

## SCHEDULES

### SCHEDULE 4

#### RECOVERY OF SUMS EQUIVALENT TO BENEFIT FROM COMPENSATION PAYMENTS IN RESPECT OF ACCIDENTS, ETC: SUPPLEMENTARY PROVISION

### PART III

#### ADMINISTRATION AND ADJUDICATION

##### *Provision of information*

**13.**—(1) Any person who is, or is alleged to be, liable in respect of an accident, injury or disease, or any person acting on his behalf, shall furnish the Department with the prescribed information relating to any person seeking compensation, or in respect of whom compensation is sought, in respect of that accident, injury or disease.

(2) Any person who claims a relevant benefit or who has been in receipt of such a benefit or, if he has died, the personal representatives of such a person, shall furnish the Department with the prescribed information relating to any accident, injury or disease suffered by that person.

(3) Any person—

(a) who is the employer of a person who suffers or has suffered an accident, injury or disease; or

(b) who has been the employer of such a person at any time during the relevant period, shall furnish the Department with the prescribed information relating to the payment of statutory sick pay in respect of that person.

(4) In sub-paragraph (3) “employer” has the same meaning as it has in Part II of the 1982 Order.

(5) Any person furnishing information under this paragraph shall do so in the prescribed manner, at the prescribed place and within the prescribed time.

##### *Applications for certificates of total benefit*

**14.**—(1) If at any time before he makes the compensation payment in question the compensator applies to the Department in accordance with paragraph 3 for a certificate of total benefit relating to the victim in question—

(a) the Department shall furnish him with such a certificate before the end of the period of 4 weeks, or such other number of weeks as may be prescribed, following the day on which the application is, or is deemed in accordance with regulations to be, received; and

(b) any certificate so furnished shall, in particular, specify for the purposes of paragraph 3(2) (a) a date not earlier than the date of the application.

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(2) Where it furnishes any person with a certificate of total benefit, the Department shall also provide the information contained in that certificate to the person who appears to the Department to be the victim in relation to the compensation payment in question.

(3) The victim may apply to the Department for particulars of the manner in which any amount, rate or period specified in a certificate of total benefit has been determined.

*Liability of compensator unenforceable if certificate not issued within time limit*

**15.—**(1) The liability of the compensator to make the relevant deduction and payment relating to the first compensation payment after the default date shall not be enforceable if—

- (a) he has made a request under paragraph 14(1) which—
  - (i) accurately states the prescribed particulars relating to the victim and the accident, injury or disease in question; and
  - (ii) specifies the name and address of the person to whom the certificate is to be sent;
- (b) he has in his possession a written acknowledgment, sent to him in accordance with regulations, of the receipt of the request; and
- (c) the Department does not, within the time limit referred to in paragraph 14(1) send the certificate to the person specified in the request as the person to whom the certificate is to be sent, at the address so specified,

and accordingly, where those liabilities cease to be enforceable, nothing in the recoupment provisions shall prevent the compensator from making that compensation payment.

(2) In any case where—

- (a) the liability to make the relevant deduction and payment becomes unenforceable by virtue of this paragraph; but
- (b) the compensator nevertheless makes that deduction and payment,

he shall be treated for all purposes as if the liability had remained enforceable.

(3) Where the compensator, in reliance on this paragraph, does not make the relevant deduction and payment, then—

- (a) he shall within 14 days of the default date give the Department notice of that fact together with such other particulars as may be prescribed; and
- (b) in determining the amount of the relevant deduction and payment to be made in connection with any subsequent compensation payment made by the same or any other compensator, the amount which, apart from this paragraph, would have fallen to be deducted and paid by him shall continue to form part of the total benefit and shall not be treated as if it had been paid.

(4) If, in the opinion of the Department, circumstances have arisen which adversely affect normal methods of communication—

- (a) the Department may by order provide that no liability shall become unenforceable by virtue of this paragraph during a specified period not exceeding 3 months; and
- (b) the Department may continue any such order in force for further periods not exceeding 3 months at a time.

(5) In this paragraph “the default date” means the date on which the time limit mentioned in sub-paragraph (1)(c) expires.

### *Review of certificates of total benefit*

**16.—**(1) The Department may review any certificate of total benefit if the Department is satisfied that it was issued in ignorance of, or was based on a mistake as to, some material fact or that a mistake (whether in computation or otherwise) has occurred in its preparation.

(2) On any such review the Department may either—

- (a) confirm the certificate; or
- (b) issue a fresh certificate containing such variations as it considers appropriate,

but the Department shall not so vary the certificate as to increase the total benefit.

(3) In any case where—

- (a) one or more relevant payments have been made; and
- (b) in consequence of a review under this paragraph, it appears that the aggregate amount so paid exceeds the amount that ought to have been paid,

the Department shall pay the intended recipient an amount equal to the excess.

### *Appeals*

**17.—**(1) An appeal shall lie in accordance with this paragraph against any certificate of total benefit at the instance of the compensator, the victim or the intended recipient, on the ground—

- (a) that any amount, rate or period specified in the certificate is incorrect; or
- (b) that benefit paid or payable otherwise than in consequence of the accident, injury or disease in question has been brought into account.

(2) No appeal shall be brought under this paragraph until—

- (a) the claim giving rise to the compensation payment has been finally disposed of; and
- (b) the relevant payment, or where more than one such payment may fall to be made, the final relevant payment, has been made.

(3) Notwithstanding sub-paragraph (2), where—

- (a) an award of provisional damages has been made under paragraph 10 of Schedule 6 to the Administration of Justice Act 1982<sup>(1)</sup>; and
- (b) the relevant payment or, where more than one such payment falls to be made, the final relevant payment in relation to the provisional damages so awarded has been made,

an appeal may be brought under this paragraph against any certificate of total benefit by reference to which the amount of that relevant payment, or any of those relevant payments, was made.

(4) Regulations may—

- (a) make provision as to the manner in which, and the time within which, appeals under this paragraph are to be brought; and
- (b) make provision for the purpose of enabling any such appeal to be treated as an application for review under paragraph 16,

and regulations under head (b) may, in particular, provide that the circumstances in which such a review may be carried out shall not be restricted to those specified in paragraph 16.

(5) If any of the medical questions arises for determination on an appeal under this paragraph, the Department shall refer that question to a medical appeal tribunal, whose determination shall be

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binding, for the purposes of the appeal, on any social security appeal tribunal to whom a question is referred under sub-paragraph (7).

(6) A medical appeal tribunal, in determining any of the medical questions, shall take into account any decision of any court relating to the same, or any similar, issue arising in connection with the accident, injury or disease in question.

(7) If any question concerning any amount, rate or period specified in the certificate of total benefit arises for determination on an appeal under this paragraph, the Department shall refer that question to a social security appeal tribunal, but where any medical questions arising on the appeal have been referred to a medical appeal tribunal—

- (a) the Department shall not refer any question to the social security appeal tribunal until the Department has received the determination of the medical appeal tribunal on the questions referred to them; and
- (b) the Department shall notify the social security appeal tribunal of the determinations of the medical appeal tribunal.

(8) On a reference under sub-paragraph (7) a social security appeal tribunal may either—

- (a) confirm the amounts, rates and periods specified in the certificate of total benefit; or
- (b) specify any increases, reductions or other variations which are to be made on the issue of the fresh certificate under sub-paragraph (9).

(9) When the Department has received the determinations of the tribunals on the questions referred to them under sub-paragraphs (5) and (7), it shall in accordance with those determinations either—

- (a) confirm the certificate against which the appeal was brought; or
- (b) issue a fresh certificate.

(10) Regulations may make provision with respect to the procedure for the reference under this paragraph of questions to medical appeal tribunals or social security appeal tribunals.

(11) An appeal shall lie to a Commissioner at the instance of the compensator, the victim or the intended recipient from a decision of a medical appeal tribunal or a social security appeal tribunal under this paragraph on the ground that the decision was erroneous in point of law; and for the purposes of appeals under this sub-paragraph—

- (a) section 101(5), (5A) and (5B) of the principal Act shall apply in relation to an appeal from the decision of a social security appeal tribunal; and
- (b) section 112A(3) of that Act shall apply in relation to an appeal from the decision of a medical appeal tribunal.

(12) In this paragraph “the medical questions” means—

- (a) any question whether, as the result of a particular occurrence, a person suffered an injury, sickness or disease;
- (b) any question as to the period for which a person suffered any injury, sickness or disease.

#### *Recovery in consequence of an appeal*

**18.—**(1) Where it appears, in consequence of an appeal under paragraph 17, that the aggregate amount of the relevant payment or payments actually made exceeds the amount that ought to have been paid, the Department shall pay the intended recipient an amount equal to that excess.

(2) Where it appears, in consequence of such an appeal, that the aggregate amount of the relevant payment or payments actually made is less than the amount that ought to have been paid, the intended recipient shall pay the Department an amount equal to the deficiency.

(3) Without prejudice to any other method of enforcement, an amount payable under sub-paragraph (2) may be recovered by deduction from any benefits which are prescribed benefits for the purposes of Article 54 of the 1986 Order (recovery of overpayments).

*Recovery of relevant payment in cases of default*

**19.**—(1) This paragraph applies in any case where the compensator has made a compensation payment but—

- (a) has not requested a certificate of total benefit in respect of the victim; or
- (b) if he has done so, has not made the relevant payment within the time limit imposed by paragraph 2.

(2) Where this paragraph applies, the Department may—

- (a) if no certificate of total benefit has been issued to the compensator, issue to him such a certificate and a demand for the relevant payment to be made forthwith; or
- (b) if a certificate of total benefit has been issued to the compensator, issue to him a copy of that certificate and such a demand,

and that relevant payment shall, to the extent that it does not exceed the amount of the compensation payment, be recoverable by the Department from the compensator.

(3) Any amount recoverable under this paragraph shall, if the county court so orders, be enforceable as if it were payable under an order of the court.

(4) A document bearing a certificate which—

- (a) is signed by a person authorised in that behalf by the Department; and
- (b) states that the document, apart from the certificate, is a record of the amount recoverable under this paragraph,

shall be conclusive evidence that that amount is so recoverable; and a certificate purporting to be signed as aforesaid shall be deemed to be so signed unless the contrary is proved.

(5) Where this paragraph applies in relation to two or more connected compensators, the Department may proceed against them as if they were jointly and severally liable for an amount equal to the difference between—

- (a) the total benefit determined in accordance with the latest connected certificate of total benefit issued to any of them; and
- (b) the aggregate amount of any connected relevant payments previously made.

(6) Nothing in sub-paragraph (5) authorises the recovery from any person of an amount in excess of the compensation payment by virtue of which this paragraph applies to him (or, if there are two or more such payments which are connected, the aggregate amount of those payments).

(7) In sub-paragraphs (5) and (6), “connected” means relating to the same victim and the same accident, injury or disease.

*Inspection*

**20.**—(1) Article 59 of the 1986 Order (inspection) shall be amended in accordance with the following provisions of this paragraph.

(2) In paragraph (2) (powers of inspector to enter, examine and enquire), for head (ii) of sub-paragraph (b) substitute the following head—

- “(ii) for investigating the circumstances in which any accident, injury or disease which has given or may give rise to a claim for industrial injuries benefit, or for any benefit

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which is a relevant benefit for the purposes of the recoupment provisions, occurred or may have occurred, or was or may have been received or contracted;”.

(3) In sub-paragraph (c) of that paragraph, after head (ii) insert the following head—

“(iii) a compensation payment or a relevant payment, within the meaning of the recoupment provisions,”.

(4) In paragraph (3) (premises which are liable to inspection), after sub-paragraph (c) insert the following sub-paragraph—

“(d) any person—

(i) who is the compensator, within the meaning of the recoupment provisions, in relation to any such accident, injury or disease as is referred to in paragraph (2) (b)(ii); or

(ii) on whose behalf any such compensator has or may have made, or may make, a compensation payment, within the meaning of those provisions, carries on business or is to be found;”.

(5) In paragraph (6) (persons to furnish information required for ascertaining whether certain sums are or have been paid or payable), in sub-paragraph (a), after head (ii), insert the following head—

“(iii) any compensation payment or relevant payment, within the meaning of the recoupment provisions,”.

(6) In paragraph (7) (persons who are under a duty to provide information), in sub-paragraph (e) at the end add “or to make any compensation payment or relevant payment, within the meaning of the recoupment provisions”.

(7) After paragraph (9) add the following paragraph—

“(10) In this Article “the recoupment provisions” means Article 24 of, and Schedule 4 to, the Social Security (Northern Ireland) Order 1989 (recovery from damages, etc., of sums equivalent to benefit paid).”.