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STATUTORY INSTRUMENTS

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**1992 No. 1814**

**The Council Tax Benefit (General) Regulations 1992**

**PART XI**

**Excess benefit**

**Meaning of excess benefit**

**83.** In this Part “excess benefit” means any amount which has been allowed by way of council tax benefit and to which there was no entitlement under these Regulations (whether on initial determination or as subsequently revised on review or further review) and includes any excess which arises by reason of—

- (a) a reduction in the amount a person is liable to pay in respect of council tax in consequence of—
  - (i) regulations made under section 13 or 80 of the 1992 Act (reduction in the amount of a person’s council tax); or
  - (ii) any discount to which that tax is subject by virtue of section 11, or 79 of that Act;
- (b) a substitution under sections 31 or 60 or, in Scotland, section 94 of the 1992 Act (substituted amounts) of a lesser amount for an amount of council tax previously set by the appropriate authority under section 30 or, in Scotland section 93 of that Act (amount set for council tax).

**Recoverable excess benefit**

**84.**—(1) Any excess benefit, except benefit to which paragraph (2) applies, shall be recoverable.

(2) Subject to paragraphs (4) and (5) and excepting any excess benefit arising in consequence of a reduction in tax or substitution to which regulation 83 refers, this paragraph applies to excess benefit allowed in consequence of an official error, where the claimant or a person acting on his behalf or any other person to whom the excess benefit is allowed could not, at the time the benefit was allowed or upon the receipt of any notice relating to the allowance of that benefit, reasonably have been expected to realise that it was excess benefit.

(3) In paragraph (2), “excess benefit allowed in consequence of an official error” means excess benefit in consequence of a mistake made or something done or omitted to be done by the appropriate authority or by an officer or person acting for that authority or by an officer of the Department of Social Security or the Department of Employment acting as such where the claimant, a person acting on his behalf or any other person to whom the payment is allowed did not cause or materially contribute to that mistake, act or omission.

(4) Paragraph (2) shall not apply with respect to excess benefit to which regulation 83(a) and (b) refers.

(5) Where in consequence of an official error a person has been awarded excess benefit, upon the award being reviewed any excess benefit which remains credited to him by the appropriate authority in respect of a period after the date of the review, shall be recoverable.

### **Authority by which recovery may be made**

85. The appropriate authority which allowed the recoverable excess benefit may recover it.

### **Person from whom recovery may be sought**

86.—(1) Subject to paragraph (2), recoverable excess benefit shall be due from the claimant or the person to whom the excess benefit was allowed.

(2) Where recoverable excess benefit is allowed to a claimant who has one or more partners, recovery of the excess may be made by deduction from any council tax benefit allowed to a partner, provided the claimant and that partner were members of the same household both at the time the excess benefit is allowed and when the deduction is made.

### **Methods of recovery**

87.—(1) Without prejudice to any other method of recovery an appropriate authority may recover any recoverable excess benefit due from any person referred to in regulation 86 (person from whom recovery may be sought) by any of the methods specified in paragraphs (2) and (3) or any combination of those methods.

(2) Excess benefit may be recovered either—

- (a) by payment by or on behalf of the person to whom regulation 86(1) refers, or
- (b) by an addition being made by the appropriate authority to any amount payable in respect of the council tax concerned.

(3) Where recoverable excess benefit due from any person cannot be recovered by either of the methods specified in paragraph (2), the appropriate authority may request the Secretary of State to recover the outstanding excess from the benefits prescribed in regulation 91 in accordance with the provisions of that regulation.

### **Further provision as to recovery of excess benefit**

88. In addition to the methods for recovery of excess benefit which are specified in regulation 87, any sum or part of a sum which is due from the person concerned and which is not paid within 21 days of his being notified of the amount that is due, shall be recoverable in a court of competent jurisdiction by the authority to which the excess benefit is due.

### **Diminution of capital**

89.—(1) Where in the case of recoverable excess benefit, in consequence of a misrepresentation or failure to disclose a material fact (in either case whether fraudulent or otherwise) as to a person's capital, or an error, other than one to which regulation 84(2) (effect of official error) refers, as to the amount of a person's capital, the excess benefit was in respect of a period ("the excess benefit period") of more than 13 benefit weeks, the appropriate authority shall, for the purpose only of calculating the amount of the excess—

- (a) at the end of the first 13 benefit weeks of the excess benefit period, treat the amount of the capital as having been reduced by the amount of excess council tax benefit allowed during those 13 weeks;
- (b) at the end of each subsequent period of 13 benefit weeks, if any, of the excess benefit period, treat the amount of that capital as having been further reduced by the amount of excess council tax benefit allowed during the immediately preceding 13 benefit weeks.

(2) Capital shall not be treated as reduced over any period other than 13 benefit weeks or in any circumstances other than those, for which paragraph (1) provides.

### **Sums to be deducted in calculating recoverable excess benefit**

- 90.** In calculating the amount of recoverable excess benefit, the appropriate authority—
- (a) if it determines that a lesser amount was properly allowable in respect of the whole or part of the excess benefit period, shall deduct that amount; and
  - (b) may deduct so much of any payment of council tax in respect of the excess benefit period which exceeds the amount, if any, which the claimant was liable to pay for that period under the original erroneous determination.

### **Recovery of excess benefit from prescribed benefits**

**91.**—(1) For the purposes of section 76(3)(c) of the Administration Act 1992 (deduction of excess council tax benefit from prescribed benefits), the benefits prescribed by this regulation are—

- (a) any benefit under the Contributions and Benefits Act 1992, except guardian's allowance;
  - (b) 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<sup>(1)</sup> 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.
- (2) Where the Secretary of State is satisfied that—
- (a) recoverable excess benefit has been allowed in consequence of a misrepresentation of or failure to disclose a material fact (in either case whether fraudulent or otherwise), by a claimant or any other person to whom council tax benefit has been allowed; and
  - (b) the person who misrepresented that fact or failed to disclose it is receiving a sufficient amount of one or more of the benefits prescribed in paragraph (1) to enable deductions to be made for the recovery of the excess,

he shall, if requested to do so by an appropriate authority under regulation 87 (methods of recovery) recover the excess by deduction from any of those benefits.

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<sup>(1)</sup> 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. 1661/85 (O.J. No. L160, 20.6.1985) and Commission Regulation (EEC) No. 513/86 (O.J. No. L57, 28.2.1986).