STATUTORY RULES OF NORTHERN IRELAND

2016 No. 224

SOCIAL SECURITY
HOUSING
RATES

The Social Security (Overpayments and Recovery) Regulations (Northern Ireland) 2016

Made - - - - 3rd May 2016

Laid before Parliament 10th May 2016
Coming into operation in accordance with regulation 1(2) and (3)

The Secretary of State for Works and Pensions makes the following Regulations in exercise of the powers conferred by sections 69(4), (6)(a) and (b), (8) and (9A) to (9C), 69ZA, 69ZB(2)(b) to (5), 69ZC(1) to (3), 69ZD, 69ZF, 69ZG, 69ZH, 72(2), 73(4), (5)(a) and (8) to (10), 74(2) and (3B) to (3D), 109B(4A) and 165(1), (4), (5) and (6) of the Social Security Administration (Northern Ireland) Act 1992(**1**) and Article 38(1) of the Welfare Reform (Northern Ireland) Order 2015(**2**).

Those powers are exercisable by the Secretary of State by virtue of Article 4(1) of the Welfare Reform (Northern Ireland) Order 2015.

(**1**) 1992 c. 8; section 69(8) was amended by paragraph 8 of Schedule 4 to the Tax Credits Act 2002 (c. 21) and is amended by section 107(2) of the Welfare Reform Act 2012 (c. 5) and subsections (9A) to (9C) are inserted by Article 110(1) of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)), section 69ZA was inserted by Article 71(1) of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and amended by Schedule 8 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)) and Article 110(2) of the Welfare Reform (Northern Ireland) Order 2015, sections 69ZB to 69ZH are inserted by Article 109(1) of the Welfare Reform (Northern Ireland) Order 2015, section 72(2) was amended by paragraph 11(b) of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), paragraph 4(8)(a) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and paragraph 7 of Schedule 2 to the Welfare Reform (Northern Ireland) Order 2015, section 73(5) was added by Article 15 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997 (S.I. 1997/1182 (N.I. 11)) and paragraphs (8) to (10) are inserted by Article 110(3) of the Welfare Reform (Northern Ireland) Order 2015, section 74(3B) to (3D) is inserted by Article 110(4) of the Welfare Reform (Northern Ireland) Order 2015, section 109B was inserted by section 14(1) of the Social Security Fraud Act (Northern Ireland) 2001 (c. 17 (N.I.)) and subsection (4A) is inserted by Article 109(4)(a) of the Welfare Reform (Northern Ireland) Order 2015 and section 165(1) was amended by paragraph 49(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and section 18(5) of the National Insurance Contributions Act 2014 (c. 7) and subsection (6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998.

(**2**) S.I. 2015/2006 (N.I.1).

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (Overpayments and Recovery) Regulations (Northern Ireland) 2016.

(2) The following provisions come into operation on 20th June 2016—

(a) this Part;

(b) Part 6;

(c) regulation 31 except paragraphs (2)(c), (d) and (f), (4)(b), and paragraph (7) in so far as it relates to universal credit;

(d) regulation 32(1), (2) in so far as it relates to personal independence payment, and (3); and

(e) regulation 33(1), (2) in so far as it relates to personal independence payment, and (3).

(3) All other provisions come into operation immediately after the coming into operation of the Universal Credit Regulations (Northern Ireland) 2016(**3**).

Interpretation

2.—(1) In these Regulations—

"the 2007 Act" means the Welfare Reform Act (Northern Ireland) 2007(**4**);

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

"the Administration Act" means the Social Security Administration (Northern Ireland) Act 1992;

"the Claims and Payments Regulations" means the Universal Credit, Personal Independence payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016(**5**);

"assessment period" has the same meaning as in the Universal Credit Regulations;

"claimant" means the person who has claimed the benefit concerned;

"couple" has the same meaning as in Part 2 of the 2015 Order;

"employment and support allowance" means an allowance under Part 1 of the 2007 Act (as amended by Schedule 3 and Part 1 of Schedule 12 to the 2015 Order that remove references to an income-related allowance);

"housing costs" means any amount included in an award of universal credit in respect of rent payments as defined in paragraph 2 of Schedule 1 to the Universal Credit Regulations;

"jobseeker's allowance" means an allowance under the Jobseekers Order (as amended by Part 1 of Schedule 12 to the 2015 Order that remove references to an income-based allowance);

"the Jobseekers Order" means the Jobseekers (Northern Ireland) Order 1995(**6**);

"liable person" means the person from whom a recoverable amount is recoverable;

"overpayment" means an amount of—

(**3**) S.R. 2016 No. 216.
(**4**) 2007 c. 2 (N.I.).
(**5**) S.R. 2016 No. 220.
(**6**) S.I. 1995/2705 (N.I. 15).

(a) universal credit, jobseeker's allowance or employment and support allowance which may be recovered by the Department by virtue of section 69ZB(1) of the Administration Act;

(b) working tax credit or child tax credit which may be recovered under section 29 of the Tax Credits Act 2002(**7**) as modified by regulation 10(4) of the Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016(**8**);

"overpayment period" means the period over which an overpayment accrues;

"partner" means, where the person being referred to is a member of a couple, the other member of the couple;

"recoverable amount" is to be construed in accordance with regulation 3;

"universal credit" means universal credit under Part 2 of the 2015 Order;

"the Universal Credit Regulations" means the Universal Credit Regulations (Northern Ireland) 2016.

(2) Subject to paragraph (3), the Interpretation Act (Northern Ireland) 1954(**9**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(3) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

PART 2

Recoverability

Recoverable amounts

3.—(1) In these Regulations "recoverable amount" means—

(a) subject to regulations 7 to 9, the amount of any overpayment; and

(b) any other amount recoverable under any provision of the Administration Act specified in paragraph (2).

(2) Those provisions are—

(a) section 69ZE(**10**) (court action etc.);

(b) section 69ZG (recovery of payments on account);

(c) section 69ZH (recovery of hardship payments etc.); and

(d) section 109B(4)(**11**) (penalty as alternative to prosecution: colluding employers, etc.).

Persons from whom an overpayment may be recovered

4.—(1) The following paragraphs apply for determining the person from whom an overpayment is recoverable in the circumstances specified in those paragraphs.

(2) Where the payee is a person appointed under regulation 52 of the Claims and Payments Regulations (persons unable to act) or a person to whom the Department has directed that payment

(**7**) 2002 c. 21.
(**8**) S.R. 2016 No. 226.
(**9**) 1954 c. 33 (N.I.).
(**10**) Section 69ZE is inserted by Article 109(1) of the Welfare Reform (Northern Ireland) Order 2015.
(**11**) Subsection (4) is substituted by Article 109(4)(a) of the Welfare Reform (Northern Ireland) Order 2015.

be made in accordance with regulation 53 of those Regulations (payment to another person on the claimant's behalf), then the overpayment is recoverable from the claimant in addition to the payee.

(3) Where the payee is a person to whom universal credit, jobseeker's allowance or employment and support allowance has been paid pursuant to Schedule 5 to the Claims and Payments Regulations (deductions from benefit and direct payment to third parties), then, to the extent that the amount paid does not exceed the amount payable to the payee under that Schedule, the overpayment is recoverable from the claimant instead of the payee.

(4) Paragraphs (5) to (7) apply only in relation to overpayments of housing costs.

(5) Where the Department is satisfied that an overpayment occurred in consequence of any change of dwelling occupied by the claimant as the claimant's home, then if the claimant and the payee are not the same person, the overpayment is recoverable from the claimant in addition to the payee.

(6) Where the Department is satisfied that an overpayment occurred in consequence of a misrepresentation, or a failure to disclose a material fact (in either case, whether fraudulent or otherwise), by any person ("M"), then, if M and the payee are not the same person, the overpayment is recoverable from M instead of the payee.

(7) Where the Department is satisfied that an overpayment occurred for a reason other than that mentioned in paragraph (5) or (6), then, except where paragraph (2) or (8) applies in relation to the overpayment, if the claimant and the payee are not the same person, the overpayment is recoverable from the claimant instead of the payee.

(8) This paragraph applies where an overpayment occurred due to the amount of the payment exceeding the amount of housing costs for which the claimant is liable.

(9) In this regulation "payee" means the person to whom the overpayment has been paid.

Circumstances in which a determination need not be reversed, varied, revised or superseded prior to recovery

5. Section 69ZB(3) of the Administration Act (recovery of overpayments of certain benefits) does not apply where the circumstances of the overpayment do not provide a basis for the decision pursuant to which the payment was made to be revised under Article 10 of the Social Security (Northern Ireland) Order 1998(**12**) (revision of decisions) or superseded under Article 11 of that Order (decisions superseding earlier decisions).

PART 3

Prevention of duplication of payments

Duplication and prescribed income

6.—(1) The income prescribed for the purpose of section 69ZB(5) of the Administration Act (recovery of overpayments of certain benefits) is any income which falls to be taken into account in accordance with Chapters 2 and 3 of Part 6 of the Universal Credit Regulations (calculation of capital and income).

(2) The date prescribed for the payment of income for the purpose of that subsection is—

(a) where the payment of income is made in respect of a specific day or period, that day or the first day of that period;

(**12**) S.I. 1998 No. 1506 (N.I. 10); Article 11 was amended by paragraph 17 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999.

(b) where the payment of income is not so made, the day or first day of the period to which it is fairly attributable.

PART 4

Calculation of recoverable amount of an overpayment

Diminution of capital

7.—(1) Paragraph (2) applies where—

(a) there is an overpayment of universal credit which occurred as a consequence of an error relating to the amount of a person's capital; and

(b) the overpayment period is 3 months or more.

(2) Where this paragraph applies, the Department must, for the purpose only of calculating the recoverable amount of that overpayment—

(a) at the end of the first 3 months of the overpayment period, treat the amount of that capital as having been reduced by the amount of universal credit overpaid during those 3 months;

(b) at the end of each subsequent period of 3 months, if any, of the overpayment period, treat the amount of that capital as having been further reduced by the amount of universal credit overpaid during the immediately preceding 3 months.

(3) Capital is not to be treated as reduced over any period other than 3 months in any circumstances other than those for which paragraph (2) provides.

Sums to be deducted

8.—(1) In calculating the recoverable amount of an overpayment of jobseeker's allowance or employment and support allowance, the Department must deduct the amounts specified in paragraphs (2) and (3).

(2) Any amount which has been offset under regulation 16.

(3) Any additional amount of universal credit which is not payable to the claimant or the claimant's partner under the original or any other determination but which should have been determined to be payable in respect of all or part of the overpayment period to the claimant, or to the claimant and the claimant's partner jointly—

(a) on the basis of the claim for universal credit as presented to the Department;

(b) on the basis of that claim as it would have appeared if any change of circumstances, except a change of the dwelling which the claimant occupies as the claimant's home, had been notified at the time that change occurred;

(c) where the overpayment arose by virtue of a misrepresentation or a failure to disclose a material fact, on the basis that that misrepresentation or failure had been remedied prior to the award being made; or

(d) where the overpayment arose by virtue of an error made by, or on behalf of, the Department, on the basis that that error had not been made.

Sums to be deducted: change of dwelling

9.—(1) This regulation applies where an overpayment of housing costs has occurred in the following circumstances—