



STATUTORY INSTRUMENTS.

S.I. No. 461 of 2011

SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND
CONTROL) (AMENDMENT) (No. 4) (OVERPAYMENTS)
REGULATIONS 2011

(Prn. A11/1650)

SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND CONTROL) (AMENDMENT) (No. 4) (OVERPAYMENTS) REGULATIONS 2011

I, JOAN BURTON, Minister for Social Protection, in exercise of the powers conferred on me by sections 4 and 341 of the Social Welfare Consolidation Act 2005 (No. 26 of 2005) (adapted by the Social and Family Affairs (Alteration of Name of Department and Title of Minister) Order 2010 (S.I. No. 186 of 2010)) and by section 342 of that Act (amended by section 17 of the Social Welfare and Pensions Act 2011 (No. 9 of 2011)), with the consent of the Minister for Public Expenditure and Reform, hereby make the following Regulations:

Citation and construction.

1. (1) These Regulations may be cited as the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 4) (Overpayments) Regulations 2011.

(2) These Regulations and the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2011 shall be construed together as one and may be cited together as the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2011.

Definitions.

2. In these Regulations “Principal Regulations” means the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007).

Revocation.

3. The Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 3) (Overpayments) Regulations 2011 (S.I. No. 392 of 2011) are revoked.

Recovery of overpayment by means of deduction from social welfare payment.

4. The Principal Regulations are amended by substituting the following article for article 245—

“Recovery of overpayment by means of deduction from social welfare payment.

245. (1) Subject to sub-article (2), where a person is required to repay an amount of any—

(a) benefit described in section 39(1),

(b) assistance described in section 139(1),

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 13th September, 2011.

- (c) respite care grant under Part 5,
- (d) family income supplement under Part 6,
- (e) continued payment for qualified children under Part 7, or
- (f) payment pursuant to section 239,

and that person is entitled to, or subsequently becomes entitled to, any payment referred to in paragraphs (a) to (f), recovery of the overpayment may take the form of—

- (i) withholding all or part of arrears of any payment referred to in paragraphs (a) to (f) due to that person under the Principal Act, or
- (ii) making deductions from ongoing payments having regard to the total amount to be recovered and the person's ability to repay,

or both.

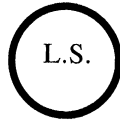
(2) Recovery of an overpayment, as provided for in sub-article (1), shall not cause, without the prior written agreement of the person liable to repay the overpayment, that person's weekly payment of benefit under sub-article (1)(a) or assistance under sub-article (1)(b), as the case may be, to fall below the weekly rate of supplementary welfare allowance appropriate to his or her family circumstances that would be payable if the person was not in receipt of any benefit or assistance.”.

Reduction or cancellation of sum to be repaid.

5. Article 246 of the Principal Regulations is amended by substituting the following sub-article for sub-article (3):

“(3) Other than in the case of a person to whom section 342A applies, the amount of an overpayment to be repaid may be reduced by the amount of any other payment referred to in paragraphs (a) to (f) of article 245(1) to which the person would otherwise have been entitled in the period to which the overpayment relates had he or she not been in receipt of the payment which gave rise to the overpayment.”.

The Minister for Public Expenditure and Reform consents to the foregoing Regulations.



GIVEN under my Official Seal,
9 September 2011.

BRENDAN HOWLIN,
Minister for Public Expenditure and Reform.



GIVEN under my Official Seal,
9 September 2011.

JOAN BURTON,
Minister for Social Protection.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations revoke the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 3) (Overpayments) Regulations 2011 (S.I. No. 392 of 2011) as they were made incorrectly and re-enact the provisions that were contained in those Regulations.

Sections 17 and 18 of the Social Welfare and Pensions Act 2011 provide that where a fraudulent social welfare overpayment occurs, any other social welfare benefits to which that person may have qualified for during the period in which that overpayment occurred will not be offset against the amount of the overpayment to be recovered.

These Regulations make consequential changes to Part 9 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007, which deals with overpayments, so as to—

- (a) update the list of social welfare benefits from which overpayments can be recovered, in line with the list set out in section 342 of the Social Welfare Consolidation Act 2005; and
- (b) limit the application of article 246(3) of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to non-fraudulent cases. Article 246(3) allows for the offsetting of other potential social welfare entitlements to which the person may have qualified for during the period in which the overpayment occurred against the amount of the overpayment.

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