

1990 No. 85

SOCIAL SECURITY

**The Social Security (Recoupment) Regulations
(Northern Ireland) 1990**

Made 6th March 1990

Coming into operation—

*for the purposes of regulations 1, 5
to 8 and 16* 2nd April 1990

*for the purposes of regulations 2, 9,
10, 13 and 15* 9th July 1990

for all other purposes 3rd September 1990

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The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 24(3), (4)(g) and (5) and 31(3) of, and paragraphs 1(2), 4(1) and (2), 13, 15(1)(a)(i) and (b), 17(4) and (10) and 21(2) of Schedule 4 to, the Social Security (Northern Ireland) Order 1989(a) and of all other powers enabling it in that behalf, and with the consent of the Department of Finance and Personnel to regulations 2 and 3(b), hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Recoupment) Regulations (Northern Ireland) 1990 and shall come into operation as follows—

- (a) for the purposes of regulations 1, 5 to 8 and 16 on 2nd April 1990;
- (b) for the purposes of regulations 2, 9, 10, 13 and 15 on 9th July 1990; and
- (c) for all other purposes on 3rd September 1990.

(2) In these regulations—

“the 1989 Order” means the Social Security (Northern Ireland) Order 1989;

“Schedule 4” means Schedule 4 to the 1989 Order; and

“the Compensation Recovery Unit” means the Compensation Recovery Unit of the Department at Castle Buildings, Stormont, Belfast.

PART II

BENEFITS AND PAYMENTS

Relevant benefits

2.—(1) The following benefits are relevant benefits for the purposes of Article 24 of the 1989 Order—

- (a) attendance allowance;

(a) S.I. 1989/1342 (N.I. 13)

(b) See Article 30(5) of the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13))

- (b) disablement benefit (including disablement pensions) payable in accordance with sections 57 to 63 of the principal Act;
- (c) family credit;
- (d) income support, under Part III of the 1986 Order(a), including personal expenses addition, special transitional addition and transitional addition as defined in the Income Support (Transitional) Regulations (Northern Ireland) 1987(b);
- (e) invalidity pension and allowance;
- (f) mobility allowance;
- (g) benefits payable under regulations made under the Old Cases Act;
- (h) reduced earnings allowance;
- (i) retirement allowance;
- (j) severe disablement allowance;
- (k) sickness benefit;
- (l) statutory sick pay;
- (m) unemployment benefit;
- (n) any increase in any of the benefits mentioned above payable in accordance with the Social Security (Northern Ireland) Acts 1975 to 1989 or the Old Cases Act or with any regulations or order made thereunder.

(2) In paragraph (1), the reference to unemployment benefit includes also a reference to any income support paid with it on the same instrument of payment, and for this purpose, income support includes personal expenses addition, special transitional addition and transitional addition as defined in the Income Support (Transitional) Regulations (Northern Ireland) 1987.

(3) In this regulation "instrument of payment" has the same meaning as in regulation 2(1) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(c).

Small payments

3.—(1) A person shall be exempted from liability to make the relevant deduction or the relevant payment where the amount of the compensation payment in question, or the aggregate amount of 2 or more connected compensation payments, does not exceed £2,500.

(2) Where an amount has been deducted and paid to the Department which, by virtue of paragraph (1), ought not to have been so deducted and paid, the Department—

- (a) where it is satisfied that the whole of the amount ought to have been paid to the intended recipient, shall pay the whole of that amount to that person; or

(a) S.I. 1986/1888 (N.I. 18)

(b) S.R. 1987 No. 460; relevant amending regulations are S.R. 1988 Nos. 132 and 153 and S.R. 1989 Nos. 371 and 485. *See also* Article 16 of S.R. 1989 No. 18

(c) S.R. 1987 No. 465

- (b) where it is not so satisfied, shall either pay the whole of the amount to the compensator or pay to the compensator that part of the amount which he would have been entitled to retain and to the intended recipient that part which he would have been entitled to receive(a) had the amount not been so deducted and paid.

Exempt payments

4. The following payments shall be exempt payments for the purposes of Article 24 of the 1989 Order—

- (a) any payment made out of property held for the purpose of the charitable trust called the Macfarlane Trust and established partly out of funds provided by the Secretary of State for Social Services to the Haemophilia Society for the relief of poverty or distress among those suffering from haemophilia;
- (b) any compensation payment made by British Coal in accordance with the National Coal Board Pneumoconiosis Compensation Scheme set out in the Schedule to an agreement made on 13th September 1974 between the National Coal Board, the National Union of Mineworkers, the National Association of Colliery Overmen Deputies and Shotfirers and the British Association of Colliery Management;
- (c) any payment made to the victim in respect of sensorineural hearing loss where the loss is less than 50 db in one or both ears; and
- (d) any contractual amount paid to an employee by an employer of his in respect of a day of incapacity for work.

PART III

ADMINISTRATION AND ADJUDICATION

Information to be provided by compensator

5. A 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 following information in respect of that accident, injury or disease—

- (a) the full name and the address of any person seeking compensation or in respect of whom compensation is sought;
- (b) where known, the date of birth or the national insurance number of that person, or both if both are known;

(a) See section 3 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c. 23). Section 3(1) was amended by paragraph 72(a) of Schedule 2 to the Social Security (Consequential Provisions) Act 1975 (c. 18), paragraph 3 of Schedule 5 to the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)), paragraph 1 of Schedule 2 to the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)) and, from 3rd September 1990, by paragraph 22(1) of Schedule 4 to the Social Security (Northern Ireland) Order 1989. Section 3(1A) is inserted, and section 3(2) ceases to have effect, from 3rd September 1990, by paragraph 22(2) and (3), respectively, of Schedule 4 to the Social Security (Northern Ireland) Order 1989. Section 3(6) was substituted by paragraph 72(b) of Schedule 2 to the Social Security (Consequential Provisions) Act 1975

- (c) where the liability arises, or is alleged to arise, in respect of—
 - (i) an accident or injury, the date of the accident or injury, or
 - (ii) a disease, the date on which the disease was diagnosed;
- (d) the nature of the accident, injury or disease; and
- (e) where known, whether at the time of the accident or injury or the diagnosis of the disease, the person was employed under a contract of service, and if he was, the name and address of his employer at that time and the person's payroll number.

Information to be provided by victim

6.—(1) A person who claims (whether on behalf of himself or another) a relevant benefit or has been in receipt of such a benefit, shall furnish the Department with such of the following information relating to any accident, injury or disease the victim has suffered as the Department requests—

- (a) whether the accident, injury or disease resulted from any action taken by another person, or from any failure of another person to act, and if so, the full name and the address of that other person;
- (b) whether he has claimed or may claim a compensation payment, and if so, the full name and the address of the person against whom the claim was or may be made;
- (c) the amount of any compensation payment and the date on which it was made;
- (d) the relevant benefit claimed, the date from which benefit was first claimed and the amount of the benefit received in the period beginning with that date and ending with the date on which the information is sent;
- (e) in the case of a person who has received or is entitled to receive statutory sick pay during the relevant period, the name and address of any employer who is or was liable to make these payments to him during the relevant period and the dates on which the employment with that employer began and ended; and
- (f) any changes in the medical diagnosis relating to the condition arising from the accident, injury or disease.

(2) In this regulation "person" includes a deceased person's personal representative.

Information to be provided by employer

7. 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 such of the following information relating to the payment of statutory sick pay as the Department requests—

- (i) the amount of any statutory sick pay he is liable to pay or has paid to the victim since the first day of the relevant period,

- (ii) the date on which the liability first arose and the rate at which statutory sick pay is or was payable,
- (iii) the date on which such liability terminated or is likely to terminate, and
- (iv) the causes of the incapacity for work during any periods of entitlement to statutory sick pay.

Sending information

8. A person who furnishes the Department with information shall do so by sending it in writing to the Compensation Recovery Unit not later than 14 days after—

- (a) where he is a person to whom regulation 5 applies, the date on which he receives a claim for compensation from the victim in respect of the accident, injury or disease; or
- (b) where he is a person to whom regulation 6 or 7 applies, the date on which the Department requests the information from him.

Particulars to be stated before liability of compensator becomes unenforceable

9. The following particulars are prescribed for the purposes of paragraph 15(1)(a)(i) of Schedule 4 (particulars to be stated before liability of compensator becomes unenforceable)—

- (a) the full name of the victim together with his address, and either his date of birth or national insurance number, or both if both are known; and
- (b) unless already furnished to the Department in accordance with regulation 5—
 - (i) where the liability arises or is alleged to arise in respect of an accident or injury, the date of that accident or injury, or where it arises or is alleged to arise in respect of a disease, the date on which the disease was diagnosed,
 - (ii) the nature of the accident, injury or disease, and
 - (iii) where known, whether at the time of the accident or injury or the diagnosis of the disease the victim was employed under a contract of service, and if he was, the name and address of his employer at that time and the person's payroll number.

Acknowledgement of compensator's request

10. Where the compensator requests a certificate of total benefit in accordance with paragraph 15(1)(a) of Schedule 4, the Department shall send to the compensator, as soon as reasonably practicable, a written acknowledgement of the receipt of the request stating the day on which the request was received.

Appeals

11.—(1) Any appeal against a certificate of total benefit shall be in writing and shall be made by sending or delivering it to the Compensation Recovery Unit—

- (a) not later than 3 months after the date on which the compensator made the relevant payment; or
- (b) where the certificate was reviewed by the Department in accordance with regulation 13, not later than 3 months from the date on which the certificate is confirmed, or, as the case may be, a fresh certificate issued.

(2) Any appeal under this regulation shall contain particulars of the grounds on which it is made.

(3) Where an earlier compensation payment has been made and subsequently one or more later payments are made to or in respect of the same victim in respect of the same accident, injury or disease (whether by the same or another compensator), the date referred to in paragraph (1)(a) is the date of the last of those later payments.

(4) The time for making an appeal may be extended for special reasons by the chairman of the tribunal to which the appeal is referred, even though the time limit may have already expired.

(5) Any application for an extension of time under paragraph (4) shall be made in writing and shall be determined by the chairman.

(6) An application under paragraph (4) for an extension of time which has been refused shall not be renewed.

(7) Where it appears to the chairman of the tribunal to whom the appeal was referred that the appeal gives insufficient particulars to enable the question at issue to be determined, he may require the person making the appeal to furnish such further particulars as may reasonably be required.

Withdrawal of appeal

12. A person who has made an appeal under regulation 11 may withdraw that appeal—

- (a) before the hearing begins by giving notice in writing of his intention to withdraw the appeal to the appeal tribunal to which the appeal was made and with the consent in writing of the Department; or
- (b) after the hearing has begun and before the determination is made, with the leave of the chairman of the appeal tribunal.

Review

13. The Department may treat any appeal as an application for review under paragraph 16 of Schedule 4, notwithstanding that the certificate of total benefit was not issued in ignorance of, or based on a mistake as to, some material fact or that a mistake (whether in computation or otherwise) has not occurred in its preparation.

PART IV

MISCELLANEOUS MATTERS

Benefits exceed compensation

14. Where, after making the relevant deduction from the compensation payment, there is no balance remaining for payment to the intended recipient, any reference in Schedule 4 to the making of the compensation payment shall be construed as a reference to the acceptance by the intended recipient of an offer in respect of his claim against the compensator.

Foreign compensators

15. Where immediately before the making of a compensation payment, the compensator is not resident and does not have a place of business in Northern Ireland, then these regulations shall be modified in their application to the intended recipient in accordance with the following provisions—

- (a) regulation 5 shall apply with the additional requirement that the intended recipient supply the Department with the name of the compensator and his address; and
- (b) regulation 9 shall apply with the additional requirement that he supply the Department with details of—
 - (i) the amount of the compensation paid to him, and
 - (ii) whether that payment represents the final payment in respect of the accident, injury or disease.

Transitional provisions and saving

16.—(1) A compensator who may make a compensation payment after 2nd September 1990 in respect of an accident or injury which occurred or a disease which was diagnosed on or after 1st January 1989 but before 2nd April 1990, shall so inform the Department as soon as reasonably practicable.

(2) Where an accident or injury occurred or a disease was diagnosed before 1st January 1989 and a compensation payment in respect of that accident, injury or disease is or may be made after 2nd September 1990, then—

- (a) the provisions of section 3 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948(a) shall apply to that payment as though the amendments made to it by paragraph 22 of Schedule 4 to the 1989 Order, had not been made; and
- (b) the payment shall be calculated as if Article 24(6) of that Order had not been made.

Sealed with the Official Seal of the Department of Health and Social Services on 6th March 1990.

(L.S.)

A. N. Burns

Assistant Secretary

The Department of Finance and Personnel hereby consents to regulations 2 and 3 of the foregoing regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 6th March 1990.

(L.S.)

R. A. H. Miller

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations contain provisions (“the recoupment provisions”) relating to the recovery of sums equivalent to benefit from compensation payments in respect of accidents, injuries and diseases. Article 31(3) of the Social Security (Northern Ireland) Order 1989 (“the 1989 Order”) is an enabling power under which the regulations are made. It was brought into operation on 23rd August 1989 by Article 1(3)(b) of the 1989 Order. Article 24(3) of, and paragraph 1(2) of Schedule 4 to, the 1989 Order which are also enabling powers were brought into operation on 1st February 1990 by the Social Security (1989 Order) (Commencement No. 2) Order (Northern Ireland) 1990 (S.R. 1990 No. 35 (C. 1) (“the No. 2 Commencement Order”). The other enabling powers were also brought into operation on 1st February 1990 by the No. 2 Commencement Order for the purposes only of authorising the making of regulations.

The regulations correspond to provision contained in regulations made by the Secretary of State for Social Security in relation to Great Britain and accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980 (c. 30) are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.

Regulation 2 prescribes the benefits which are relevant for the purposes of the recoupment provisions. Regulation 3 sets the level of a small payment (or the aggregate of payments), which is exempt from liability under the recoupment provisions, at £2,500 or less. Regulation 4 prescribes certain payments which are exempt payments for the purposes of the recoupment provisions.

Regulations 5, 6 and 7 prescribe the information required to be provided to the Department by, respectively, the compensator, the victim and, where statutory sick pay has been in payment to the victim, the victim’s employer or employers. Regulation 8 provides for the information to be sent to the Compensation Recovery Unit of the Department.

Where the Department fails to send a certificate of total benefit within 4 weeks then the compensator's liability to the Department becomes unenforceable where he has provided the Department with the particulars set out in regulation 9 and has received a written acknowledgement of his request for the certificate (regulation 10).

Regulations 11, 12 and 13 make provision for appeals from, and reviews of, the amount specified on a certificate of total benefit.

Regulation 14 makes provision, where no balance remains for payment to the intended recipient after deduction from the compensation payment of the amount payable to the Department, for references to compensation payments in Schedule 4 to the 1989 Order to be construed as references to the acceptance of an offer.

Regulation 15 makes modifications to the regulations where the compensator is not resident in Northern Ireland and does not have a place of business therein.

Regulation 16(1) relates to notifications of claims in respect of compensation payments which may be made after 2nd September 1990 where an accident or injury occurred or a disease was diagnosed on or after 1st January 1989 but before 2nd April 1990. Regulation 16(2) provides for savings where an accident or injury occurred or a disease was diagnosed before 1st January 1989 and a compensation payment is or may be made after 2nd September 1990.