STATUTORY RULES OF NORTHERN IRELAND

2008 No. 504

HOUSING; RATES

The Housing Benefit (Amendment No. 2) Regulations (Northern Ireland) 2008

Made - - - - 19th December 2008

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 5(1)(a), 73(3) and (4) and 165(1), (4) and (6) of the Social Security Administration (Northern Ireland) Act 1992(**1**) and now vested in it(**2**).

The Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it(**3**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Housing Benefit (Amendment No. 2) Regulations (Northern Ireland) 2008 and, subject to paragraph (2), shall come into operation on 6th April 2009.

(2) Regulations 3(2) and 4 shall come into operation on 27th January 2009.

(3) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Housing Benefit Regulations

2.—(1) The Housing Benefit Regulations (Northern Ireland) 2006(**5**) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 98 (person from whom recovery may be sought)—

(a) for paragraph (2) substitute—

(**1**) 1992 c. 8; section 73(3) was substituted by section 62 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and in section 165 subsection (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 subsection (6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

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

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

(**4**) 1954 c. 33 (N.I.)

(**5**) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2008 No. 378

"(2) For the purposes of section 73(3)(b) of the Administration Act (recovery from such other person, as well as or instead of the person to whom the overpayment was made), where recovery of an overpayment is sought by the Executive—

(a) subject to paragraph (1) and where sub-paragraph (b) or (c) does not apply, the overpayment is recoverable from the claimant as well as the person to whom the payment was made, if different;

(b) 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 by or on behalf of any person to whom the payment was made, the overpayment is only recoverable from any person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made; or

(c) in a case where an overpayment arose in consequence of an official error where the claimant, or a person acting on the claimant's behalf, or any person to whom the payment was paid, or any person acting on their behalf, 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, the overpayment is only recoverable from any such person instead of, if different, the person to whom the payment was made.";

(b) in paragraph (4) for "paragraph (2)(a)(ii)" substitute "paragraph (2)(c)"; and

(c) omit paragraph (5).

(3) In regulation 99 (method of recovery)—

(a) in paragraph (1) for "regulation 102" substitute "regulation 102(1)";

(b) after paragraph (1) insert—

"(1A) Where an overpayment is recoverable from a claimant who has one or more partners, a relevant authority may recover the overpayment by deduction from any housing benefit payable to the claimant's partner, or where it is unable to do so, may request the Department to recover any recoverable overpayment from the benefits prescribed in regulation 102(2A), provided that the claimant and that partner were a couple both at the time of the overpayment and when the deduction is made.";

(c) in paragraph (3)—

(i) after "permitted by paragraph (1)" insert "or (1A)", and

(ii) after "a claimant" insert "or a claimant's partner"; and

(d) in paragraph (4) for "who has" substitute "or a claimant's partner, where the claimant has".

(4) In regulation 102 (recovery of overpayments from prescribed benefits)—

(a) in paragraph (1)(**6**) at the beginning insert "Subject to paragraph (2A),";

(b) after paragraph (2) insert—

"(2A) For the purposes of section 73(4) of the Administration Act, where recovery is sought from the claimant's partner under regulation 99(1A), the benefits prescribed by this regulation are—

(a) income support;

(b) income-based jobseeker's allowance;

(c) state pension credit; and

(d) income-related employment and support allowance."; and

(**6**) Paragraph (1) was amended by regulation 3(16) of S.R. 2008 No. 378

(c) for paragraph (3) substitute—

"(3) The Department shall, if requested to do so by an authority under regulation 99, recover a recoverable overpayment by deduction from any of the benefits prescribed in paragraph (1) or (in the case of the claimant's partner) any of the benefits prescribed in paragraph (2A) provided that the Department is satisfied that—

(a) a recoverable overpayment has been made in consequence of a misrepresentation of or a failure to disclose a material fact (in either case whether fraudulently or otherwise), by a claimant or any other person to whom a payment of housing benefit has been made; and

(b) the person from whom it is sought to recover the overpayment is receiving sufficient amounts of any of the benefits prescribed in paragraph (1) or (2A) (as the case may be) to enable deductions to be made for the recovery of the overpayment.".

Amendment of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations

3.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(**7**) shall be amended in accordance with paragraphs (2) to (5).

(2) In regulation 62 (time and manner in which claims are to be made) omit paragraph (13)(**8**).

(3) In regulation 79 (person from whom recovery may be sought)—

(a) for paragraph (2) substitute—

"(2) For the purposes of section 73(3)(b) of the Administration Act (recovery from such other person, as well as or instead of the person to whom the overpayment was made), where recovery of an overpayment is sought by the Executive—

(a) subject to paragraph (1) and where sub-paragraph (b) or (c) does not apply, the overpayment is recoverable from the claimant as well as the person to whom the payment was made, if different;

(b) 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 by or on behalf of any person to whom the payment was made, the overpayment is only recoverable from any person who misrepresented or failed to disclose that material fact instead of, if different, the person to whom the payment was made; or

(c) in a case where an overpayment arose in consequence of an official error where the claimant, or a person acting on the claimant's behalf, or any person to whom the payment was paid, or any person acting on their behalf, 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, the overpayment is only recoverable from any such person instead of, if different, the person to whom the payment was made.";

(b) in paragraph (4) for "paragraph (2)(a)(ii)" substitute "paragraph (2)(c)"; and

(c) omit paragraph (5).

(4) In regulation 80 (method of recovery)—

(a) in paragraph (1) for "regulation 83" substitute "regulation 83(1)";

(**7**) S.R. 2006 No. 406; relevant amending Regulations are S.R. 2008 Nos. 378 and 410
(**8**) Paragraph (13)(b) was amended by regulation 5(b) of S.R. 2008 No. 410