

## SCHEDULES

### SCHEDULE 4

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

#### PART II

##### PAYMENTS, DEDUCTIONS AND CERTIFICATES

###### *Time for making payment to Secretary of State*

- 2      The compensator's liability to make the relevant payment arises immediately before the making of the compensation payment, and he shall make the relevant payment before the end of the period of 14 days following the day on which the liability arises.

###### *The certificate of total benefit*

- 3      (1) It shall be for the compensator to apply to the Secretary of State for the certificate of total benefit and he may, subject to sub-paragraph (5) below, from time to time apply for fresh certificates.
- (2) The certificate of total benefit shall specify—
- (a) the amount which has been, or is likely to be, paid on or before a specified date by way of any relevant benefit which is capable of forming part of the total benefit;
  - (b) where applicable—
    - (i) the rate of any relevant benefit which is, has been, or is likely to be paid after the date so specified and which would be capable of forming part of the total benefit; and
    - (ii) the intervals at which any such benefit is paid and the period for which it is likely to be paid;
  - (c) the amounts (if any) which, by virtue of the recoupment provisions, are to be treated as increasing the total benefit; and
  - (d) the aggregate amount of any relevant payments made on or before a specified date (reduced by so much of that amount as has been paid by the Secretary of State to the intended recipient before that date in consequence of the recoupment provisions).
- (3) On issuing a certificate of total benefit, the Secretary of State shall be taken to have certified the total benefit as at every date for which it is possible to calculate an amount that would, on the basis of the information so provided, be the total benefit as at that date, on the assumption that payments of benefit are made on the days on which they first become payable.

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- (4) The Secretary of State may estimate, in such manner as he thinks fit, any of the amounts, rates or periods specified in the certificate of total benefit.
- (5) A certificate of total benefit shall remain in force until such date as may be specified in the certificate for that purpose and no application for a fresh certificate shall be made before that date.
- (6) Where a certificate ceases to be in force, the Secretary of State may issue a fresh certificate, whether or not an application has been made to him for such a certificate.
- (7) The compensator shall not make the compensation payment at any time when there is no certificate of total benefit in force in respect of the victim, unless his liability to make the relevant deduction and the relevant payment has ceased to be enforceable by virtue of paragraph 15 below.

*Exemption from deduction in cases involving small payments*

- 4 (1) Regulations may make provision exempting persons from liability to make the relevant deduction or the relevant payment in prescribed cases where the amount of the compensation payment in question, or the aggregate amount of two or more connected compensation payments, does not exceed the prescribed sum.
- (2) Regulations may make provision for cases where an amount has been deducted and paid to the Secretary of State which, by virtue of regulations under sub-paragraph (1) above, ought not to have been so deducted and paid, and any such regulations may, in particular, provide for him to pay that amount to the intended recipient or the compensator or to pay a prescribed part of it to each of them.
- (3) The reference in section 22(4)(a) of this Act to a “small payment” is a reference to a payment from which by virtue of this paragraph no relevant deduction falls to be made.
- (4) For the purposes of this paragraph—
  - (a) two or more compensation payments are “connected” if each is made to or in respect of the same victim and in respect of the same accident, injury or disease; and
  - (b) any reference to a compensation payment is a reference to a payment which would be such a payment apart from section 22(4)(a) of this Act.

*Multiple compensation payments*

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- (1) This paragraph applies where—
  - (a) a compensation payment has been made (an “earlier payment”) to or in respect of the victim; and
  - (b) subsequently another such payment (a “later payment”) falls to be 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).
- (2) In determining the amount of the relevant deduction and payment required to be made in connection with the later payment, the amount referred to in section 22(1)(a) of this Act shall be reduced by the amount of any relevant payment made in connection with the earlier payment, or, if more than one, the aggregate of those relevant payments.

- (3) In relation to the later payment, the compensator shall take the amount of the reduction required by sub-paragraph (2) above to be such as may be specified under paragraph 3(2)(d) above in the certificate of total benefit issued to him in connection with that later payment.
- (4) In any case where—
- (a) the relevant payment made in connection with an earlier payment is not reflected in the certificate of total benefit in force in relation to a later payment, and
  - (b) in consequence, the aggregate of the relevant payments made in relation to the later payment and every earlier payment exceeds what it would have been had that relevant payment been so reflected,
- the Secretary of State shall pay the intended recipient an amount equal to the excess.
- (5) In determining any rights and liabilities in respect of contribution or indemnity, relevant payments shall be treated as damages paid to or for the intended recipient in respect of the accident, injury or disease in question.

#### *Collaboration between compensators*

- 6 (1) This paragraph applies where compensation payments in respect of the same accident, injury or disease fall (or apart from the recoupment provisions would fall) to be made to or in respect of the same victim by two or more compensators.
- (2) Where this paragraph applies, any two or more of those compensators may give the Secretary of State notice that they are collaborators in respect of compensation payments in respect of that victim and that accident, injury or disease.
- (3) Where such a notice is given and any of the collaborators makes a relevant payment in connection with such a compensation payment, each of the other collaborators shall be treated as if the aggregate amount of relevant payments specified in his certificate of total benefit, as in force at the time of that relevant payment, or in a fresh certificate which does not purport to reflect the payment, were increased by the amount of that payment.

#### *Structured settlements*

- 7 (1) This paragraph applies where—
- (a) in final settlement of a person's claim, an agreement is entered into—
    - (i) for the making of periodical payments (whether of an income or capital nature) to or in respect of the victim; or
    - (ii) for the making of such payments and one or more lump sum payments; and
  - (b) apart from this paragraph, those payments would fall to be regarded for the purposes of the recoupment provisions as compensation payments.
- (2) Where this paragraph applies, the recoupment provisions (other than this paragraph) shall have effect on the following assumptions, that is to say—
- (a) the relevant period in the case of the compensator in question shall be taken to end (if it has not previously done so) on the day of settlement;
  - (b) the compensator in question shall be taken—

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- (i) to have been liable to make on that day a single compensation payment of the amount referred to in section 22(1)(a) of this Act (reduced or increased in accordance with such of the recoupment provisions as would have applied in the case of a payment on that day); and
    - (ii) to have made from that single payment a relevant deduction of an amount equal to it; and
  - (c) the payments under the agreement referred to in sub-paragraph (1) above shall be taken to be exempt payments.
- (3) The intended recipient shall not by virtue of anything in this paragraph become entitled to be paid any sum, whether by the compensator or the Secretary of State, and if on a review or appeal under paragraph 16 or 18 below it appears that the amount paid by a compensator in pursuance of this paragraph was either greater or less than it ought to have been, then—
- (a) any excess shall be repaid to the compensator instead of to the intended recipient; but
  - (b) any deficiency shall be paid to the Secretary of State by the intended recipient.
- (4) Where any further compensation payment falls to be made to or in respect of the victim otherwise than under the agreement in question, sub-paragraph (2)(a) above shall be disregarded for the purpose of determining the end of the relevant period in relation to that further payment.
- (5) In any case where—
- (a) the person making the periodical payments (the “secondary party”) does so in pursuance of arrangements entered into with another (as in a case where an insurance company purchases an annuity for the victim from another such company), and
  - (b) apart from those arrangements, that other (“the primary party”) would have been regarded as the compensator,
- then for the purposes of the recoupment provisions, the primary party shall be regarded as the compensator and the secondary party shall not be so regarded.
- (6) In determining for the purposes of this paragraph whether any periodical payments would fall to be regarded as compensation payments, section 22(4)(a) of this Act shall be disregarded.
- (7) In this paragraph “the day of settlement” means—
- (a) if the agreement referred to in sub-paragraph (1) above is approved by a court, the day on which that approval is given; and
  - (b) in any other case, the day on which that agreement is entered into.

#### *Insolvency*

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- (1) Where the intended recipient is subject to a bankruptcy order, nothing in the Act 1986 shall affect the operation of the recoupment provisions.
  - (2) Where the estate of the intended recipient is sequestrated, the relevant deduction from the compensation payment shall not form part of the whole estate of the debtor, within the meaning of section 31(8) of the Bankruptcy (Scotland) Act 1985.

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*Protection of legal aid charges*

- 9 (1) In any case where—
- (a) the compensation payment is subject to any charge under the Legal Aid Act 1974 or the Legal Aid Act 1988, and
  - (b) after the making of the relevant deduction, the balance of the compensation payment is insufficient to satisfy that charge,
- the Secretary of State shall make such a payment as will secure that the deficiency is made good to the extent of the relevant payment.
- (2) Where the Secretary of State makes a payment under this paragraph, then, for the purposes of paragraph 3 above, the amount of the payment shall be treated as increasing the total benefit.
- (3) In the application of this paragraph to Scotland, references in sub-paragraph (1) to a charge under the Acts specified shall be construed as references to any provisions of the Legal Aid (Scotland) Act 1986 for the repayment to the Scottish Legal Aid Fund of sums paid by it on behalf of the intended recipient in respect of the proceedings in which the compensation payment is made.

*Overpaid benefits*

- 10 In any case where—
- (a) during the relevant period, there has, in respect of the accident, injury or disease, been paid to or for the victim any relevant benefit to which he was not entitled (“the overpaid benefit”), and
  - (b) the amount of the relevant payment is such that, after taking account of the rest of the total benefit, there remains an amount which represents the whole or any part of the overpaid benefit,
- then, notwithstanding anything in section 53 of the 1986 Act or any regulations under that section, the receipt by the Secretary of State of the relevant payment shall be treated as the recovery of the whole or, as the case may be, that part of the overpaid benefit.

*Death*

- 11 In the case of any compensation payment the whole or part of which is made—
- (a) in consequence of an action under the Fatal Accidents Act 1976, or
  - (b) in circumstances where, had an action been brought, it would have been brought under that Act, or
  - (c) in respect of a liability arising by virtue of section 1 of the Damages (Scotland) Act 1976,
- regulations may make provision for estimating or calculating the portion of the payment which is to be regarded as so made for the purposes of section 22(4)(c) or (d) of this Act.

*Payments into court*

- 12 (1) Nothing in the recoupment provisions requires a court to make any relevant deduction or payment in connection with money in court.

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- (2) Where a party to an action makes a payment into court which, had it been paid directly to the other party, would have constituted a compensation payment, the making of that payment shall be regarded for the purposes of the recoupment provisions as the making of a compensation payment, but the compensator—
  - (a) may either—
    - (i) withhold from such a payment into court an amount equal to the relevant deduction; or
    - (ii) make such a payment into court before the certificate of total benefit has been issued to him; and
  - (b) shall not become liable to make the relevant payment, or to furnish a certificate of deduction, until he has been notified that the payment into court has been paid out of court to or for the other party.
- (3) Where a person making a payment into court withholds an amount in accordance with sub-paragraph (2)(a)(i) above—
  - (a) he shall, at the time when he makes that payment, furnish the court with a certificate of the amount so withheld; and
  - (b) the amount paid into court shall be regarded as increased by the amount so certified;

but no person shall be entitled by virtue of this sub-paragraph to the payment out of court of any amount which has not in fact been paid into court.
- (4) Where a payment into court is made as mentioned in sub-paragraph (2)(a)(ii) above, the compensator—
  - (a) shall apply for the certificate of total benefit no later than the day on which the payment into court is made; and
  - (b) shall become liable to make the relevant payment as mentioned in sub-paragraph (2)(b) above, notwithstanding that the relevant deduction has not been made.
- (5) Where any such payment into court as is mentioned in sub-paragraph (2) above is paid out of court to or for the other party to the action within the initial period, then, as respects the compensator in question, the relevant period shall be taken to have ended on the day on which the payment into court was made.
- (6) In sub-paragraph (5) above “the initial period” means the period of 21 days following the making of the payment into court, but rules of court may make provision varying the length of that period.
- (7) Rules of court may make provision regulating or prescribing the practice and procedure to be followed in relation to such payments into court as are mentioned in sub-paragraph (2) above.
- (8) This paragraph does not extend to Scotland.