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STATUTORY INSTRUMENTS

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**1987 No. 491**

**Social Security (Payments on account,  
Overpayments and Recovery) Regulations 1987**

**PART VII**

**THE PROCESS OF RECOVERY**

**Recovery by deduction from benefits**

**16.**—(1) Where any amount is recoverable under sections 27 or 53(1) of the Act, or under these regulations, it 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 to be recoverable is entitled.

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

- (a) subject to paragraphs (3) and (4), any benefit under the Social Security Act 1975;
- (b) subject to paragraphs (3) and (4), any child benefit;
- (c) any family income supplement;
- (d) any benefit payable under the legislation of any member State other than the United Kingdom concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, whether or not the benefit has been acquired by virtue of the provisions of that Regulation;
- (e) subject to regulation 17, any supplementary pension or allowance;
- (f) any benefit payable under the social security legislation applicable in Northern Ireland which is equivalent to benefit prescribed by paragraphs (a), (b), (c) or (e) subject to exceptions equivalent to those made by paragraphs (3) and (4).

(3) Deductions may not be made from entitlement to the benefits specified in paragraph (4) except as a means of recovering an overpayment of the benefit from which the deduction is to be made.

(4) The benefits specified for the purposes of paragraph (3) 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(1), and child benefit.

**Limitations on deductions from supplementary pension or allowance**

**17.**—(1) Regulation 16 shall apply without limitation to any payment of arrears of supplementary pension or allowance other than any arrears caused by the operation of regulation 8(1) of the Supplementary Benefit (Determination of Questions) Regulations 1980(2) (suspension of

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

(2) S.I. 1980/1643; relevant amending instruments are S.I. 1981/815, 1982/907, 1983/337, 1000 and 1984/458.

payments), but shall apply to the amount of pension or allowance to which a person is presently entitled only to the extent that there may, subject to regulation 18 of the Supplementary Benefit (Claims and Payments) Regulations 1981(3) (priority as between certain debts), be recovered in respect of any one benefit week—

- (a) in a case to which paragraph (2) applies, not more than the amount there specified; and
- (b) in any other case, 3 times 5 per cent of the single householder rate, that 5 per cent being, where it is not a multiple of 5 pence, rounded to the next higher such multiple.

(2) Where—

- (a) the person to whom the supplementary pension or allowance is payable is a person to whom—
  - (i) paragraph 1(a) of the table in paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976 (normal requirements for person over pensionable age who has a partner) applies,
  - (ii) paragraph 3(a) of that table (normal requirements for householders over pensionable age) applies,
  - (iii) regulation 7 of the Supplementary Benefit (Requirements) Regulations 1983(4) (long-term rates for normal requirements) applies; or
  - (iv) regulation 9(12)(a)(i) or (b)(i) of those regulations (long-term rates for normal requirements of boarders) applies; or
- (b) 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 supplementary benefit,

the amount mentioned in paragraph (1)(a) shall be one-sixth of the weekly amount for normal requirements for the time being applicable to a person to whom paragraph 3 of the table in paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976 (long-term rate for householders) applies, that one-sixth 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.

(3) Where in the calculation of the resources of the person to whom the supplementary pension or allowance is payable the amount of earnings or other income falling to be taken into account is reduced by regulation 10(5) or 11(5) of the Supplementary Benefit (Resources) Regulations 1981(5) (partial disregard of earnings or other income respectively) the weekly amount applicable under paragraph (1) 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 regulation 17(3) of the Supplementary Benefit (Claims and Payments) Regulations 1981(6) (regular payments to third parties for fuel items).

(4) Regulation 16 shall not be applied to a supplementary pension or allowance so as to reduce that pension or allowance in any one benefit week—

- (a) in a case in which the person to whom that pension or allowance is payable is also entitled to payment of any benefit under the Social Security Act 1975 together with which, under arrangements made by the Secretary of State either throughout or in any part of Great Britain, supplementary pension or allowance is paid, to less than 5 pence;
- (b) in any other case, to less than 10 pence.

(5) In this regulation—

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(3) S.I. 1981/1525; relevant amending instruments are S.I. 1982/1400, 1983/337 and 1986/562.  
 (4) S.I. 1983/1399, to which there are amendments not relevant to these regulations.  
 (5) S.I. 1981/1527; relevant amending instruments are S.I. 1982/1125, 1126 and 1984/1102.  
 (6) S.I. 1981/1525; relevant amending instruments are S.I. 1982/522 and 914 and 1984/458.

- (a) “benefit week” has the same meaning as in regulation 7 of the Supplementary Benefit (Determination of Questions) Regulations 1980;
- (b) “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(7), or, before that order came into operation, the Judges Rules;
  - (ii) in Scotland, a written statement duly witnessed by 2 persons.

### **Recovery from couples**

**18.** In the case of an overpayment of supplementary benefit or family income supplement in respect of a married or unmarried couple, the amount recoverable by deduction, in accordance with regulation 16, may be recovered by deduction from supplementary benefit or family income supplement payable to either of them, provided that the two of them are a married or unmarried couple at the date of the deduction.