments and Recovery) Regulations 1987 (S.I. 1987/491) and the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968).

“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 sections 27 or 53(1) of the Act, or under these Regulations, that amount shall be recoverable by the Secretary of State from any of the benefits prescribed by the next paragraph to which the person from whom it is determined the amount to be recoverable is entitled.

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

- (a) subject to paragraphs (1) and (2) of regulation 16, any benefit under the Social Security Act 1975⁽¹⁸⁾;
- (b) subject to paragraphs (1) and (2) of regulation 16, 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 specified 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 Social Security Act 1975 as modified by regulation 6 of the Social Security (Attendance Allowance) (No. 2) Regulations 1975⁽¹⁹⁾, 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 37(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 9 to the Claims and Payments Regulations, be recovered in respect of any one benefit week—

- (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 section 55 of the Act 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.

⁽¹⁸⁾ 1975 c. 14.

⁽¹⁹⁾ S.I. 1975/598, amended by S.I. 1977/1361.

(6) Where, in the calculation of the income of a person to whom the 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, and any increase under this paragraph has priority over any increase which would, but for this paragraph, be made under paragraph 6(5) of Schedule 9 to the Claims and Payments Regulations.

(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 paragraph 1(1)(c) of column 2 of Schedule 2 to the Income Support Regulations;

“specified benefit” means income support either alone or together with any unemployment, sickness or invalidity benefit, retirement pension or severe disablement allowance which is paid by means of the same instrument of payment;

“written statement after caution” means—

- (i) in England and Wales, a written statement made in accordance with the Police and Criminal Evidence Act 1984 (Codes of Practice) (No.1) Order 1985(20), or, before that Order came into operation, the Judges Rules;
- (ii) in Scotland, a written statement duly witnessed by 2 persons.

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. rable 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 section 23(8) of the Act (effect of return to work after a trade dispute) shall be recoverable from him in accordance with this Part of these Regulations.

(2) In this Part, unless the context otherwise requires—

“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 section 23(8) of the Act;

“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, and related expressions shall be construed accordingly;

“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(2), under regulation 19(1)(a) 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 Secretary of State by way of repayment of income support otherwise recoverable under this Part of these Regulations.

(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 section 23(8) of the Act (effect of return to work after a trade dispute) and makes an award to him accordingly he 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 his decision—

- (a) the amount of income support awarded together with a statement that the claimant is a person entitled by virtue of section 23(8) of the Act 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—

- (a) the sum specified in paragraph (4), plus
- (b) the sum specified in paragraph (5), less
- (c) 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 in which case the sum shall be £8.

Service and contents of deduction notices

20.—(1) Where the amount of income support has not already been repaid by the claimant, the Secretary of State 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 notification of award.

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

- (a) the amount specified in the decision 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 Secretary of State 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.
- (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) of this regulation;
- (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 Secretary of State may at any time give a direction in writing cancelling a deduction notice and—

- (a) he 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 the following provisions of this regulation 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 five weeks (and the protected earnings and the figure of £1 accordingly multiplied by five);
- (d) where earnings are paid daily, the protected earnings and the figure of £1 shall be divided by five,

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 Secretary of State 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 the preceding paragraph, 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 1p, 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 the 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)(a) or under this regulation, may be reviewed by an adjudicating authority if he is satisfied that it 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 Secretary of State 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 Secretary of State may, if he 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 Secretary of State to recover direct from claimant

26. Where the Secretary of State has received a notification of award and it is at any time not practicable for him, 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 Secretary of State.

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 Secretary of State, 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 Secretary of State.

(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 Secretary of State 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 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 Secretary of State; 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 Secretary of State, on a form approved by him, at such office of the Department of Health and Social Security as he 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 Secretary of State, he shall give notice within 10 working days to the Secretary of State 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 Secretary of State of the name of the employer and of the address of his place of employment.

Failure to notify

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

- (a) for any one offence, level 3 on the standard scale; or
- (b) for an offence of continuing any such contravention, £40 for each day on which it is so continued.

PART IX

REVOCATION, TRANSITIONAL PROVISIONS AND SAVINGS

Revocation

30. Subject to regulation 31(3), the Social Security (Payments on account, Overpayments and Recovery) Regulations 1987(**21**) are hereby revoked except for regulations 19 and The Schedule thereto and 20(2) and (3) which shall continue in force.

Transitional provisions

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 1987 or Part IV of the Supplementary Benefit (Trade Disputes and Recovery from Earnings) Regulations 1980(**22**) 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 words “the same benefit” there were substituted the words “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 the words “income support” there were substituted the words “supplementary benefit”.

(4) In this Part—

“family income supplement” means benefit under the Family Income Supplements Act 1970(**23**);

“supplementary benefit” means benefit under Part I of the Supplementary Benefits Act 1976(**24**).

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

30th March 1988

Michael Portillo
Parliamentary Under-Secretary of State,
Department of Health and Social Security

(21) S.I. 1987/491.

(22) S.I. 1980/1641.

(23) 1970 c. 55.

(24) 1976 c. 71.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament, come into force on 11th April 1988 and replace, with amendments, the Social Security (Payments on account, Overpayments and Recovery) Regulations 1987 (S.I.1987/491) and Part IV of the Supplementary Benefit (Trade Disputes and Recovery from Earnings) Regulations 1980 (S.I. 1980/1641) which cease to have effect.

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.

The Regulations are made under provisions of the Social Security Act 1986 none of which has yet been in force for 12 months. Accordingly, the Regulations are exempt, by section 61(5) of the Social Security Act 1986, from reference to the Social Security Advisory Committee and have not been so referred.