



Social Security Administration Act 1992

1992 CHAPTER 5

PART III

OVERPAYMENTS AND ADJUSTMENTS OF BENEFIT

Misrepresentation etc.

71 Overpayments - general

- (1) Where it is determined that, whether fraudulently or otherwise, any person has misrepresented, or failed to disclose, any material fact and in consequence of the misrepresentation or failure—
 - (a) a payment has been made in respect of a benefit to which this section applies; or
 - (b) any sum recoverable by or on behalf of the Secretary of State in connection with any such payment has not been recovered,the Secretary of State shall be entitled to recover the amount of any payment which he would not have made or any sum which he would have received but for the misrepresentation or failure to disclose.
- (2) Where any such determination as is referred to in subsection (1) above is made on an appeal or review, there shall also be determined in the course of the appeal or review the question whether any, and if so what, amount is recoverable under that subsection by the Secretary of State.
- (3) An amount recoverable under subsection (1) above is in all cases recoverable from the person who misrepresented the fact or failed to disclose it.
- (4) In relation to cases where payments of benefit to which this section applies have been credited to a bank account or other account under arrangements made with the agreement of the beneficiary or a person acting for him, circumstances may be prescribed in which the Secretary of State is to be entitled to recover any amount paid in excess of entitlement; but any such regulations shall not apply in relation to any payment unless before he agreed to the arrangements such notice of the effect of the

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regulations as may be prescribed was given in such manner as may be prescribed to the beneficiary or to a person acting for him.

- (5) Except where regulations otherwise provide, an amount shall not be recoverable under subsection (1) above or regulations under subsection (4) above unless—
- (a) the determination in pursuance of which it was paid has been reversed or varied on an appeal or revised on a review; and
 - (b) it has been determined on the appeal or review that the amount is so recoverable.
- (6) Regulations may provide—
- (a) that amounts recoverable under subsection (1) above or regulations under subsection (4) above shall be calculated or estimated in such manner and on such basis as may be prescribed;
 - (b) for treating any amount paid to any person under an award which it is subsequently determined was not payable—
 - (i) as properly paid; or
 - (ii) as paid on account of a payment which it is determined should be or should have been made,
 and for reducing or withholding any arrears payable by virtue of the subsequent determination;
 - (c) for treating any amount paid to one person in respect of another as properly paid for any period for which it is not payable in cases where in consequence of a subsequent determination—
 - (i) the other person is himself entitled to a payment for that period; or
 - (ii) a third person is entitled in priority to the payee to a payment for that period in respect of the other person,
 and for reducing or withholding any arrears payable for that period by virtue of the subsequent determination.
- (7) Circumstances may be prescribed in which a payment on account by virtue of section 5(1)(r) above may be recovered to the extent that it exceeds entitlement.
- (8) Where any amount paid is recoverable under—
- (a) subsection (1) above;
 - (b) regulations under subsection (4) or (7) above; or
 - (c) section 74 below,
- it may, without prejudice to any other method of recovery, be recovered by deduction from prescribed benefits.
- (9) Where any amount paid in respect of a married or unmarried couple is recoverable as mentioned in subsection (8) above, it may, without prejudice to any other method of recovery, be recovered, in such circumstances as may be prescribed, by deduction from prescribed benefits payable to either of them.
- (10) Any amount recoverable under the provisions mentioned in subsection (8) above—
- (a) if the person from whom it is recoverable resides in England and Wales and the county court so orders, shall be recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court; and
 - (b) if he resides in Scotland, shall be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

- (11) This section applies to the following benefits—
- (a) benefits as defined in section 122 of the Contributions and Benefits Act;
 - (b) subject to section 72 below, income support;
 - (c) family credit;
 - (d) disability working allowance;
 - (e) any social fund payments such as are mentioned in section 138(1)(a) or (2) of the Contributions and Benefits Act; and
 - (f) child benefit.

72 Special provision as to recovery of income support

- (1) Where—
- (a) a direction under section 125(1) of the Contributions and Benefits Act is revoked; and
 - (b) it is determined by an adjudication officer that, whether fraudulently or otherwise, any person has misrepresented, or failed to disclose, any material fact and in consequence of the misrepresentation or failure a payment of income support has been made during the relevant period to the person to whom the direction related,
- an adjudication officer may determine that the Secretary of State shall be entitled to recover the amount of the payment.
- (2) In subsection (1) above “the relevant period” means—
- (a) if the revocation is under subsection (3) of section 125 of the Contributions and Benefits Act, the period beginning with the date of the change of circumstances and ending with the date of the revocation; and
 - (b) if the revocation is under subsection (4) of that section, the period during which the direction was in force.
- (3) Where a direction under section 125(1) of the Contributions and Benefits Act is revoked, the Secretary of State may certify whether there has been misrepresentation of a material fact or failure to disclose a material fact.
- (4) If he certifies that there has been such misrepresentation or failure to disclose, he may also certify—
- (a) who made the misrepresentation or failed to make the disclosure; and
 - (b) whether or not a payment of income support has been made in consequence of the misrepresentation or failure.
- (5) If he certifies that a payment has been made, he may certify the period during which income support would not have been paid but for the misrepresentation or failure to disclose.
- (6) A certificate under this section shall be conclusive for the purposes of this section as to any matter certified.
- (7) Section 71(3) and (6) to (11) above apply to income support recoverable under subsection (1) above as they apply to income support recoverable under section 71(1) above.
- (8) The other provisions of section 71 above do not apply to income support recoverable under subsection (1) above.

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Adjustments of benefits

73 Overlapping benefits - general

- (1) Regulations may provide for adjusting benefit as defined in section 122 of the Contributions and Benefits Act which is payable to or in respect of any person, or the conditions for its receipt, where—
 - (a) there is payable in his case any such pension or allowance as is described in subsection (2) below; or
 - (b) the person is, or is treated under the regulations as, undergoing medical or other treatment as an in-patient in a hospital or similar institution.
- (2) Subsection (1)(a) above applies to any pension, allowance or benefit payable out of public funds (including any other benefit as so defined, whether it is of the same or a different description) which is payable to or in respect of—
 - (a) the person referred to in subsection (1);
 - (b) that person's wife or husband;
 - (c) any child or adult dependant of that person; or
 - (d) the wife or husband of any adult dependant of that person.
- (3) Where but for regulations made by virtue of subsection (1)(a) above two persons would both be entitled to an increase of benefit in respect of a third person, regulations may make provision as to their priority.
- (4) Regulations may provide for adjusting benefit as defined in section 122 of the Contributions and Benefits Act payable to or in respect of any person where there is payable in his case any such benefit as is described in subsection (5) below.
- (5) Subsection (4) above applies to any benefit payable under the legislation of any member State other than the United Kingdom which is payable to or in respect of—
 - (a) the person referred to in that subsection;
 - (b) that person's wife or husband;
 - (c) any child or adult dependant of that person; or
 - (d) the wife or husband of any adult dependant of that person.

74 Income support and other payments

- (1) Where—
 - (a) a payment by way of prescribed income is made after the date which is the prescribed date in relation to the payment; and
 - (b) it is determined that an amount which has been paid by way of income support would not have been paid if the payment had been made on the prescribed date,the Secretary of State shall be entitled to recover that amount from the person to whom it was paid.
- (2) Where—
 - (a) a prescribed payment which apart from this subsection falls to be made from public funds in the United Kingdom or under the law of any other member State is not made on or before the date which is the prescribed date in relation to the payment; and

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- (b) it is determined that an amount (“the relevant amount”) has been paid by way of income support that would not have been paid if the payment mentioned in paragraph (a) above had been made on the prescribed date,
- then—
- (i) in the case of a payment from public funds in the United Kingdom, the authority responsible for making it may abate it by the relevant amount; and
- (ii) in the case of any other payment, the Secretary of State shall be entitled to receive the relevant amount out of the payment.
- (3) Where—
- (a) a person (in this subsection referred to as A) is entitled to any prescribed benefit for any period in respect of another person (in this subsection referred to as B); and
- (b) either—
- (i) B has received income support for that period; or
- (ii) B was, during that period, a member of the same family as some person other than A who received income support for that period; and
- (c) the amount of the income support has been determined on the basis that A has not made payments for the maintenance of B at a rate equal to or exceeding the amount of the prescribed benefit,
- the amount of the prescribed benefit may, at the discretion of the authority administering it, be abated by the amount by which the amounts paid by way of income support exceed what it is determined that they would have been had A, at the time the amount of the income support was determined, been making payments for the maintenance of B at a rate equal to the amount of the prescribed benefit.
- (4) Where an amount could have been recovered by abatement by virtue of subsection (2) or (3) above but has not been so recovered, the Secretary of State may recover it otherwise than by way of abatement—
- (a) in the case of an amount which could have been recovered by virtue of subsection (2) above, from the person to whom it was paid; and
- (b) in the case of an amount which could have been recovered by virtue of subsection (3) above, from the person to whom the prescribed benefit in question was paid.
- (5) Where a payment is made in a currency other than sterling, its value in sterling shall be determined for the purposes of this section in accordance with regulations.

Housing benefit

75 Overpayments of housing benefit

- (1) Except where regulations otherwise provide, any amount of housing benefit paid in excess of entitlement may be recovered in such manner as may be prescribed either by the Secretary of State or by the authority which paid the benefit.
- (2) Regulations may require such an authority to recover such an amount in such circumstances as may be prescribed.
- (3) An amount recoverable under this section is in all cases recoverable from the person to whom it was paid; but, in such circumstances as may be prescribed, it may also be recovered from such other person as may be prescribed.

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- (4) Any amount recoverable under this section may, without prejudice to any other method of recovery, be recovered by deduction from prescribed benefits.

Community charge benefits

76 Excess benefits

- (1) Regulations may make provision as to any case where a charging authority or a levying authority has allowed a community charge benefit to a person and the amount allowed exceeds the amount to which he is entitled in respect of the benefit.
- (2) As regards any case where the benefit is in respect of a personal community charge the regulations may provide that—
- (a) a sum equal to the excess shall be due from the person concerned to the authority (whatever the form the benefit takes);
 - (b) any liability under any provision included under paragraph (a) above shall be met by such method mentioned in subsection (3) below as is prescribed as regards the case concerned, or by such combination of two or all three of the methods as is prescribed as regards the case concerned.
- (3) The methods are—
- (a) payment by the person concerned;
 - (b) addition to any amount payable in respect of the charge concerned;
 - (c) deduction from prescribed benefits.
- (4) As regards any case where the benefit is in respect of a contribution period the regulations may provide that—
- (a) a sum equal to the excess shall be due from the person concerned to the authority (whatever the form the benefit takes);
 - (b) any liability under any provision included under paragraph (a) above shall be met by such method mentioned in subsection (5) below as is prescribed as regards the case concerned, or by such combination of the methods as is prescribed as regards the case concerned;
 - (c) there is to be no adjustment as between the person concerned and the charge payer, or as between the charge payer and the authority concerned.
- (5) The methods are—
- (a) payment by the person concerned;
 - (b) deduction from prescribed benefits.
- (6) In a case where the regulations provide that a sum or part of a sum is to be paid, and the sum or part is not paid on or before such day as may be prescribed, the regulations may provide that the sum or part shall be recoverable in a court of competent jurisdiction.
- (7) For the purposes of subsection (4) above the charge payer is—
- (a) in relation to England and Wales, the person who is liable to pay an amount in respect of the collective community charge concerned under section 15 of the Local Government Finance Act 1988;
 - (b) in relation to Scotland, the person who is liable to pay the collective community charge under section 11(5) of the Abolition of Domestic Rates Etc. (Scotland) Act 1987.

- (8) The regulations may provide that they are not to apply as regards any case falling within a prescribed category.

77 Shortfall in benefits

- (1) Regulations may make provision as to any case where a charging authority or a levying authority has allowed a community charge benefit to a person and the amount allowed is less than the amount to which he is entitled in respect of the benefit.
- (2) In particular, as regards any prescribed case where the benefit is in respect of a contribution period the regulations may provide that—
- (a) a sum equal to the difference shall be due from the authority to the person concerned;
 - (b) any liability under any provision included under paragraph (a) above shall be met by payment and not by such reductions as are mentioned in section 138(4) below (whatever the form the benefit actually allowed takes);
 - (c) there is to be no adjustment as between the person concerned and the charge payer, or as between the charge payer and the authority concerned.
- (3) For the purposes of subsection (2) above the charge payer is—
- (a) in relation to England and Wales, the person who is liable to pay an amount in respect of the collective community charge concerned under section 15 of the Local Government Finance Act 1988;
 - (b) in relation to Scotland, the person who is liable to pay the collective community charge under section 11(5) of the Abolition of Domestic Rates Etc. (Scotland) Act 1987.

Social fund awards

78 Recovery of social fund awards

- (1) A social fund award which is repayable shall be recoverable by the Secretary of State.
- (2) Without prejudice to any other method of recovery, the Secretary of State may recover an award by deduction from prescribed benefits.
- (3) The Secretary of State may recover an award—
- (a) from the person to or for the benefit of whom it was made;
 - (b) where that person is a member of a married or unmarried couple, from the other member of the couple;
 - (c) from a person who is liable to maintain the person by or on behalf of whom the application for the award was made or any person in relation to whose needs the award was made.
- (4) Payments to meet funeral expenses may in all cases be recovered, as if they were funeral expenses, out of the estate of the deceased, and (subject to section 71 above) by no other means.
- (5) In this section—
- “married couple” means a man and woman who are married to each other and are members of the same household;

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“unmarried couple” means a man and woman who are not married to each other but are living together as husband and wife otherwise than in circumstances prescribed under section 132 of the Contributions and Benefits Act.

- (6) For the purposes of this section—
- (a) a man shall be liable to maintain his wife and any children of whom he is the father;
 - (b) a woman shall be liable to maintain her husband and any children of whom she is the mother;
 - (c) a person shall be liable to maintain another person throughout any period in respect of which the first-mentioned person has, on or after 23rd May 1980 (the date of the passing of the Social Security Act 1980) and either alone or jointly with a further person, given an undertaking in writing in pursuance of immigration rules within the meaning of the Immigration Act 1971 to be responsible for the maintenance and accommodation of the other person; and
 - (d) “child” includes a person who has attained the age of 16 but not the age of 19 and in respect of whom either parent, or some person acting in the place of either parent, is receiving income support.
- (7) Any reference in subsection (6) above to children of whom the man or the woman is the father or the mother shall be construed in accordance with section 1 of the Family Law Reform Act 1987.
- (8) Subsection (7) above does not apply in Scotland, and in the application of subsection (6) above to Scotland any reference to children of whom the man or the woman is the father or the mother shall be construed as a reference to any such children whether or not their parents have ever been married to one another.
- (9) A document bearing a certificate which—
- (a) is signed by a person authorised in that behalf by the Secretary of State; and
 - (b) states that the document apart from the certificate is, or is a copy of, such an undertaking as is mentioned in subsection (6)(c) above,
- shall be conclusive of the undertaking in question for the purposes of this section; and a certificate purporting to be so signed shall be deemed to be so signed until the contrary is proved.

Northern Ireland payments

79 Recovery of Northern Ireland payments

Without prejudice to any other method of recovery—

- (a) amounts recoverable under any enactment or instrument having effect in Northern Ireland and corresponding to an enactment or instrument mentioned in section 71(8) above shall be recoverable by deduction from benefits prescribed under that subsection;
- (b) amounts recoverable under any enactment having effect in Northern Ireland and corresponding to section 75 above shall be recoverable by deduction from benefits prescribed under subsection (4) of that section; and
- (c) awards recoverable under Part III of the Northern Ireland Administration Act shall be recoverable by deduction from benefits prescribed under subsection (2) of section 78 above and subsection (3) of that section shall have

effect in relation to such awards as it has effect in relation to awards out of the social fund under this Act.

Adjustment of child benefit

80 Child benefit - overlap with benefits under legislation of other member States

Regulations may provide for adjusting child benefit payable in respect of any child in respect of whom any benefit is payable under the legislation of any member State other than the United Kingdom.