STATUTORY RULES OF NORTHERN IRELAND

2005 No. 459

HOUSING; RATES

The Housing Benefit (General) (Amendment No. 2) Regulations (Northern Ireland) 2005

Made - - - -	*20th October 2005*
Coming into operation -	*10th April 2006*

The Department for Social Development, in exercise of the powers conferred by section 122(1)(d) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**) sections 73(1), (2), (3) and (4) and 165(1), (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992(**b**) and now vested in it(**c**), and of all other powers enabling it in that behalf, with the consent of the Department of Finance and Personnel(**d**), and after agreement by the Social Security Advisory Committee(**e**) that proposals in respect of these Regulations should not be referred to it, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit (General) (Amendment No.2) Regulations (Northern Ireland) 2005 and shall come into operation on 10th April 2006.

(2) In these Regulations—

"the Housing Benefit Regulations" means the Housing Benefit (General) Regulations (Northern Ireland) 1987(**f**).

(3) The Interpretation Act (Northern Ireland) 1954(**g**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of regulation 98 of the Housing Benefit Regulations

2. In regulation 98 of the Housing Benefit Regulations(**h**) (meaning of overpayment) for "as subsequently revised or further revised" there shall be substituted "or as subsequently revised or superseded or further revised or superseded".

(**a**) 1992 c.7

(**b**) 1992 c. 8. Section 73(1) was amended by paragraph 2 of Schedule 1 and Schedule 2 to the Social Security Administration (Fraud) (Northern Ireland) Order 1997 (S.I. 1997/1182 (N.I.11)). Section 73(3) was substituted by section 62 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4). Section 165(6) was amended by paragraph 86 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)

(**c**) *See* Article 8(b) of S.R. 1999 No. 481

(**d**) *See* section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment)(Northern Ireland) Order 1993 (S.I.1993/1579 (N.I. 8)); *see* also Article 6(b) of S.R 1999 No.481

(**e**) *See* section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992

(**f**) S.R. 1987 No.461; relevant amending Regulations are S.R. 1991 Nos. 176 and 337, S.R. 2000 No. 265 and S.R. 2001 Nos. 179 and 215

(**g**) 1954 c. 33 (N.I.)

(**h**) Regulation 98 was substituted by regulation 5 of S.R. 1991 No. 176 and amended by regulations 4(o) and 5(d) of S.R. 2001 No. 215

Amendment of regulation 99 of the Housing Benefit Regulations

3.—(1) Regulation 99 of the Housing Benefit Regulations (recoverable overpayments) shall be amended in accordance with paragraphs (2) to (4).

(2) In paragraph (2)(**a**) for "caused by" there shall be substituted "which arose in consequence of".

(3) In paragraph (3)(**b**) for "caused by official error" there shall be substituted "which arose in consequence of an official error".

(4) In paragraph (4A)(**c**) after "revised" there shall be inserted "or superseded" and after "revision" there shall be inserted "or supersession".

Amendment of regulation 101 of the Housing Benefit Regulations

4.—(1) Regulation 101 of the Housing Benefit Regulations(**d**) (person from whom recovery may be sought) shall be amended in accordance with paragraphs (2) to (5).

(2) After sub-paragraph (b) of paragraph (1), there shall be inserted the following sub-paragraph—

"(bb) the Executive is satisfied that the overpayment did not occur as a result of any change of dwelling occupied by the claimant as his home;".

(3) For paragraph (2) there shall be substituted the following paragraph—

"(2) For the purposes of section 73(3)(b) of the Administration Act (overpayments of housing benefit), where recovery of an overpayment is sought by the Executive—

(a) the prescribed person from whom it is sought shall be—

(i) in a case where an overpayment arose in consequence of a misrepresentation of or a failure to disclose a material fact (in either case, whether fraudulently or otherwise) by or on behalf of the claimant or any other person to whom housing benefit has been paid, the person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made;

(ii) in a case where an overpayment arose in consequence of an official error where the claimant or a person acting on his behalf or any other person to whom the payment has been made could reasonably have been expected, at the time of receipt of the payment or of any notice relating to that payment, to realise that it was an overpayment, that person instead of, if different, the person to whom the payment was made, or

(b) where sub-paragraphs (a)(i) and (ii) do not apply, the prescribed person from whom it is sought is—

(i) the claimant.;

(ii) in a case where a recoverable overpayment is made to a claimant who has one or more partners, the claimant's partner or any of his partners.".

(4) After paragraph (3), there shall be inserted the following paragraph—

"(3A) For the purposes of paragraph (2)(a)(ii), "overpayment arose in consequence of an official error" shall have the same meaning as in regulation 99(3)".

(5) In paragraph (4) for "paragraph (2)(b)" there shall be substituted "paragraph (2)(b)(ii)".

(**a**) Paragraph (2) was amended by regulation 10 of S.R. 1991 No. 47 and regulation 14(a) of S.R. 1991 No. 337

(**b**) Paragraph (3) was substituted by regulation 8(c) of S.R. 2001 No. 215

(**c**) Paragraph (4A) was added by regulation 14(b) of S.R. 1991 No. 337 and amended by regulation 5(e) of and Schedule 1 to S.R. 2001 No. 215

(**d**) Regulation 101 was substituted by regulation 2(3) of S.R. 2001 No.179

Amendment of regulation 102 of the Housing Benefit Regulations

5.—(1) Regulation 102 of the Housing Benefit Regulations(**a**) (method of recovery) shall be amended in accordance with the paragraphs (2) to (4).

(2) In paragraph (1) for "the appropriate authority" there shall be substituted "a relevant authority".

(3) After paragraph (1) there shall be inserted the following paragraph—

"(1A) Where—

(a) a claimant has moved into a dwelling which he occupies as his home;

(b) a recoverable overpayment of housing benefit is thereafter made direct to him in connection with the dwelling he occupied as his home immediately preceding the date he moved to that dwelling, and

(c) the relevant authority which made the recoverable overpayment is paying housing benefit to that claimant in respect of that new dwelling,

the relevant authority may at its discretion deduct from the housing benefit it is paying to the claimant in respect of a benefit week an amount equal to the claimant's weekly entitlement to housing benefit at his new dwelling, and may do so for the number of benefit weeks equal to the number of weeks during which the claimant was over paid housing benefit.".

(4) In paragraph (2) after "paragraphs" there shall be inserted "(1A),".

(5) In paragraph (5) after "regulation" there shall be inserted ", except as made under paragraph (1A),".

Amendment of regulation 104 of the Housing Benefit Regulations

6. In regulation 104(1)(c) of the Housing Benefit Regulations(**b**) (sums to be deducted in calculating recoverable overpayments) after "change of circumstances" there shall be inserted ", except a change of the dwelling which the claimant occupies as his home,".

Amendment of regulation 105 of the Housing Benefit Regulations

7. In regulation 105 of the Housing Benefit Regulations (recovery of overpayments from prescribed benefits), after paragraph (1) there shall be inserted the following paragraph—

"(1A) For the purposes of paragraph (1)(c) the term "Member State" shall be understood to include Switzerland in accordance with and subject to the provisions of Annex II of the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons, signed at Brussels on 21st June 1999."(**c**).

(**a**) Regulation 102 was substituted by regulation 4(1) of S.R. 2000 No.265

(**b**) Regulation 104 was substituted by regulation 5 of S.R. 2000 No.265 and amended by regulation 4(p) of and Schedule 1 to S.R. 2001 No.215

(**c**) Cm 4904

Sealed with the Official Seal of the Department for Social Development on 20th October 2005



John O'Neill
A senior officer of the Department for Social Development

The Department of Finance and Personnel hereby consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 20th October 2005



Jack Layberry
A senior officer of the Department of Finance and Personnel

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations further amend the Housing Benefit (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 461) ("the Housing Benefit Regulations").

Regulation 2 amends the meaning of "overpayment" in Part XIII of the Housing Benefit Regulations, and the amendment in paragraph (4) of regulation 3 is consequential to this.

Regulation 3 amends regulation 99 of the Housing Benefit Regulations. Paragraphs (2) and (3) amend the terminology used in respect of overpayments arising in consequence of official error.

Regulation 4 amends regulation 101 of the Housing Benefit Regulations. Paragraph (2) inserts an additional condition in the list of prescribed circumstances that must be satisfied for an overpayment not to be recovered from the person to whom it was paid. Paragraphs (3) to (5) prescribe the person from whom recovery of an overpayment should be made in specified circumstances instead of the person to whom the payment was made.

Regulation 5 amends regulation 102 of the Housing Benefit Regulations. Paragraph (2) amends the terminology used in respect of an authority administering housing benefit, and paragraphs (3) to (5) insert an additional method of recovery in the case of a claimant who changes his address.

Regulation 6 amends regulation 104 of the Housing Benefit Regulations to ensure a claimant's change of address is not treated as being a change of circumstances when calculating housing benefit payable in respect of the overpayment period.

Regulation 7 amends regulation 105 of the Housing Benefit Regulations to provide for recovery of overpaid housing benefit from benefits paid by Switzerland under Article 4(1) of Regulation (EEC) No 1408/71, following the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons, signed at Brussels on 21st June 1999.

These Regulations do not impose any charge on business.

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