

1997 No. 2813

SOCIAL SECURITY

The Social Security (Penalty Notice)
Regulations 1997

<i>Made</i> - - -	<i>25th November 1997</i>
<i>Laid before Parliament</i>	<i>27th November 1997</i>
<i>Coming into force</i>	<i>18th December 1997</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 115A(2) (b), 189(1), (3) and (5) and 191 of the Social Security Administration Act 1992(a), and of all other powers enabling her in that behalf, by this instrument which is made before the end of the period of 6 months beginning with the coming into force of the aforesaid section 115A(2) (b)(b), after consultation with organisations appearing to her to be representative of the authorities concerned(c), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Social Security (Penalty Notice) Regulations 1997 and shall come into force on 18th December 1997.

Notice

2.—(1) Where the Secretary of State or authority gives to a person a written notice under section 115A(2) of the Social Security Administration Act 1992 ▶¹(“the 1992 Act”) in a case to which section 115A(1) of that Act applies◀, the notice shall contain the information that—

- (a) the penalty ▶¹◀ applies to an overpayment which is recoverable under section 71 ▶¹71ZB◀, 71A, 75 or 76 of the Social Security Administration Act 1992(d);
- (b) the penalty ▶¹◀ applies where it appears to the Secretary of State or authority that the making of the overpayment was attributable to an act or omission by the person and that there are grounds for instituting proceedings for an offence relating to the overpayment;

¹Words in reg. 2(1) & (a) inserted and omitted by reg. 5(2)(a) & (b) of S.I. 2014/591 as from 28.4.14. See reg. 5(5) of S.I. 2014/591 for details for when to apply.

- (a) 1992 c. 5; section 115A was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47) section 15; section 191 is an interpretation provision and is cited because of the meaning assigned to the word “prescribe”.
- (b) See section 173(5) of the Social Security Administration Act 1992.
- (c) See section 176(1) of the Social Security Administration Act 1992.
- (d) Section 71(2) and (5) was amended by and section 71(5A) was inserted by the Social Security (Overpayments) Act 1996 (c. 51) section 1; section 71(10A) and (10B) was inserted by the Jobseekers Act 1995 (c. 18) section 32(1); section 71(11) was amended by the Jobseekers Act 1995 Schedule 2, paragraph 48.
Section 71A was inserted by the Jobseekers Act 1995 section 18.
Section 75(1) was amended by Schedules 1 and 2 of, and section 75(5) to (7) was inserted by section 16 of, the Social Security (Fraud) Act 1997.
Section 76(1) was amended by the Local Government Finance Act 1992 (c. 14) Schedule 9, paragraph 15(1) and the Local Government Finance (Scotland) Act 1994 (c. 39) Schedule 13, paragraph 175(3); section 76(2) was amended by the Local Government Finance Act 1992 Schedule 9, paragraph 15(2) and Schedule 14; section 76(3)(b) was amended by the Local Government Finance Act 1992 Schedule 9, paragraph 15(3); section 76(4), (5) and (7) was amended by the Local Government Finance Act 1992 Schedule 9, paragraph 15(4) and Schedule 14. The amendments have effect in relation to council tax benefit; section 76 as originally in force continues to have effect for community charge benefit by virtue of the Local Government Finance Act 1992 section 118(4).

Reg. 2

¹Words in reg. 2(2)(c)-(d) substituted, para. (1A) and words in para. (2) inserted by reg. 5(2)(d)-(e), (3) & (4) of S.I. 2014/591 as from 28.4.14. See reg. 5(5) of S.I. 2014/591 for when to apply.

- (c) the penalty is ¹50 per cent. of the amount of the overpayment (subject to the maximum and minimum amounts prescribed in section 115A(3) of the 1992 Act)◀, is payable in addition to repayment of the overpayment and is recoverable by the same methods as those by which the overpayment is recoverable;
- (d) a person who agrees to pay a penalty may withdraw the agreement within ¹14◀ days (including the date of the agreement) by notifying the Secretary of State or authority in the manner specified by the Secretary of State or authority; if the person withdraws the agreement, so much of the penalty as has already been recovered shall be repaid and he will no longer be immune from proceedings for an offence;
- (e) if it is decided on review or appeal (or in accordance with regulations) that the overpayment is not recoverable or due, so much of the penalty as has already been recovered shall be repaid;
- (f) if the amount of the overpayment is revised on review or appeal, except as covered by a new agreement to pay the revised penalty, so much of the penalty as has already been recovered shall be repaid and the person will no longer be immune from proceedings for an offence;
- (g) the payment of a penalty does not give the person immunity from prosecution in relation to any other overpayment or any offence not relating to an overpayment.

¹(1A) Where the Secretary of State or authority gives to a person written notice under section 115A(2) of the 1992 Act in a case to which section 115(1A) of that Act applies, the notice shall contain the information that—

- (a) the penalty applies where it appears to the Secretary of State or authority that there are grounds for instituting proceedings against the person for an offence relating to an act or omission on the part of the person in relation to any benefit;
- (b) if an overpayment attributable to the act or omission had been made, the overpayment would have been recoverable under section 71, 71ZB, 71A, 75 or 76 of the 1992 Act;
- (c) the penalty is £350;
- (d) a person who agrees to pay the penalty may withdraw the agreement within 14 days (including the date of the agreement) by notifying the Secretary of State or authority in the manner specified by the Secretary of State or authority; if the person withdraws the agreement, so much of the penalty as has already been recovered shall be repaid and he will no longer be immune from proceedings for an offence;
- (e) if it is decided on review or appeal (or in accordance with regulations) that any overpayment attributable to the act or omission would not have been recoverable or due, so much of the penalty as has already been recovered shall be repaid;
- (f) the payment of a penalty does not give the person immunity from prosecution in relation to any overpayment or any other offence not relating to an overpayment.◀

(2) The notice shall ¹in either case◀ set out—

- (a) the manner specified by the Secretary of State or authority by which the person may agree to pay a penalty;
- (b) the manner specified by the Secretary of State or authority by which the person may notify the withdrawal of his agreement to pay a penalty.

Signed by authority of the Secretary of State for Social Security.

25th November 1997

John Y. Denham
Parliamentary Under-Secretary of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument is made before the end of the period of 6 months beginning with the coming into force of the enactment under which the Regulations are made. The Regulations contained in this instrument are accordingly exempt by section 173(5) of the Social Security Administration Act 1992, from reference to the Social Security Advisory Committee and have not been so referred.

Section 115A of the Social Security Administration Act 1992 provides for a person who has caused an overpayment of social security benefit, housing benefit, community charge benefit or council tax benefit, to pay a penalty in lieu of criminal proceedings. In this connection the Secretary of State or local authority may give the person a notice about the agreement to pay a penalty. These Regulations require such a notice to set out certain additional information relating to the operation of these provisions.

These Regulations do not impose any costs on business.

