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STATUTORY INSTRUMENTS

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**1995 No. 866**

**The National Health Service (Injury Benefits) Regulations 1995**

**PART IV**

**Review of Allowance and Miscellaneous**

**Review and adjustment of allowance**

**13.**—(1) The Secretary of State shall review the amount of an allowance payable under Part II of these Regulations in the light of—

- (a) a further reduction of the person's earning ability by reason of the injury or disease;
- (b) the commencement or cessation of payment to the person of a benefit mentioned in regulation 4(6)(b), by reason of the injury or disease; or
- (c) the commencement of a pension payable to the person under a relevant pension scheme or an increase in such a pension not being an increase under the Pensions (Increase) Act 1971; and for this purpose such pension shall be deemed to be reduced proportionately by the amount by which an official pension, that began on the date at which the average remuneration used in the calculation of allowance was calculated, would have been increased under the Pensions (Increase) Act 1971 by the date of the increase or commencement of the first mentioned pension.

(2) A person not entitled to benefits under these Regulations by reason only that his earning ability was not permanently reduced by more than 10 per cent. shall be entitled to receive such benefits if, in consequence of a further reduction by reason of the inquiry or disease, his earning ability is permanently reduced to aggregate by more than 10 per cent. except that such benefits shall not be payable in respect of any period before such further reduction or for a period of more than 13 weeks before the Secretary of State is notified in writing of such further reduction, whichever is the later.

(3) The Secretary of State shall review the amount of an allowance payable under Part III of these Regulations in the light of any reduction in, or the cessation of, a pension under a relevant pension scheme in respect of the deceased payable to the person entitled to such allowance.

(4) Where a person who is entitled to an allowance under Part II again becomes employed in an employment mentioned in regulation 3(1) or becomes employed in an employment mentioned in any corresponding provision in force in Scotland, Northern Ireland or the Isle of Man, then, whilst he continues in such employment, the allowance under Part II shall be abated by an amount by which it would, when aggregated with his relevant income, exceed the amount of his former earnings.

For the purposes of this paragraph—

- (a) "relevant income" means the amount of any emoluments payable to the person in question in respect of the further employment plus the amount of any pension payable to him under a relevant pension scheme;
- (b) "former earnings" means, in relation to that person, the average remuneration by reference to which the allowance was determined or the annual rate of his emoluments at the date on which the allowance became payable, whichever is higher;

- (c) where the further employment is employment of the type mentioned in regulation 3(1)(c), that person shall be deemed to be in receipt of emoluments equal in amount to those which would have been payable, in the opinion of the Secretary of State, to a person employed whole-time by an employing authority on similar duties.

(5) Where, on review of an allowance under the previous regulations, regulation 4(6)(b)(vi) of those Regulations<sup>(1)</sup> did not apply by reason that the person to whom the allowance was payable was not in the employment of an employing authority on or after 1st April 1991 then, on any further review of the allowance payable to that person under these Regulations, no account shall be taken of any amount mentioned in regulation 4(6)(b)(iv) or (v).

### **Loss of rights to benefit**

**14.** The Secretary of State may direct that all or part of any benefit under these Regulations payable to or in respect of a person whom these Regulations apply be forfeited if that person is convicted of any of the following offences committed before the benefit becomes payable—

- (a) an offence in connection with employment mentioned in regulation 3(1), which is certified by the Secretary of State either to have been gravely injurious to the State or to be liable to lead to a serious loss of confidence in the public service;
- (b) an offence of treason;
- (c) one or more offences under the Official Secrets Acts 1911 to 1989<sup>(2)</sup> for which the person has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in aggregate to, at least 10 years.

### **Offset for crime, negligence or fraud**

**15.—(1)** If a loss to public funds occurs as a result of the criminal, negligent or fraudulent act or omission of a person to whom these Regulations apply, the Secretary of State may reduce any benefit under these Regulations payable to, or in respect of, that person by an amount equal to this loss.

(2) If the loss to public funds is equal to or greater than the value of the benefit under these Regulations payable to or in respect of the person, a reduction under paragraph (1) may result in the benefits ceasing to be payable.

(3) The Secretary of State shall give the person a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction in benefits will be made until the person's obligation to make good the loss has become enforceable under the order of a court or arbitrator.

(5) Where the loss referred to in paragraph (1) is suffered by an employing authority, the amount of the reduction in benefits will be paid to the employing authority.

### **Officers transferred in consequence of reorganisation**

**16.—(1)** This regulation shall apply to or in respect of any person who was transferred to the employment of an employing authority under the National Health Service Reorganisation Act 1973<sup>(3)</sup> and who, having remained in the employment of that authority without break of one day or more, suffers an injury or contracts a disease in respect of which, had he remained in his previous employment, he would have been eligible to receive benefits by virtue of any enactment, scheme or arrangement associated with that employment.

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(1) Regulation 4(6)(b)(vi) was inserted into the previous regulations by S.I.1991/1584 regulation 12(b).

(2) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6.

(3) 1973 c. 32.

(2) Where the Secretary of State is of the opinion that, in relation to any person to whom or in respect of whom this regulation applies, any benefits specified in paragraph (1)

- (a) would, when taken as a whole, have been more favourable than any benefits payable under these Regulations, or
- (b) would have been payable where no benefits would have been payable under these Regulations,

the Secretary of State, having regard to the provisions of such enactment, scheme or arrangement, may make such payments, to or in respect of such person, supplementary to any benefits which otherwise might be payable under these Regulations, as the Secretary of State considers equitable so that the benefits, taken as a whole, are not less favourable than those which might be payable under such provisions.

### **Damages**

**17.—**(1) The Secretary of State shall take into account against the benefits provided in these Regulations any damages or compensation recovered by any person in respect of the injury or disease or in respect of the death of a person to whom these Regulations apply, and such benefits may be withheld or reduced accordingly.

(2) For the purposes of paragraph (1), a person shall be deemed to have recovered damages—

- (a) whether they are paid in pursuance of a judgement or order of a court or by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce the claim; or
- (b) if they are recovered for his benefit in respect of a claim under the Fatal Accidents Act 1976<sup>(4)</sup>.

(3) Where any payments in respect of a benefit under these Regulations are made before the right to, or the amount of, such damages or compensation is finally determined, then if and when a right to and the amount of such damages or compensation is finally determined the Secretary of State shall have the right to recover from the beneficiary an amount not exceeding—

- (a) where the amount of the payments made by the Secretary of State is less than the net amount of the damages or compensation, the amount of those payments;
- (b) where the amount of those payments is not less than the net amount of the damages or compensation, such part of those payments as is equal to the net amount of the damages or compensation.

(4) So far as any amount recoverable under this regulation represents a payment made by the Secretary of State from which income tax has been deducted before the payment, the proper allowance shall be made in respect of the amount so deducted, and in this regulation the expression “the net amount of the damages or compensation” means the amount of the damages or compensation after deducting any tax payable in the United Kingdom or elsewhere to which the damages or compensation are subject.

(5) No proceedings shall be brought to recover any amount under this regulation—

- (a) after the death of the recipient of the payments; or
- (b) after the expiration of 2 years from the date on which a right to, and the amount of, the damages or compensation is finally determined or from the date on which the final determination first came to the knowledge of the Secretary of State, if later.

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(4) 1976 c. 30.

(6) A certificate issued by the Secretary of State and stating the date on which the final determination of a right to, and of the amount of, any damages or compensation first came to her knowledge shall be admissible in any proceedings as sufficient evidence of that date.

#### **Avoidance of duplicate benefits**

18. If the Secretary of State is of the opinion that an injury or disease has been, or will be, taken into account for the purpose of any corresponding scheme the benefits of which or contributions towards which are payable out of public funds, she may make such deduction from the benefits under these Regulations as may appear to her to be equitable in order to secure that there may not be payable in respect of the same injury or disease benefits under these Regulations as well as benefits under a corresponding scheme.

#### **Medical examination**

19. The Secretary of State may require any person entitled, or claiming to be entitled, to an allowance under Part II of these Regulations, or under Part III of these Regulations on the grounds that he is incapable by reason of permanent ill-health or infirmity of mind or body of earning his own living, to submit to a medical examination by a registered medical practitioner selected by the Secretary of State, and in that event the Secretary of State shall also offer the person an opportunity of submitting a report from his own medical adviser as a result of an examination by him, and the Secretary of State shall take that report into consideration together with the report of the medical practitioner selected by the Secretary of State.

#### **Benefits not assignable**

20. Subject to the provisions of any enactment in that behalf, any benefit to which a person becomes entitled under these Regulations shall be payable to, or in trust for, that person and shall not be assignable.

#### **Payment to personal representatives**

21. Where, on the death of any person, any sum not exceeding £5,000 or such higher amount as would for the time being be applicable in relation to the death if these Regulations were an enactment to which section 1 of the Administration of Estates (Small Payments) Act 1965<sup>(5)</sup> (maximum amount disposable on death without representation) applied, is due to or in respect of that person under these Regulations, the Secretary of State may dispense with proof of the title of the personal representatives of that person and pay that sum to the personal representatives or to the person, or to or among any one or more of any persons, appearing to the Secretary of State on such evidence as she deems satisfactory to be entitled by law to a beneficial interest therein and any person to whom such a payment is made, and not the Secretary of State, shall thereafter be liable to account for any amount so paid.

#### **Determination of questions**

22. Any question arising under these Regulations as to the rights or liabilities of a person to whom these Regulations apply, or of a person claiming to be treated as such, or of the widow or widower or any dependant of such a person, shall be determined by the Secretary of State.

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(5) 1965 c. 32.

### **Option to persons detrimentally affected by these Regulations**

**23.**—(1) This regulation applies in relation to any benefit which is payable to or in respect of a person who, having served in an employment or office, service in which qualified persons to participate in the benefits provided under the previous regulations, ceased to serve therein before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than he would have been if that provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Secretary of State within 6 months of the coming into force of these Regulations or such longer period as the Secretary of State may allow.

(4) An election pursuant to paragraph (2) shall have effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, such person shall be treated as if he had never recommended service at any time after that cessation (or, as the case may be, the last such cessation).

### **Revocations and savings**

**24.**—(1) The Regulations or Orders specified in column 1 of the Schedule to these Regulations are hereby revoked to the extent mentioned in column 2 of that Schedule.

(2) Anything done under, or by virtue of, any regulation revoked by these Regulations, if it could have been done under or for the purpose of the corresponding provision of these Regulations, shall be deemed to have been done under or by virtue of the corresponding provision of these Regulations and anything begun under, or by virtue of, any such regulation may be continued under these Regulations as if begun under these Regulations.