1988 No. 142

SOCIAL SECURITY

The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988

Made	*8th April 1988*
Coming into operation . .	*11th April 1988*

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SCHEDULE — Revocations

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 24A, 28, 52(1)(*s*) and (*t*), 54, 55 and 84(1) of the

Social Security (Northern Ireland) Order 1986(**a**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1988 and shall come into operation on 11th April 1988.

(2) In these regulations—

"the Act" means the Social Security (Northern Ireland) Act 1975(**b**);

"the Order" means the Social Security (Northern Ireland) Order 1986;

"adjudicating authority" means, as the case may be, the Chief or any other adjudication officer, a social security appeal tribunal, the Chief or any other Social Security Commissioner or a Tribunal of Commissioners;

"benefit" means any benefit under the Act(**c**), child benefit, family credit, income support and any payment under Article 33(2)(*a*) of the Order(**d**) (maternity and funeral expenses);

"child benefit" means benefit under Part II of the Child Benefit (Northern Ireland) Order 1975(**e**);

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**f**);

"family credit" means family credit under Part III of the Order;

"guardian's allowance" means an allowance under section 38 of the Act(**g**);

"income support" means income support under Part III of the Order and includes personal expenses addition, special transitional addition and

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(**a**) S.I. 1986/1888 (N.I. 18); Article 24A was inserted by paragraph 18 of Schedule 4 to the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)). Article 54 was amended by paragraph 13 of Schedule 3, paragraph 20 of Schedule 4 and Schedule 5 to the Social Security (Northern Ireland) Order 1988. Article 81(1) provides for section 155(1) to (3A) of the Social Security (Northern Ireland) Act 1975 (c. 15) (extent of powers) to apply to the enabling provisions under which these regulations are made; section 155(3A) of that Act was inserted by Article 63(1)

(**b**) 1975 c. 15

(**c**) Amendments altering the range of benefits available under this Act were made by Articles 2(3), 17, 18 and 24 of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)), Article 32 of the Social Security (Northern Ireland) Order 1982 (S.I. 1982/1084 (N.I. 16)), Articles 5 to 7 of, and Schedule 3 to, the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)) and Articles 37 to 43 of, and Schedule 3 and paragraph 13 of Schedule 4 to, the Social Security (Northern Ireland) Order 1986

(**d**) Article 33(2)(*a*) was amended by Article 3 of the Social Fund (Maternity and Funeral Expenses) (Northern Ireland) Order 1987 (S.I. 1987/464 (N.I. 8))

(**e**) S.I. 1975/1504 (N.I. 16)

(**f**) S.R. 1987 No. 465; the relevant amending regulations are S.R. 1988 No. 67

(**g**) Section 38 was amended by paragraph 13 of Schedule 4 to the Child Benefit (Northern Ireland) Order 1975 and Article 46 of the Social Security (Northern Ireland) Order 1986

transitional addition as defined in the Income Support (Transitional) Regulations (Northern Ireland) 1987(**a**);

"Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987(**b**);

"severe disablement allowance" means an allowance under section 36 of the Act(**c**).

PART II

INTERIM PAYMENTS

Making of interim payments

2.—(1) The Department may, in its discretion, make an interim payment, that is to say a payment on account of any benefit to which it appears to the Department that a person is or may be entitled, in the following circumstances—

(*a*) a claim for that benefit has not been made in accordance with the Claims and Payments Regulations and it is impracticable for such a claim to be made immediately;

(*b*) a claim for that benefit has been so made, but it is impracticable for it or a reference, review, application or appeal which relates to it to be determined immediately; or

(*c*) an award of that benefit has been made but it is impracticable for the beneficiary to be paid immediately, except by means of an interim payment.

(2) On or before the making of an interim payment the recipient shall be given notice in writing of his liability under this Part to have it brought into account and to repay any overpayment.

Bringing interim payments into account

3. Where it is practicable to do so and notice has been given as required by regulation 2(2), the interim payment shall be brought into account as follows—

(*a*) any interim payment made in anticipation of an award of benefit shall be offset by the adjudicating authority in reduction of the benefit to be awarded; and

(*b*) any interim payment (whether or not made in anticipation of an award) which is not offset under paragraph (*a*) shall be deducted by the Department from—

(i) the sum payable under the award of benefit on account of which the interim payment was made; or

(ii) any sum payable under any subsequent award of the same benefit to the same person.

(**a**) S.R. 1987 No. 460

(**b**) S.R. 1987 No. 459; the relevant amending regulations are S.R. 1988 No. 146

(**c**) Section 36 was amended by Article 5(1) of the Health and Social Security (Northern Ireland) Order 1984 and paragraph 2 of Schedule 4 to the Social Security (Northern Ireland) Order 1985 (S.I. 1985/1209 (N.I. 16))

Recovery of overpaid interim payments

4.—(1) Where the adjudicating authority has determined that an interim payment has been overpaid in circumstances which fall within paragraph (3) and that notice has been given as required by regulation 2(2), that authority shall determine the amount of the overpayment.

(2) The amount of the overpayment shall be recoverable by the Department by the same procedures and subject to the same conditions as if it were recoverable under Article 54(1) of the Order.

(3) The circumstances in which an interim payment may be determined to have been overpaid are as follows—

(*a*) an interim payment has been made under regulation 2(1)(*a*) or (*b*) but—

(i) the recipient has failed to make a claim in accordance with the Claims and Payments Regulations as soon as practicable or has made a claim which is either defective or is not made on the form approved for the time being by the Department and the Department has not treated the claim as duly made under regulation 4(7) of those regulations,

(ii) it has been determined that there is no entitlement on the claim, or that the entitlement is less than the amount of the interim payment, or that benefit on the claim is not payable, or

(iii) the claim has been withdrawn under regulation 5(2) of the Claims and Payments Regulations; or

(*b*) an interim payment has been made under regulation 2(1)(*c*) which exceeds the entitlement under the award of benefit on account of which the interim payment was made.

(4) For the purposes of this regulation a claim is defective if it is made on the form approved for the time being by the Department but is not completed in accordance with the instructions on the form.

PART III

OFFSETTING

Offsetting prior payment against subsequent award

5.—(1) Subject to regulation 6 (exception from offset of recoverable overpayment), any sum paid in respect of a period covered by a subsequent determination in any of the cases set out in paragraph (2) shall be offset against arrears of entitlement under the subsequent determination and, except to the extent that the sum exceeds the arrears, shall be treated as properly paid on account of them.

(2) Paragraph (1) applies in the following cases—

Case 1: Payment under an award which is revised, reversed or varied

Where a person has been paid a sum by way of benefit under an award which is subsequently varied on appeal or revised on a review.