STATUTORY RULES OF NORTHERN IRELAND

2017 No. 28

WELFARE

The Welfare Supplementary Payment (Amendment) Regulations (Northern Ireland) 2017

Laid before the Assembly in draft

Made - - - -	*23rd January 2017*
Coming into operation -	*6th February 2017*

The Department for Communities makes the following Regulations in exercise of the powers conferred by Article 137 of the Welfare Reform (Northern Ireland) Order 2015(**1**), and now vested in it(**2**).

In accordance with Article 137(5) of that Order, a draft of these Regulations has been laid before and approved by a resolution of the Assembly.

PART 1

INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the Welfare Supplementary Payment (Amendment) Regulations (Northern Ireland) 2017.

(2) These Regulations come into operation on 6th February 2017.

Amendments to welfare supplementary payment regime

2. These Regulations amend the welfare supplementary payment regime as follows—

(a) Part 2 makes provision for the recovery of overpayments of welfare supplementary payments,

(b) Part 3 makes amendments to welfare supplementary payments in respect of the benefit cap,

(**1**) S.I. 2015/2006 (N.I.1); Article 137 was amended by Article 18 of the Welfare Reform and Work (Northern Ireland) Order 2016 (S.I. 2016/999 (N.I. 1))

(**2**) See Article 8(b) of S.R. 1999 No. 481 and section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I))

(c) Part 4 makes amendments to welfare supplementary payments in respect of contributory employment and support allowance,

(d) Part 5 makes amendments to welfare supplementary payments in respect of loss of disability-related premiums,

(e) Part 6 makes amendments to welfare supplementary payments in respect of loss of carer payments, and

(f) Part 7 makes amendments to welfare supplementary payments in respect of loss of disability living allowances.

Non-retrospective effect of provisions terminating or reducing welfare supplementary payment

3. Where an amendment made by these Regulations would have the effect of terminating or reducing a welfare supplementary payment to which a person is entitled, that termination or reduction only has effect from the date on which the amendment comes into operation.

PART 2

RECOVERY OF OVERPAYMENT OF WELFARE SUPPLEMENTARY PAYMENTS

Application of this Part

4.—(1) This Part applies where welfare supplementary payments are paid in excess of what a person is entitled to (in this Part "an overpayment").

(2) In this Part "welfare supplementary payment" means—

(a) welfare supplementary payment under the Welfare Supplementary Payments Regulations (Northern Ireland) 2016(**3**),

(b) welfare supplementary payment under the Welfare Supplementary Payment (Loss of Carer Payments) Regulations (Northern Ireland) 2016(**4**),

(c) welfare supplementary payment under the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016(**5**),

(d) welfare supplementary payment under the Welfare Supplementary Payment (Loss of Disability Living Allowance) Regulations (Northern Ireland) 2016(**6**).

Interpretation of this Part

5. In this Part—

"the 1998 Order" means the Social Security (Northern Ireland) Order 1998(**7**),

"the 2015 Order" means the Welfare Reform (Northern Ireland) Order 2015,

"outstanding amount", see regulation 7,

"overpayment" means welfare supplementary payment paid in excess of entitlement,

(**3**) S.R. 2016 No. 178; as amended by S.R. 2016 No. 389
(**4**) S.R. 2016 No. 253
(**5**) S.R. 2016 No. 254
(**6**) S.R. 2016 No. 250
(**7**) S.I. 1998/1506 (N.I. 10)

"relevant social security benefit" has the same meaning as in section 115CA of the Administration Act(**8**).

Circumstances in which overpayment may be recovered

6.—(1) The Department may recover an amount of overpayment in each of the following four cases.

(2) The first case is where—

(a) a person, whether fraudulently or otherwise, misrepresents or fails to disclose a material fact in connection with the person's welfare supplementary payment or the person's claim for a relevant social security benefit, and

(b) in consequence of that misrepresentation or failure, the person receives an overpayment.

(3) The second case is where—

(a) a person fails to provide notification of a change of circumstances affecting entitlement to welfare supplementary payment, or does so only after an unreasonable delay, and

(b) in consequence of that failure or delay, the person receives an overpayment.

(4) The third case is where—

(a) a mistake, whether in the form of an act or omission, is made in a person's case by the Department or by an officer or a person providing services to the Department, and

(b) in consequence of that mistake, the person receives an overpayment.

(5) The fourth case is where—

(a) welfare supplementary payment is awarded in respect of a decision to reduce or remove entitlement to a relevant social security benefit,

(b) there is—

(i) a revision of this decision under Article 10 of the 1998 Order(**9**),

(ii) a supersession of this decision under Article 11 of the 1998 Order(**10**), or

(iii) an appeal against this decision under Article 13 of the 1998 Order(**11**),

(c) on revision, supersession or appeal, the person is awarded that relevant social security benefit or the amount of the relevant social security benefit that the person is entitled to increases, and

(d) in consequence, it transpires that the amount of welfare supplementary payment received was in excess of entitlement.

(6) The first and second case apply whether or not there has been a right of appeal under Article 13(4) of the 1998 Order in respect of any relevant social security benefit, entitlement to which is linked to the welfare supplementary payment.

(**8**) 1992 c.8; section 115CA was inserted by paragraph 8 of Schedule 6 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4) and amended by section 1(7) and (8) of the Social Security Fraud Act (Northern Ireland) 2001 (c. 17), paragraph 12 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14), Schedule 6 to the Tax Credits Act 2002 (c. 21), paragraph 4(11) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2), paragraph 13 of Schedule 12 and paragraph 26 of Schedule 16 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)) and paragraph 13 of Schedule 2, paragraph 11 of Schedule 9 and Part 1 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015

(**9**) Article 10 was amended by Part 7 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015

(**10**) Article 11 was amended by paragraph 17(a) of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and by Part 7 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015

(**11**) Article 13 was amended by paragraphs 19 and 20 of Schedule 6 to, and Schedule 9 to, the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), Articles 107 and 109 of the Welfare Reform (Northern Ireland) Order 2015 and Article 4(2) of the Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014 (S.I. 2014/886) and applied by section 14(6) of the Justice Act (Northern Ireland) 2016 (c.21 (N.I.))

Means of recovery

7.—(1) An amount recoverable may be recovered—

(a) by means of deduction from certain supplementary payments under regulation 9,

(b) in so far as the outstanding amount is not recovered under regulation 9, by means of deduction from benefits under regulation 10,

(c) in so far as the outstanding amount is not recovered under regulations 9 and 10, by means of deduction from earnings under regulation 11, and

(d) in so far as the outstanding amount is not recovered under regulations 9, 10 and 11, by means of action taken in court under regulation 12.

(2) In addition, where the Department may recover an overpayment by virtue of the fourth case in regulation 6, the amount recoverable may be recovered by means of deduction from back-dated payments awarded under regulation 13.

(3) In this Part "the outstanding amount" means, in relation to an amount recoverable, the amount which for the time being remains to be recovered.

Persons from whom overpayments may be recovered

8.—(1) This regulation applies where there has been an overpayment in respect of a person (A).

(2) If payment is made to A, the amount recoverable is only recoverable from A.

(3) If payment is made to a person appointed under regulation 33 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**12**), then the amount recoverable is recoverable from—

(a) A, and

(b) the person appointed.

(4) If payment is made to a person that A has nominated under regulation 91(3) of the Housing Benefit Regulations (Northern Ireland) 2006(**13**), then the amount recoverable is recoverable from—

(a) A, and

(b) the person nominated.

(5) If payment is made to A's landlord or A's landlord's agent, then the amount recoverable is only recoverable from the landlord or the landlord's agent, as the case may be.

(6) In a case where payment is made to—

(a) a joint-claim couple under regulation 14 or 15 of the Welfare Supplementary Payment (Loss of Disability-Related Premiums) Regulations (Northern Ireland) 2016, or

(b) a joint claim: couples under regulation 28 of those Regulations,

the amount recoverable is recoverable from both members of that couple.

Deduction from certain supplementary payments

9.—(1) The Department may, in the case of a person from whom an amount is recoverable, recover the outstanding amount by making deductions from—

(a) such amounts of welfare supplementary payment as are still to be paid in that person's case, and

(**12**) S.R. 1987 No. 465; relevant amending Regulations are S.R. 1992 No. 7, S.R. 2002 No. 297, S.R. 2005 No. 46 and S.R. 2006 No. 407

(**13**) S.R. 2006 No. 405

(b) in so far as the outstanding amount is not recovered by using the method under sub-paragraph (a), such amounts of housing supplementary payment as are still to be paid in that person's case.

(2) When acting under paragraph (1) in a case where the outstanding amount is less than the total of the amounts referred to in sub-paragraph (a) or (b) (as the case may be), the Department must continue to pay the amounts in question until that total is equal to the outstanding amount.

(3) In this regulation "housing supplementary payment" means a payment under Article 137A of the 2015 Order(**14**).

Deductions from benefits

10.—(1) The Department may, in the case of a person from whom an amount is recoverable, recover the outstanding amount (subject to regulation 7(1)(b)) by making deductions from such amounts as are payable by way of relevant benefit in that person's case.

(2) Each of the benefits listed in Schedule 1 is a "relevant benefit".

(3) In the case of a relevant benefit which is income-related, a deduction under this regulation may, for any week for which the benefit is payable in that person's case, be made at the rate of not more than 3 times 5% of the relevant personal allowance (see paragraph (6)).

(4) In the case of a relevant benefit which is not income-related, a deduction under this regulation may, for any week for which the benefit is payable in that person's case, be made at the rate of not more than one-third of the amount of the benefit that is applicable to that person.

(5) Each of the following relevant benefits is "income-related"—

(a) income support,

(b) income-based jobseeker's allowance,

(c) contribution-based jobseeker's allowance, in a case where if there were no entitlement to it there would be an entitlement to income-based jobseeker's allowance,

(d) income-related employment and support allowance,

(e) contribution-related employment and support allowance, in a case where if there no entitlement to it there would be an entitlement to income-related employment and support allowance,

(f) state pension credit.

(6) "Relevant personal allowance" means the amount for the time being specified in paragraph 1(1)(e) of column (2) of Schedule 2 to the Income Support (General) Regulations 1987(**15**); and where 5% of that allowance is not a multiple of 5 pence, it is to be rounded up to the next higher multiple of 5 pence.

(7) A reference to contribution-based or income-based jobseeker's allowance is to be construed in accordance with the Jobseekers Order(**16**).

(8) A reference to contribution-related or income-related employment support allowance is to be construed in accordance with Part 1 of the Welfare Reform Act (Northern Ireland) 2007(**17**).

(**14**) Article 137A was inserted by Article 19 of the Welfare Reform and Work (Northern Ireland) Order 2016 (S.I. 2016/999 (N.I. 1))

(**15**) S.R. 1987 No. 459; relevant amending Regulations are S.R. 1988 No. 318 and S.R. 1990 No. 213

(**16**) S.I. 1995/ 2705 (N.I. 15); relevant amending provisions are paragraphs 3 and 4 of Schedule 7, and Part V of Schedule 10, to S.I. 1997/3147 (N.I. 11), paragraph 102 of Schedule 6 to S.I. 1998/1506 (N.I. 10), paragraph 46 of Schedule 1 to 2002 c.19, 2004 c.33, paragraph 6(3) of Schedule 3 to 2007 c. 2 (N.I.), sections 4 and 11 of, and paragraphs 9 and 10 of Schedule 1 to, 2010 c.13 (N.I.), Articles 50(3), 55(3) and 66 of, and paragraph 29 of Schedule 2 and Part 1 of Schedule 12 to, S.I. 2015/2006

(**17**) 2007 c. 2 (N.I.)