
STATUTORY INSTRUMENTS

2003 No. 492

**The Child Benefit and Guardian's Allowance
(Administration) Regulations 2003**

PART 5

OVERPAYMENTS AND RECOVERY

Recovery of overpayments by direct credit transfer

35.—(1) If the adjudicating authority determines that—

- (a) a payment of child benefit or guardian's allowance in excess of entitlement has been credited to a bank account or other account under an arrangement for direct credit transfer made in accordance with [^{F1}regulation 16]; and
- (b) the conditions specified in paragraph (2) are satisfied,

the excess, or the specified part of it to which the certificate referred to in sub-paragraph (a) of that paragraph relates, shall be recoverable.

(2) The following conditions are specified in this paragraph—

- (a) the Board must have 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 direct credit transfer; and
- (b) subject to paragraph (3), notice of the effect which this regulation would have, in the event of an overpayment, must have been given in writing to the person entitled to the benefit or allowance, or to a person acting in his behalf, [^{F2}before the Board made the arrangement for the payment of child benefit or guardian's allowance into that account].

(3) In the case of an arrangement relating to child benefit which was agreed to before 6th April 1987, the condition specified in paragraph (2)(b) need not be satisfied in any case where the application for the benefit to be paid by direct credit transfer contained a statement, or was accompanied by a written statement made by the applicant, which complied with the provisions specified in paragraph (4).

(4) The provisions specified in this paragraph are—

- (a) in relation to child benefit under the Contributions and Benefits Act, regulation 7(2)(b) and (6) of the Child Benefit (Claims and Payments) Regulations 1984(1);
- (b) in relation to child benefit under the Contributions and Benefits (NI) Act, regulation 7(2)(b) and (6) of the Child Benefit (Claims and Payments) Regulations (Northern Ireland) 1985(2).

(1) S.I.1984/1960. Regulation 7 was revoked, together with other parts of the instrument, by the Schedule to S.I. 1987/491 and Schedule 10 to S.I. 1987/1968.

(2) S.R. 1985 No. 124. Regulation 7 was revoked, together with other parts of the instrument, by the Schedule to S.R. 1987 No. 122 and Schedule 9 to S.R. 1987 No. 465.

Textual Amendments

- F1** Words in [reg. 35\(1\)\(a\)](#) substituted (1.11.2010) by [The Child Benefit and Guardian's Allowance \(Administration\) \(Amendment\) Regulations 2010 \(S.I. 2010/2459\)](#), regs. 1, **2(b)**
- F2** Words in [reg. 35\(2\)\(b\)](#) substituted (1.11.2010) by [The Child Benefit and Guardian's Allowance \(Administration\) \(Amendment\) Regulations 2010 \(S.I. 2010/2459\)](#), regs. 1, **2(c)**

Commencement Information

- I1** [Reg. 35](#) in force at 7.4.2003, see [reg. 1](#)

Circumstances in which determination need not be reversed, varied, revised or superseded

36.—(1) This regulation applies where, whether fraudulently or otherwise, a person has misrepresented, or failed to disclose, material facts which do not provide a basis for the determination in pursuance of which an amount of child benefit or guardian's allowance was paid—

- (a) in relation to benefit or allowance under the Contributions and Benefits Act, to be revised under section 9 or superseded under section 10 of the Social Security Act 1998;
 - (b) in relation to benefit or allowance under the Contributions and Benefits (NI) Act, to be revised under Article 10 or superseded under Article 11 of the Social Security (Northern Ireland) Order 1998.
- (2) Where this regulation applies—
- (a) in relation to an amount mentioned in paragraph (1) relating to child benefit or guardian's allowance under the Contributions and Benefits Act, neither subsection (5) nor (5A) of section 71 of the Administration Act (recoverability dependent on reversal, variation, revision or supersession of determination)**(3)** applies;
 - (b) in relation to an amount mentioned in paragraph (1) relating to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act, neither subsection (5) nor (5A) of section 69 of the Administration (NI) Act (recoverability dependent on reversal, variation, revision or supersession of determination)**(4)** applies.

Commencement Information

- I2** [Reg. 36](#) in force at 7.4.2003, see [reg. 1](#)

Calculating recoverable amounts

37. Where there has been an overpayment of child benefit or guardian's allowance, in calculating the amounts recoverable under section 71(1) of the Administration Act, section 69(1) of the Administration (NI) Act or regulation 35, the adjudicating authority must deduct any amount which is offset under regulation 38.

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- (3) Subsection (5) of section 71 was amended, and subsection (5A) of that section inserted, by section 1(3) and (4) of the Social Security (Overpayments) Act 1996 (c. 51) and both those subsections were amended by paragraph 81(2) and (3) of the Social Security Act 1998.
- (4) Subsection (5) of section 69 was amended, and subsection (5A) of that section inserted, by section 2(3) and (4) of the Social Security (Overpayments) Act 1996 and both those subsections were amended by paragraph 62(2) and (3) of Schedule 6 to S.I. 1998/1506 (N.I. 10).

Commencement Information

I3 [Reg. 37](#) in force at 7.4.2003, see [reg. 1](#)

Offsetting prior payments of child benefit and guardian's allowance against arrears payable by virtue of a subsequent determination

- 38.**—(1) Subject to regulation 40, in either of the cases specified in paragraphs (2) and (3)—
- (a) a sum of child benefit paid for a period covered by a subsequent determination shall be offset against any arrears of entitlement to the benefit payable for that period by virtue of the subsequent determination;
 - (b) a sum of guardian's allowance paid for a period covered by a subsequent determination shall be offset against any arrears of entitlement to the allowance payable for that period by virtue of the subsequent determination,

and, except to the extent that it exceeds them, the sum so paid shall be treated as properly paid on account of the arrears.

(2) The case specified in this paragraph is where a person has been paid a sum pursuant to a determination which subsequently—

- (a) is revised under section 9 or superseded under section 10 of the Social Security Act 1998;
- (b) is revised under Article 10 or superseded under Article 11 of the Social Security (Northern Ireland) Order 1998; or
- (c) is overturned on appeal.

(3) The case specified in this paragraph is where a person has been paid a sum for a period by way of an increase in respect of a dependent person and it is subsequently determined that—

- (a) the dependent person is entitled to the benefit or allowance for that period; or
- (b) a third person is entitled to the increase for that period in priority to the person who has been paid.

(4) Where child benefit which has been paid under an award in favour of a person (“the first claimant”) is subsequently awarded to another (“the second claimant”) for any week, the benefit shall nevertheless be treated as properly paid if it was received by someone (other than the first claimant) who—

- (a) had [^{F3}the child or qualifying young person] living with him or was contributing towards the cost of providing for [^{F3}the child or qualifying young person] 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 [^{F4}that child or qualifying young person] 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 second claimant under the subsequent award.

Textual Amendments

- F3** Words in [reg. 38\(4\)\(a\)](#) substituted (10.4.2006) by [The Child Benefit and Guardian's Allowance \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/203\)](#), [regs. 1, 2\(7\)\(a\)](#)
- F4** Words in [reg. 38\(4\)\(b\)](#) substituted (10.4.2006) by [The Child Benefit and Guardian's Allowance \(Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/203\)](#), [regs. 1, 2\(7\)\(b\)](#)

Commencement Information

14 [Reg. 38](#) in force at 7.4.2003, see [reg. 1](#)

Offsetting prior payments of income support or jobseeker's allowance against arrears of child benefit or guardian's allowance payable by virtue of a subsequent determination

39.—(1) This regulation applies where—

- (a) a person has been paid a sum by way of income support or jobseeker's allowance; and
- (b) it is subsequently determined that—
 - (i) child benefit or guardian's allowance should be awarded or is payable in lieu of the income support or jobseeker's allowance; and
 - (ii) the income support or jobseeker's allowance was not payable.

(2) Subject to regulation 40, any sum of income support or jobseeker's allowance in respect of the period covered by the subsequent determination—

- (a) shall be offset against any arrears of entitlement to the child benefit or guardian's allowance payable for that period by virtue of that determination; and
- (b) except to the extent that it exceeds them, the sum so paid shall be treated as properly paid on account of the arrears.

Commencement Information

15 [Reg. 39](#) in force at 7.4.2003, see [reg. 1](#)

Exception from offset of recoverable overpayment

40. No amount may be offset under regulation 38(1) or 39(2) which has been determined to be a recoverable overpayment for the purposes of section 71(1) of the Administration Act or section 69(1) of the Administration (NI) Act.

Commencement Information

16 [Reg. 40](#) in force at 7.4.2003, see [reg. 1](#)

Bringing interim payments into account

41.—(1) Subject to paragraph (2), if it is practicable to do so—

- (a) any interim payment made in anticipation of an award of child benefit or guardian's allowance shall be offset by the adjudicating authority in reduction of the benefit or allowance to be awarded;
- (b) any interim payment (whether or not made in anticipation of an award) which is not offset under sub-paragraph (a) shall be deducted by the Board from—
 - (i) the sum payable under the award of benefit or allowance on account of which the interim payment was made; or
 - (ii) any sum payable under any subsequent award of the benefit or allowance to the same person.

(2) Paragraph (1) does not apply unless the Board have given the notice required by regulation 22(3).

Commencement Information

I7 Reg. 41 in force at 7.4.2003, see **reg. 1**

Recovery of overpaid interim payments

42.—(1) Subject to paragraph (2), if the adjudicating authority, in the circumstances specified in either of paragraphs (3) and (4), has determined that an interim payment has been overpaid, it shall determine the amount of the overpayment.

(2) Paragraph (1) does not apply unless the Board have given the notice required by regulation 22(3).

(3) The circumstances specified in this paragraph are where an interim payment has been made under regulation 22(1)(a) and (b) and—

- (a) the recipient has failed to make a claim in accordance with these Regulations as soon as practicable;
- (b) the recipient has made a defective application and the Board have not treated the claim as duly made under regulation 10;
- (c) it has been determined that—
 - (i) there is no entitlement on the claim;
 - (ii) the entitlement is less than the amount of the interim payment; or
 - (iii) the benefit or allowance on the claim is not payable; or
- (d) the claim has been withdrawn.

(4) The circumstances specified in this paragraph are where an interim payment has been made under regulation 22(1)(c) which exceeds the entitlement under the award of benefit on account of which the interim payment was made.

(5) The amount of any overpayment determined under paragraph (1) shall be recoverable by the Board in the same manner as it would be if it were recoverable under—

- (a) in relation to child benefit or guardian's allowance under the Contributions and Benefits Act, section 71(1) of the Administration Act;
- (b) in relation to child benefit or guardian's allowance under the Contributions and Benefits (NI) Act, section 69(1) of the Administration (NI) Act.

Commencement Information

I8 Reg. 42 in force at 7.4.2003, see **reg. 1**

[^{F5}Recovery of overpayments from awards of child benefit and guardian's allowance

42A.—(1) Where any amount of child benefit or guardian's allowance is recoverable from a person under—

- (a) section 71(1) of the Administration Act,
- (b) section 69(1) of the Administration (NI) Act, or
- (c) regulation 35(1) or 42(5),

Changes to legislation: There are currently no known outstanding effects for the The Child Benefit and Guardian's Allowance (Administration) Regulations 2003, PART 5. (See end of Document for details)

that amount may be recovered by the adjudicating authority from any child benefit or guardian's allowance payable to that person.

(2) For the purposes of paragraph (1), child benefit or guardian's allowance payable includes any payment of arrears of child benefit or guardian's allowance other than a payment of arrears required to be made by regulation 21(1) of the Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003.]

Textual Amendments

F5 [Reg. 42A](#) inserted (8.5.2012) by [The Child Benefit and Guardian's Allowance \(Administration\) \(Amendment\) Regulations 2012 \(S.I. 2012/1074\)](#), regs. 1, 3

Changes to legislation:

There are currently no known outstanding effects for the The Child Benefit and Guardian's Allowance (Administration) Regulations 2003, PART 5.