

2012 No. 645

SOCIAL SECURITY

The Social Security (Recovery) (Amendment) Regulations 2012

Made - - - - *1st March 2012*

Laid before Parliament *6th March 2012*

Coming into force - - *1st April 2012*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 71(6)(a) and (8), 75(1), (4) and (5), 76(1), 189(1) and (4) and 191 of the Social Security Administration Act 1992(a).

In accordance with section 173(1)(b) of that Act, the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it.

In respect of provisions in these Regulations relating to housing benefit and council tax benefit, the Secretary of State has consulted with organisations appearing to him to be representative of the authorities concerned(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Recovery) (Amendment) Regulations 2012 and come into force on 1st April 2012.

(2) In these Regulations—

“the 1988 Regulations” means the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988(c);

“the Council Tax Benefit Regulations” means the Council Tax Benefit Regulations 2006(d);

“the Council Tax Benefit (SPC) Regulations” means the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(e);

(a) 1992 c. 5. Section 75(1) is amended by paragraph 3 of Schedule 1 and Schedule 2 to the Social Security Administration (Fraud) Act 1997 (c.47) (“the 1997 Act”). Section 75(5) is amended by section 16 of the 1997 Act. Section 76(1) is amended by paragraph 15(1) of Schedule 9 to the Local Government Finance Act 1992 (c.14) and by paragraph 175(3) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39). Section 189(1) and (4) is amended by paragraph 109(a) and (c) of Schedule 7, and Schedule 8, to the Social Security Act 1998 (c.14), paragraph 57(1) and (2) of Schedule 3 to the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c.2) and Schedule 6 to the Tax Credits Act 2002 (c.21). Section 191 is an interpretation provision and is cited for the meaning of the word “prescribe”. The definition of “prescribe” is amended by paragraphs 2 and 10 of Schedule 5 to the Welfare Reform Act 2007 (c.5).

(b) See section 176(1) of the Social Security Administration Act 1992. That subsection is amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c.14), paragraph 3(4) of Schedule 13 to the Housing Act 1996 (c.52) and section 69(6) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

(c) S.I.1988/664.

(d) S.I. 2006/215.

(e) S.I. 2006/216.

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006(a);

“the Housing Benefit (SPC) Regulations” means the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006(b).

Sums to be deducted in calculating recoverable amounts

2.—(1) In regulation 13(1)(b) of the 1988 Regulations(c)(sums to be deducted in calculating recoverable amounts)—

(a) after “which was not payable” insert “to the person from whom the amount is recoverable or their partner”;

(b) after “to be payable” insert “to that person or their partner”;

(c) at the end of paragraph (ii) add “or” and after that paragraph insert—

“(iii) on the basis of the determination if any change of circumstances had been notified at the time that change occurred.”.

(2) In both regulation 104(1) of the Housing Benefit Regulations(d) and regulation 85(1) of the Housing Benefit (SPC) Regulations (e)(sums to be deducted in calculating recoverable overpayments) after “determined to be payable” insert “to the person from whom the overpayment is recoverable or their partner”.

(3) In both regulation 89(1) of the Council Tax Benefit Regulations(f) and regulation 74(1) of the Council Tax Benefit (SPC) Regulations(g)(sums to be deducted in calculating recoverable excess benefit), after “determined to be payable” insert “to the person from whom the excess benefit is recoverable or their partner”.

Limitation on deduction from prescribed benefits

3.—(1) In regulation 16(5) of the 1988 Regulations(h) (limitation on deductions from prescribed benefits)—

(a) for “4 times” substitute “5 times”;

(b) for the words from “where it is not a multiple of 10 pence” to the end of that paragraph substitute “where it is not a multiple of 5 pence, rounded to the next higher such multiple”.

(2) In both regulation 102(3) of the Housing Benefit Regulations(i) and regulation 83(3) of the Housing Benefit (SPC) Regulations (j) (method of recovery)—

(a) for “four times” substitute “five times”;

(b) for the words from “but where that five per cent.” to the end of each of those paragraphs substitute “that five per cent. being, where it is not a multiple of 5 pence, rounded to the next higher such multiple”.

Methods of recovery

4.—(1) In regulation 86(3)(b) of the Council Tax Benefit Regulations(k) (methods of recovery), for “90(1A)” substitute “90(1B)”.

(a) S.I. 2006/213.

(b) S.I. 2006/214.

(c) Regulation 13 is amended by S.I.1996/1345, 1999/2571 and 2002/3019.

(d) Regulation 104(1) is amended but that amendment is not relevant to these Regulations.

(e) Regulation 85(1) is amended but that amendment is not relevant to these Regulations.

(f) There are no relevant amendments to regulation 89.

(g) There are no relevant amendments to regulation 74.

(h) Regulation 16(5) is substituted by S.I.2000/2336.

(i) Regulation 102(3) is amended by S.I.2005/2904 and 2008/2824.

(j) Regulation 83(3) is amended by S.I.2005/2904 and 2008/2824.

(k) Regulation 86(3) is amended by S.I.2008/2824.

(2) In regulation 71(3)(b) of the Council Tax Benefit (SPC) Regulations^(a) (methods of recovery), for “75(1A)” substitute “75(1B)”.

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

1st March 2012

Freud
Parliamentary Under-Secretary of State,
Department for Work and Pensions

^(a) Regulation 71(3) is amended by S.I.2008/2824.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make changes to provisions concerning recovery of overpaid social security benefits.

Regulation 2 amends the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 (S.I.1988/664) (“the 1988 Regulations”), the Housing Benefit Regulations 2006 (S.I.2006/213) (“the Housing Benefit Regulations”), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I.2006/214) (“the Housing Benefit (SPC) Regulations”), the Council Tax Benefit Regulations 2006 (S.I.2006/215) (“the Council Tax Benefit Regulations”) and the Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I.2006/216) (“the Council Tax Benefit (SPC) Regulations”). The amendments to those Regulations ensure that the amount of a recoverable overpayment or excess benefit is reduced by the additional amount of benefit which would have been payable either to the person from whom the overpayment or excess benefit is recoverable, or their partner, had all the correct facts relating to their benefit claim or award had been known.

Regulation 2 also amends the 1988 Regulations to provide that where there is an award of income support, state pension credit or income-based jobseeker’s allowance, the amount of any recoverable overpayment is reduced by the additional amount of that benefit which would have been payable if any change of circumstances had been notified at the time that change occurred.

Regulation 3 amends the 1988 Regulations, the Housing Benefit Regulations and the Housing Benefit (SPC) Regulations. This is to provide both that the maximum deduction from benefit to recover an overpayment which has arisen as a result of fraud is increased from 4 times 5 per cent. of the relevant personal allowance to 5 times 5 per cent. of that allowance and that the rules for rounding the maximum amount which may be deducted in both fraud and non-fraud cases are made consistent with each other.

Regulation 4 amends the Council Tax Benefit Regulations and the Council Tax Benefit (SPC) Regulations to correct erroneous cross-references to the provisions in those Regulations relating to recovery of excess council tax benefit from partners of persons from whom that excess is recoverable.

A full impact assessment has not been published for this instrument as it has no impact on the private sector or civil society organisations.

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