STATUTORY INSTRUMENTS

1979 No. 1163

SOCIAL SECURITY

The Social Security (Determination of Claims and Questions) Amendment Regulations 1979

Made - - - -	*17th September* 1979
Laid before Parliament	*26th September* 1979
Coming into Operation	*5th November* 1979

The Secretary of State for Social Services, in exercise of powers conferred upon him by section 119(3) and (4) of the Social Security Act 1975**(a)** and of all other powers enabling him in that behalf, after considering the report of the National Insurance Advisory Committee on the draft submitted to them in accordance with section 139 of that Act, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Determination of Claims and Questions) Amendment Regulations 1979 and come into operation on 5th November 1979.

(2) In these regulations "the principal regulations" means the Social Security (Determination of Claims and Questions) Regulations 1975**(b)**.

Amendment of regulation 38 *of the principal regulations*

2. For the text of regulation 38 of the principal regulations there shall be substituted the following:—

"38.—(1) Subject to paragraph (3), this regulation has effect where—

(*a*) in pursuance of a decision under the Act, benefit has been paid for any period and—

(i) the effect of a decision given on appeal against, or review of, that decision is such that had it been given in the first instance the whole or part of that benefit would not have been paid, or

(ii) in a case where the first mentioned decision cannot be reviewed, the facts established for the purpose of a subsequent decision of an insurance officer, local tribunal or a Commissioner, other than a decision given on appeal against the earlier decision, are such that had they been known when the earlier decision was given the whole or part of that benefit would not have been paid,

and

(a) 1975 c. 14; section 119 was amended by section 8 of, and paragraph 9 of Schedule 3 to, the Social Security Act 1979 (c. 18).

(b) S.I. 1975/558, to which there are amendments not relevant to these regulations.

(*b*) the Supplementary Benefits Commission certify that an additional amount of supplementary pension or allowance would have been paid to a person (whether or not the claimant) in receipt of such pension or allowance, but for the fact that that benefit, or such part of it as would not have been paid in the circumstances envisaged in paragraph (*a*), (i) or (ii), was taken into account as a resource in calculating his entitlement to such pension or allowance.

(2) Where this regulation has effect, the decision on appeal or review, or the subsequent decision referred to in paragraph (1)(*a*)(ii), as the case may be, shall direct that benefit under the Act, to the extent of the additional amount shown in the certificate of the Supplementary Benefits Commission, was properly paid.

(3) Where benefit under the Act was paid for any period in respect of a child not living with, or an adult dependant not residing with, the claimant, paragraphs (1) and (2) shall not apply unless either—

(*a*) the claimant has or is deemed to have contributed to the cost of providing for that child, or has contributed to the maintenance of that adult dependant, as the case may be, at a weekly rate not less than the weekly rate of benefit paid to him in respect of that child or adult dependant, or

(*b*) it appears from the certificate of the Supplementary Benefits Commission that it is the claimant who has been paid less supplementary pension or allowance than he would have been paid had no benefit under the Act, or only a reduced amount of such benefit, been paid in respect of that child or adult dependant.

(4) In this regulation "supplementary pension" and "supplementary allowance" mean such a pension or allowance under the Supplementary Benefits Act 1976**(a)**."

Patrick Jenkin,
Secretary of State for Social Services.

17th September 1979.

(a) 1976 c. 71.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, which are made under section 119 of the Social Security Act 1975 as amended by the Social Security Act 1979, amend the Social Security (Determination of Claims and Questions) Regulations 1975. They come into operation on 5th November 1979.

Regulation 2 substitutes new provisions for those of regulation 38 of the 1975 Regulations. New paragraphs (1) and (2), which replace the former paragraph (1), continue to enable benefit, if paid under an earlier decision but subsequently by decision on review or appeal found not to be payable, to be treated as properly paid to the extent that, but for such payment, more pension or allowance under the Supplementary Benefits Act 1976 would have been paid instead. The restriction to cases where repayment of benefit would have been required is removed and regulation 38 is extended to cases where there can be no review of a decision but where facts found for the purposes of a subsequent decision do not support payments made under the earlier one. Paragraph (3) makes exceptions from paragraphs (1) and (2) in respect of dependency benefits.

The Report of the National Insurance Advisory Committee dated 20th July 1979 on the draft of these Regulations referred to them is contained in Command Paper (Cmnd. No. 7669) published by Her Majesty's Stationery Office.

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