
STATUTORY INSTRUMENTS

2020 No. 103

The Victims' Payments Regulations 2020

PART 5

Payments

Determination of amount of victims' payments

18.—(1) If a person is entitled to victims' payments, the Board must determine the amount of victims' payments payable to the applicant.

(2) The amount of victims' payments payable to an applicant is the appropriate rate subject to any adjustment made in accordance with regulations 19 and 20.

(3) The appropriate rate is the rate specified from time to time in column 2 of the table in Part 2 of Schedule 1 to The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006⁽¹⁾ (weekly rates of pensions for disabled members of the armed forces of certain ranks) corresponding to the applicant's degree of relevant disablement.

(4) Where an interim assessment of the applicant's degree of disablement has been made, for the duration of the interim period, the appropriate rate is the rate specified from time to time in column 2 of that table corresponding to the interim assessment of the applicant's degree of relevant disablement.

(5) Where a person is entitled to victims' payments following an application in a case where regulation 10 applies, the appropriate rate is the rate specified from time to time in column 2 of that table corresponding to the deceased's degree of relevant disablement.

(6) Subject to regulation 21, a person is entitled to victims' payments from the date the Board determines the applicant is entitled to victims' payments.

Adjustment in respect of other payments

19.—(1) Payments of victims' payments to a person are to be reduced by the aggregate amount of relevant payments received by that person—

- (a) in respect of the same disablement to which the victims' payments relate, and
- (b) while the person is entitled to victims' payments.

(2) For the purpose of this regulation, "relevant payments" means any of the following—

- (a) disablement pension under—
 - (i) section 103 of the Social Security Contributions and Benefits Act 1992⁽²⁾ (disablement pension);
 - (ii) section 103 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽³⁾ (disablement pension);

⁽¹⁾ S.I. 2006/606.

⁽²⁾ 1992 c. 4; Section 103 was amended by section 64(1)(b) of the Welfare Reform Act 2012 (c. 5).

⁽³⁾ 1992 c. 7; Section 103 was amended by S.I 2015/2006 (N.I.1).

- (b) any retired pay, pension, allowance or other continuing benefit awarded under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 in respect of a disablement;
- (c) any payments under article 15(1) or article 29(1) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011⁽⁴⁾ (benefits payable for injury and death);
- (d) any pension, award, allowance or other continuing benefit awarded under the Police Service of Northern Ireland and Police Service of Northern Ireland Reserve (Injury Benefit) Regulations 2006⁽⁵⁾ in respect of injury received in the execution of duty;
- (e) an ill-health pension under article 15 of the Firefighters' Pension Scheme Order (Northern Ireland) 2007⁽⁶⁾ or a pension payable under that Order in respect of disablement;
- (f) an award on ill-health retirement under article 12 of the New Firefighters' Pension Scheme Order (Northern Ireland) 2007⁽⁷⁾ or a pension payable under that Order in respect of disablement;
- (g) any pension, allowance, gratuity or other payment awarded under the Civil Service Compensation Scheme 1994;
- (h) any pension, allowance, gratuity or other payment awarded under the Civil Service Compensation Scheme (Northern Ireland) made under Article 3 of the Superannuation (Northern Ireland) Order 1972⁽⁸⁾ on the 28th August 1996, as amended from time to time;
- (i) any pension, allowance, gratuity or other payment awarded under the Civil Service Injury Benefit Scheme (Northern Ireland) made under article 3 of the Superannuation (Northern Ireland) Order 1972 and published on 1 January 2003, as amended from time to time;
- (j) any pension, allowance, gratuity or other payment awarded under the Civil Service Injury Benefits Scheme made on 22 July 2002 under section 1 of the Superannuation Act 1972, as amended from time to time;
- (k) any payment made under the National Health Service (Scotland) (Injury Benefits) Regulations 1998⁽⁹⁾, the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001⁽¹⁰⁾ or the National Health Service (Injury Benefits) Regulations 1995⁽¹¹⁾;
- (l) any benefit that is equivalent or substantially similar to those listed in sub-paragraphs (a)-(k) above (including benefits awarded under the legislation of another country or dependent territory).

Adjustment in respect of past compensation

20.—(1) This regulation applies in a case where—

- (a) a person is determined to be entitled to victims' payments in respect of disablement suffered by that person or another person, but
- (b) compensation has previously been paid to the person so entitled in respect of that disablement, and
- (c) the compensation referred to in sub-paragraph (b) exceeds the amount of exempted compensation.

⁽⁴⁾ S.I. 2011/517; relevant amending instruments are S.I. 2011/2552, 2013/436.

⁽⁵⁾ S.I. 2006/268.

⁽⁶⁾ S.R. 2007 No. 144.

⁽⁷⁾ S.R. 2007 No. 215; amended by S.R. 2008 No. 381, 2015 No.9,

⁽⁸⁾ S.I. 1972/1073 (N.I. 10)

⁽⁹⁾ 1998 No. 1594 (S. 84).

⁽¹⁰⁾ S.R. 2001 No. 365.

⁽¹¹⁾ S.I. 1995/866.

(2) The reference in paragraph (1)(b) to the payment of compensation is a reference to the payment of compensation—

- (a) in proceedings on a claim,
- (b) in settlement of a claim (whether or not proceedings on the claim were brought before a court), or
- (c) under a scheme established under a statutory provision.

(3) The Board may, to the extent that Board considers appropriate, adjust the amount of victims' payments payable to the person in respect of the amount compensation mentioned in paragraph (1) (b) which is in excess of the amount of exempted compensation.

(4) In considering whether, and to what extent, to exercise the power in paragraph (3), the Board must have regard in particular to —

- (a) the amount of compensation referred to in sub-paragraph (b) which is in excess of the amount of exempted compensation;
- (b) the period of time since any such compensation was paid, and
- (c) any other factor the Board considers relevant.

(5) The exempted amount of compensation is calculated by taking the following three steps.

(6) The first step is to calculate the amount a person would have received had they been entitled to victims' payments from the date of the relevant incident, by multiplying together—

- (a) the number of weeks since the relevant incident, and
- (b) the appropriate rate.

(7) The second step is to adjust the amount calculated under step 1 for inflation, using the ratio published by the Treasury and known as the Gross Domestic Product deflator by reference to the period—

- (a) beginning with the date of the relevant incident, and
- (b) ending with the date of the determination of the person's entitlement to victims' payments.

(8) The third step is to further adjust the amount calculated under step 1 to reflect the time value of money, with reference to the Bank of England base rate.

(9) Subject to paragraph (10), in this regulation "the appropriate rate" has the meaning given by regulation 18.

(10) In a case where disablement is caused by more than one relevant incident—

- (a) the amount of exempted compensation is calculated by taking the sum of calculations carried out under paragraph (5) in respect of each incident, and
- (b) the appropriate rate, in relation to a particular incident, means the rate specified from time to time in column 2 of the table in Part 2 of Schedule 1 to The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 corresponding to the assessed degree of disablement attributable to that incident.

(11) The Bank of England base rate means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, or
- (b) where an order under section 19 of the Bank of England Act 1998(12) is in force, any equivalent rate determined by the Treasury under that section.

(12) 1998 c. 11.

Backdating

21.—(1) This regulation applies where—

- (a) an applicant is entitled to victims' payments, and
- (b) the application which resulted in that entitlement was made during the relevant period.

(2) For the purpose of determining the amount of victims' payments payable, the entitlement must be backdated to the date the Board considers that the person would have become entitled to victims' payments had this Scheme been established on 23 December 2014.

(3) For the purposes of this regulation, "the relevant period" means the period—

- (a) beginning with the first date on which applications may be made, and
- (b) ending on the date three years after that date, or such later date as the Secretary of State may determine.

(4) For the purpose of determining the amount of victims' payments payable in respect of a past period, the reference in regulation 18 to a rate specified from time to time is a reference to the rate specified at the time the amount of victims' payments is determined.

Notification to the applicant

22. After making a determination of the amount of victims' payments payable to an applicant, the Board must as soon as reasonably practicable notify the applicant in writing of—

- (a) the amount payable;
- (b) a summary of the reason for the determination, and
- (c) the right to appeal.

Making of payments

23.—(1) Victims' payments must be paid monthly unless the Board considers the facts of a particular case means other arrangements are more appropriate.

(2) The first payment of victims' payments to a person must be made as soon as reasonably practicable after the determination of the amount of victims' payments payable to the person.

(3) The Board may make payments by whatever means the Board considers appropriate.

Lump sums

24.—(1) A person entitled to victims' payments is entitled on application to receive instead a lump sum if—

- (a) the person is over the age of 60, or
- (b) the person is terminally ill.

(2) An application under paragraph (1) must be—

- (a) made to the Board;
- (b) in writing;
- (c) on a form approved for the purpose by the Board, and
- (d) signed by or on behalf of the applicant.

(3) An application to receive a lump sum may be made—

- (a) at the same time as an application for victims' payments;
- (b) whether or not the person is over the age of 60 at the time of the application.

(4) Subject to paragraph (5), the lump sum is the amount of victims' payments that would be payable to the person in the period of ten years beginning with—

- (a) in the case of a person to whom paragraph (1)(a) applies, the person's 60th Birthday, or
- (b) in the case of a person to whom paragraph (1)(b) applies, the date of the application to receive a lump sum.

(5) Where an application to receive a lump sum is made at the same time as an application for victims' payments, the lump sum must include any amount of victims' payments payable in accordance with regulation 21.

(6) For the purpose of calculating the amount of the lump sum no regard is to be had to the possibility of—

- (a) the rate specified in column 2 of the table in Part 2 of Schedule 1 to The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 being increased;
- (b) the person's assessed degree of relevant disablement increasing or decreasing, or
- (c) any other change of circumstance.

(7) Where a person is paid a lump sum in accordance with this Regulation, the person—

- (a) has no further entitlement to victims' payments (and accordingly regulation 23(1) does not apply), and
- (b) may not bring an appeal.

Overpayments

25.—(1) The Board may recover any amount of victims' payments or a lump sum paid in excess of entitlement.

(2) Overpayments are recoverable from the person to whom the overpayment was made.

(3) Where a person receives victims' payments or a lump sum on behalf of another person (whether pursuant to an appointment under regulation 48(1) or otherwise), overpayments are recoverable from the person on whose behalf the payments were received (as well as from the person to whom the overpayment was made).

(4) Any amount recoverable from a person may be recovered by deducting the amount from further payments of victims' payments, or from payment of a lump sum, made to that person.

(5) An amount recoverable under paragraph (1) is, if the county court so orders, recoverable as if it were payable under an order of that court.

(6) Any costs of the Board in recovering an amount under this regulation may be recovered by the Board as if the costs were amounts recoverable under paragraph (1).

(7) Where the Board is seeking to recover an overpayment, the Board must notify in writing the person from whom the Board intends to recover overpayments of—

- (a) the amount the Board is seeking to recover;
- (b) the reason the Board considers that a payment has been made in excess of entitlement.

Disregard of payments and lump sums for certain purposes

26.—(1) A payment of victims' payments or a lump sum is to be disregarded—

- (a) from the calculation of a person's income or capital when determining entitlement to a relevant social security benefit;

- (b) for the purposes of an assessment of a person’s ability to pay under regulations made under Article 36(6) or 99(5) (cost of providing residential accommodation) of the Health and Personal Social Services (Northern Ireland) Order 1972**(13)**;
- (c) for the purposes of determining whether a person should repay (either fully or in part) an award of criminal injuries compensation where the application for that award was determined before these Regulations come into force.
- (2) In paragraph (1)—
- “criminal injuries compensation” means compensation under a scheme established under the Criminal Injuries Compensation Act 1995**(14)** or the Criminal Injuries Compensation (Northern Ireland) Order 2002**(15)**;
- “relevant social security benefit” means any of the following—
- (a) employment and support allowance under—
- (i) Part 1 of the Welfare Reform Act 2007**(16)** as it has effect apart from the amendments made by Schedule 3, and Part 1 of Schedule 14, to the Welfare Reform Act 2012**(17)** (to remove references to an income-related allowance);
 - (ii) Part 1 of the Welfare Reform Act (Northern Ireland) 2007**(18)** as it has effect apart from the amendments made by Schedule 3, and Part 5 of Schedule 12, to the Welfare Reform Order (Northern Ireland) 2015**(19)** (to remove references to an income related allowance);
- (b) housing benefit under—
- (i) Part 7 of the Social Security Contributions and Benefits Act 1992**(20)**, or
 - (ii) Part 7 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992**(21)**;
- (c) income support under—
- (i) Part 7 of the Social Security Contributions and Benefits Act 1992, or
 - (ii) Part 7 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- (d) jobseeker’s allowance under—
- (i) the Jobseekers Act 1995**(22)** as it has effect apart from the amendments made by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (to remove references to an income-based allowance);
 - (ii) the Jobseekers (Northern Ireland) Order 1995**(23)** as it has effect apart from the amendments made by Part 1 of Schedule 12 to the Welfare Reform Order (Northern Ireland) 2015 (to remove references to an income-based allowance);
- (e) state pension credit under—
- (i) section 1 of the State Pension Credit Act 2002**(24)**, or

(13) S.I. 1972/1265 (N.I. 14). Article 99 was substituted by S.I. 1991/194 (N.I. 1).

(14) 1995 c. 53.

(15) S.I. 2002/796 (N.I. 1).

(16) 2007 c. 5.

(17) 2012 c. 5.

(18) 2007 c. 2 (N.I.).

(19) S.I. 2015/2006 (N.I. 1).

(20) 1992 c. 4.

(21) 1992 c. 7.

(22) 1995 c. 18.

(23) S.I. 1995/2705 (N.I. 15).

(24) 2002 c.16.

- (ii) section 1 of the State Pension Credit Act (Northern Ireland) 2002⁽²⁵⁾;
- (f) universal credit under—
 - (i) Part 1 of the Welfare Reform Act 2012, or
 - (ii) Part 2 of the Welfare Reform (Northern Ireland) Order 2015.

Exclusion of payments from benefit recovery schemes

27.—(1) In regulation 2(2) of the Social Security (Recovery of Benefits) Regulations 1997⁽²⁶⁾ (exempted trusts and payments), after sub-paragraph (p) insert—

“(q) any payment of victims’ payments, or of a lump sum, under the Victims’ Payments Regulations 2020.”

(2) In regulation 2(2) of the Social Security (Recovery of Benefits) Regulations (Northern Ireland) 1997⁽²⁷⁾ (exempted trusts and payments), after sub-paragraph (q) insert—

“(r) any payment of victims’ payments, or of a lump sum, under the Victims’ Payments Regulations 2020.”

(3) In regulation 7(2) of the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008⁽²⁸⁾ (exempted trusts and payments), after sub-paragraph (m) insert—

“(n) any payment of victims’ payments, or of a lump sum, under the Victims’ Payments Regulations 2020.”

(4) In regulation 7(2) of the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008⁽²⁹⁾ (exempted trusts and payments), after sub-paragraph (n) insert—

“(o) any payment of victims’ payments, or of a lump sum, under the Victims’ Payments Regulations 2020.”

Invalidity of assignment and bankruptcy

28.—(1) Subject to regulation 9, any assignment or charge, and any agreement to assign or charge, any payment to which a person is entitled under this Scheme is void.

(2) On the bankruptcy of any person entitled to payments under these Regulations, no such payment, or entitlement to payments, is to pass to any trustee or person acting on behalf of the creditors.

⁽²⁵⁾ 2002 c.14 (N.I.).

⁽²⁶⁾ S.I. 1997/2205. Sub-paragraph (p) was inserted by S.I. 2017/870.

⁽²⁷⁾ S.R. 1997 No. 429. Sub-paragraph (q) was inserted by S.R. 2017 No. 219.

⁽²⁸⁾ S.I. 2008/1596. Sub-paragraph (m) was inserted by S.I. 2017/870.

⁽²⁹⁾ S.R. 2008 No. 355. Sub-paragraph (n) was inserted by S.R. 2017 No. 219.