STATUTORY RULES OF NORTHERN IRELAND

2008 No. 355

The Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008

PART 4

Reduction of compensation

Reduction of compensation

12.—(1) This regulation applies in a case where, in relation to any compensation payment in consequence of a disease made to or in respect of P, a lump sum payment has been, or is likely to be made to, or in respect of P.

(2) In such a case, any claim of a person to receive the compensation payment is to be treated for all purposes as discharged if—

(a) that person is paid the amount (if any) of the compensation payment calculated in accordance with this regulation; and

(b) if the amount of the compensation payment so calculated is nil, that person is given a statement saying so by the compensator who (apart from this regulation) would have paid the gross amount of the compensation payment.

(3) For an award of compensation for which paragraph (1) is satisfied, so much of the gross amount of the compensation payment as is equal to the amount of the lump sum payment is to be reduced (to nil, if necessary) by deducting the amount of the recoverable lump sum payment.

(4) Paragraph (3) is to have effect as if a requirement to reduce a payment by deducting an amount which exceeds that payment were a requirement to reduce that payment to nil.

(5) The amount of the compensation payment calculated in accordance with this regulation is—

(a) the gross amount of the compensation payment; less

(b) the reduction made under paragraph (3),

and, accordingly, the amount may be nil.

(6) The reduction specified in paragraph (3) is to be attributed to the heads of compensation in the following order—

(a) damages for non-pecuniary loss;

(b) damages for pecuniary loss,

and, the reduction is to be made before any reduction made in respect of recoverable benefits under Article 10 of the Order.

(7) Where the lump sum payment has been made to a dependant of P, the reduction specified in paragraph (3) may be attributed—

(a) to any damages awarded to that dependant—

(i) under the Fatal Accidents (Northern Ireland) Order 1977,

(ii) under the Fatal Accidents Act 1976, or

(iii) to the extent that they are made in respect of a liability arising by virtue of section 1 of the Damages (Scotland) Act 1976,

other than those paid for funeral expenses;

(b) to any part of a compensation payment paid in respect of P, where that dependant is an intended beneficiary of part or all of that compensation.

Regulation 12: supplementary

13.—(1) A compensator who makes a compensation payment calculated in accordance with regulation 12 must inform the person to whom the payment is made—

(a) that the payment has been so calculated; and

(b) of the date for payment by reference to which the calculation has been made.

(2) If the amount of a compensation payment calculated in accordance with regulation 12 is nil, a compensator giving a statement saying so is to be treated for the purposes of these Regulations as making a payment within regulation 4(1)(a) on the day on which the statement is given.

(3) Where a compensator—

(a) makes a compensation payment calculated in accordance with regulation 12; and

(b) if the amount of the compensation payment so calculated is nil, gives a statement saying so,

the compensator is to be treated, for the purpose of determining any rights and liabilities in respect of contribution or indemnity, as having paid the gross amount of the compensation payment.

(4) For the purposes of these Regulations—

(a) the gross amount of the compensation payment is the amount of the compensation payment apart from regulation 12; and

(b) the amount of any recoverable lump sum payment is the amount determined in accordance with the certificate.

Reduction of compensation: complex cases

14.—(1) This regulation applies where—

(a) a compensation payment in the form of a lump sum ("the earlier payment") has been made to or in respect of P; and

(b) subsequently another such payment ("the later payment") is made to or in respect of the same P in consequence of the same disease.

(2) In determining the liability under regulation 10(1) arising in connection with the making of the later payment, the amount referred to in that regulation is to be reduced by any amount paid in satisfaction of that liability as it arose in connection with the earlier payment.

(3) Where—

(a) a payment made in satisfaction of the liability under regulation 10(1) arising in connection with an earlier payment is not reflected in the certificate in force at the time of the later payment; and

(b) in consequence, the aggregate of payments made in satisfaction of the liability exceeds what it would have been had that payment been so reflected,

the Department is to pay the compensator who made the later payment an amount equal to the excess.

(4) Where—

(a) a compensator receives a payment under paragraph (3); and

(b) the amount of the compensation payment made by that compensator was calculated under regulation 12,

then the compensation payment is to be recalculated under that regulation, and the compensator must pay the amount of the increase (if any) to the person to whom the compensation payment was made.

(5) Where both the earlier payment and the later payment are made by the same compensator, that compensator may—

(a) aggregate the gross amounts of the payments made;

(b) calculate what would have been the reduction made under regulation 12(3) if that aggregate amount had been paid at the date of the last payment on the basis that—

(i) the aggregate amount is to be taken to be the gross amount, and

(ii) the amount of any recoverable lump sum payment is to be taken to be the amount determined in accordance with the most recent certificate;

(c) deduct from that reduction calculated under sub-paragraph (b) the amount of the reduction under regulation 12(3) from any earlier payment; and

(d) deduct from the latest gross payment the net reduction calculated under sub-paragraph (c),

and accordingly the latest payment may be nil.

(6) Where a refund is made under paragraph (3), the Department is to send the compensator (with the refund) and the person to whom the compensation payment was made a statement showing—

(a) the total amount that has already been paid by that compensator to the Department;

(b) the amount that ought to have been paid by that compensator; and

(c) the amount to be repaid to that compensator by the Department.

(7) Where the reduction of a compensation payment is recalculated by virtue of paragraph (4) or (5), the compensator must give notice of the calculation to P.