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*Status: Point in time view as at 20/06/2016.*

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## STATUTORY INSTRUMENTS

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# 1997 No. 1183 (N.I. 12)

## The Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 <sup>F1</sup>

- - - - - 8th April 1997

**F1** functions transf. by SR 1999/481

**Modifications etc. (not altering text)**

**C1** Order: applied (with modifications) (1.10.2010) [Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/312\)](#), regs. 1, **16**, Sch. 2

### Title and commencement

1.—(1) This Order may be cited as the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997.

(2) This Order shall come into operation on such day or days as the Department may by order appoint <sup>F2</sup>.

**F2** fully exercised by SR 1997/400

### Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992;

[<sup>F3</sup>“appeal tribunal” means an appeal tribunal constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998;]

“benefit” means any benefit under the Contributions and Benefits Act, a jobseeker's allowance [<sup>F4</sup>, an employment and support allowance][<sup>F5</sup>, personal independence payment] or mobility allowance;

“compensation scheme for motor accidents” means any scheme or arrangement under which funds are available for the payment of compensation in respect of motor accidents caused, or alleged to have been caused, by uninsured or unidentified persons;

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“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“the Department” means the Department of Health and Social Services;

“listed benefit” means a benefit listed in column (2) of Schedule 2;

“National Insurance Fund” means the Northern Ireland National Insurance Fund;

“payment” means payment in money or money's worth;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department;

[<sup>F6</sup>“scheme administrator”, in relation to the Diffuse Mesothelioma Payment Scheme, has the meaning given by section 18 of the Mesothelioma Act 2014.]

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

- |           |                                                                                                                                                                                                                                                                                                                               |
|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>F3</b> | Art. 2(2): definition of "appeal tribunal" inserted (29.11.1999 for certain purposes otherwise prosp.) by Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), arts. 1(2), 78(1), <b>Sch. 6 para. 119</b> ; S.R. 1999/472, art. 2(1)(a)(2), <b>Sch. 1</b> (with transitional provisions in arts. 20, 21) |
| <b>F4</b> | Words in art. 2(2) in definition of "benefit" inserted (27.10.2008) by Employment and Support Allowance (Consequential Provisions) Regulations (Northern Ireland) 2008 (S.R. 2008/286), regs. 1(b), <b>3(2)</b>                                                                                                               |
| <b>F5</b> | Words in art. 2(2) inserted (20.6.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), art. 2(2), <b>Sch. 9 para. 33</b> ; S.R. 2016/215, art. 3(2)                                                                                                                                                    |
| <b>F6</b> | Words in art. 2(2) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), <b>Sch. 1 para. 10</b> ; S.I. 2014/459, art. 3(c)                                                                                                                                                                                          |

## Introductory

### Cases in which this Order applies

3.—(1) This Order applies in cases where—

- (a) a person makes a payment (whether on his own behalf or not) to or in respect of any other person in consequence of any accident, injury or disease suffered by the other, and
- (b) any listed benefits have been, or are likely to be, paid to or for the other during the relevant period in respect of the accident, injury or disease.

(2) The reference in paragraph (1)(a) to a payment in consequence of any accident, injury or disease is to a payment made—

- (a) by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the accident, injury or disease, <sup>F7</sup>...
- (b) in pursuance of a compensation scheme for motor accidents<sup>F8</sup>, or
- (c) under the Diffuse Mesothelioma Payment Scheme (established under the Mesothelioma Act 2014);]

but does not include a payment mentioned in Part I of Schedule 1.

(3) Paragraph (1)(a) applies to a payment made—

- (a) voluntarily, or in pursuance of a court order or an agreement, or otherwise, and
- (b) in the United Kingdom or elsewhere.

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- (4) In a case where this Order applies—
- (a) the “injured person” is the person who suffered the accident, injury or, disease,
  - (b) the “compensation payment” is the payment within paragraph (1)(a), ad
  - (c) “recoverable benefit” is any listed benefit which has been or is likely to be paid as mentioned in paragraph (1)(b).

**F7** Word in art. 3(2)(a) omitted (31.3.2014) by virtue of Mesothelioma Act 2014 (c. 1), s. 19(1), Sch. 1 para. 11(a); S.I. 2014/459, art. 3(c)

**F8** Art. 3(2)(c) and preceding word inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), Sch. 1 para. 11(b); S.I. 2014/459, art. 3(c)

### [<sup>F9</sup>Lump sum payments: regulation-making power

**3A.**—(1) The Department may by regulations make provision about the recovery of the amount of a payment to which paragraph (2) applies (a “lump sum payment”) where—

- (a) a compensation payment in consequence of a disease is made to or in respect of a person (“P”) to whom, or in respect of whom, a lump sum payment has been, or is likely to be, made, and
  - (b) the compensation payment is made in consequence of the same disease as the lump sum payment.
- (2) This paragraph applies to—
- (a) a payment made in accordance with the Pneumoconiosis, etc. , (Workers' Compensation) (Northern Ireland) Order 1979 (in this Article referred to as “ the 1979 Order ”);
  - (b) a payment made in accordance with the Mesothelioma, etc., Act (Northern Ireland) 2008,  
<sup>F10</sup> ...
  - (c) an extra-statutory payment (within the meaning given by paragraph (5)(d))<sup>F11</sup>, and
  - (d) a payment under the Diffuse Mesothelioma Payment Scheme (established under the Mesothelioma Act 2014),

(but this paragraph does not apply to a payment within sub-paragraph (d) in a case where the compensation payment is itself such a payment). ]

- (3) Regulations under this Article may, in particular—
- (a) make provision about the recovery of the amount of a lump sum payment made to or in respect of a dependant of P;
  - (b) make provision enabling the recovery of the amount of a lump sum payment from a compensation payment (including provision enabling the recovery of an amount which reduces the compensation payment to nil);
  - (c) enable the amount of a lump sum payment made before commencement to be recovered from a compensation payment made after commencement;
  - (d) make provision about certificates in respect of lump sum payments;
  - (e) apply any provision of this Order, with or without modifications.
- (4) References in paragraph (1) to a payment made in consequence of a disease—
- (a) are references to a payment made [<sup>F12</sup>as specified in Article 3(2)(a) or (c)] in respect of the disease, but
  - (b) do not include references to a payment mentioned in Part 1 of Schedule 1.

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(5) In this Article—

- (a) “ commencement ” means the date on which this Article comes into operation,
- (b) “ compensation payment ” means a payment within Article 3(1)(a),
- (c) “ dependant ” has the meaning given by Article 5 of the 1979 Order, and
- (d) “ extra-statutory payment ” means a payment made by the Department to or in respect of a person following the rejection by the Department of a claim under the 1979 Order. ]

- F9** Art. 3A inserted (27.8.2008 for certain purposes otherwise 1.10.2008) by Mesothelioma, etc., Act (Northern Ireland) 2008 (c. 9), ss. 8, 12(1); S.R. 2008/351, art. 2(1), Sch.
- F10** Word in art. 3A(2)(b) omitted (31.3.2014) by virtue of Mesothelioma Act 2014 (c. 1), s. 19(1), Sch. 1 para. 18(2)(a); S.I. 2014/459, art. 3(c)
- F11** Art. 3A(2)(d) and words inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), Sch. 1 para. 18(2)(b); S.I. 2014/459, art. 3(c)
- F12** Words in art. 3A(4)(a) substituted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), Sch. 1 para. 18(3); S.I. 2014/459, art. 3(c)

#### **Compensation payments to which this Order applies**

4. This Order applies in relation to compensation payments made on or after the day on which this Article comes into operation, unless they are made in pursuance of a court order or agreement made before that day.

#### **“The relevant period”**

5.—(1) In relation to a person (“the claimant”) who has suffered any accident, injury or disease, “the relevant period” has the meaning given by the following paragraphs.

(2) Subject to paragraph (4), if it is a case of accident or injury, the relevant period is the period of five years from the day on which the accident or injury in question occurred.

(3) Subject to paragraph (4), if it is a case of disease, the relevant period is the period of five years beginning with (and including) the date on which the claimant first claims a listed benefit in consequence of the disease.

(4) If at any time before the end of the period referred to in paragraph (2) or (3)—

- (a) a person makes a compensation payment in final discharge of any claim made by or in respect of the claimant and arising out of the accident, injury or disease, or
- (b) an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of any such claim,

the relevant period ends at that time.

#### *Certificates of recoverable benefits*

#### **Applications for certificates of recoverable benefits**

6.—(1) Before a person (“the compensator”) makes a compensation payment he shall apply to the Department for a certificate of recoverable benefits.

(2) Where the compensator applies for a certificate of recoverable benefits, the Department shall—

- (a) send to him a written acknowledgement of receipt of his application, and
- (b) subject to paragraph (7), issue the certificate before the end of the following period.

(3) The period is—

- (a) the prescribed period, or
- (b) if there is no prescribed period, the period of four weeks,

which begins with the day on which the application is received.

(4) The certificate is to remain in force until the date specified in it for that purpose.

(5) The compensator may apply for fresh certificates from time to time.

(6) Where a certificate of recoverable benefits ceases to be in force, the Department may issue a fresh certificate without an application for one being made.

(7) Where the compensator applies for a fresh certificate while a certificate (“the existing certificate”) remains in force, the Department shall issue the fresh certificate before the end of the following period.

(8) The period is—

- (a) the prescribed period, or
- (b) if there is no prescribed period, the period of four weeks,

which begins with the day on which the existing certificate ceases to be in force.

(9) For the purposes of this Order, regulations may provide for the day on which an application for a certificate of recoverable benefits is to be treated as received.

#### **Information contained in certificates**

7.—(1) A certificate of recoverable benefits shall specify, for each recoverable benefit—

- (a) the amount which has been or is likely to have been paid on or before a specified date, and
- (b) if the benefit is paid or likely to be paid after the specified date, the rate and period for which, and the intervals at which, it is or is likely to be so paid.

(2) In a case where the relevant period has ended before the day on which the Department receives the application for the certificate, the date specified in the certificate for the purposes of paragraph (1) shall be the day on which the relevant period ended.

(3) In any other case, the date specified for those purposes shall not be earlier than the day on which the Department received the application.

(4) The Department may estimate, in such manner as it thinks fit, any of the amounts, rates or periods specified in the certificate.

(5) Where the Department issues a certificate of recoverable benefits, it shall provide the information contained in the certificate to—

- (a) the person who appears to it to be the injured person, or
- (b) any person who it thinks will receive a compensation payment in respect of the injured person.

(6) A person to whom a certificate of recoverable benefits is issued or who is provided with information under paragraph (5) is entitled to particulars of the manner in which any amount, rate or period specified in the certificate has been determined, if he applies to the Department for those particulars.

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### *Liability of person paying compensation*

#### **Liability to pay Department amount of benefits**

**8.—(1)** A person who makes a compensation payment in any case is liable to pay to the Department an amount equal to the total amount of the recoverable benefits.

(2) The liability referred to in paragraph (1) arises immediately before the compensation payment or, if there is more than one, the first of them is made.

(3) No amount becomes payable under this Article before the end of the period of 14 days from the day on which the liability arises.

(4) Subject to paragraph (3), an amount becomes payable under this Article at the end of the period of 14 days beginning with (and including) the day on which a certificate of recoverable benefits is first issued showing that the amount of recoverable benefit to which it relates has been or is likely to have been paid before a specified date.

#### **Recovery of payments due under Article 8**

**9.—(1)** This Article applies where a person has made a compensation payment but—

- (a) has not applied for a certificate of recoverable benefits, or
- (b) has not made a payment to the Department under Article 8 before the end of the period allowed under that Article.

(2) The Department may—

- (a) issue the person who made the compensation payment with a certificate of recoverable benefits, if none has been issued, or
- (b) issue him with a copy of the certificate of recoverable benefits or (if more than one has been issued) the most recent one,

and (in either case) issue him with a demand that payment of any amount due under Article 8 be made immediately.

(3) The Department may, in accordance with paragraph (4), recover the amount for which a demand for payment is made under paragraph (2) from the person who made the compensation payment.

(4) Any amount recoverable under paragraph (3) shall, if the county court so orders, be enforceable as if it were payable under an order of that court.

(5) A document bearing a certificate which—

- (a) is signed by a person authorised to do so by the Department, and
- (b) states that the document, apart from the certificate, is a record of the amount recoverable under paragraph (3),

is conclusive evidence that that amount is so recoverable.

(6) A certificate under paragraph (5) purporting to be signed by a person authorised to do so by the Department is to be treated as so signed unless the contrary is proved.

### *Reduction of compensation payment*

#### **Reduction of compensation payment**

**10.—(1)** This Article applies in a case where, in relation to any head of compensation listed in column (1) of Schedule 2—

- (a) any of the compensation payment is attributable to that head, and
  - (b) any recoverable benefit is shown against that head in column (2) of that Schedule.
- (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) he is paid the amount (if any) of the compensation payment calculated in accordance with this Article, and
  - (b) if the amount of the compensation payment so calculated is nil, he is given a statement saying so by the person who (apart from this Article) would have paid the gross amount of the compensation payment.
- (3) For each head of compensation listed in column (1) of Schedule 2 for which sub-paragraphs (a) and (b) of paragraph (1) are met, so much of the gross amount of the compensation payment as is attributable to that head is to be reduced (to nil, if necessary) by deducting the amount of the recoverable benefit or, as the case may be, the aggregate amount of the recoverable benefits shown against it.
- (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 Article is—
- (a) the gross amount of the compensation payment,
- less
- (b) the sum of the reductions made under paragraph (3),
- (and, accordingly, the amount may be nil).

### **[<sup>F13</sup>Reduction of payment under Diffuse Mesothelioma Payment Scheme**

**10A.**—(1) This Article applies instead of Article 10 in a case where the compensation payment is a payment under the Diffuse Mesothelioma Payment Scheme.

- (2) The gross amount of the compensation payment—
- (a) is to be reduced by the amount of the recoverable benefit, and
  - (b) accordingly, is to be reduced to nil in any case where the amount of the recoverable benefit is equal to or greater than the gross amount of the compensation payment.
- (3) Any claim of a person to receive the compensation payment is to be treated for all purposes as discharged if—
- (a) the person is paid the gross amount of the compensation payment less the amount of the recoverable benefit, or
  - (b) the amount of the recoverable benefit is equal to or greater than the gross amount of the compensation payment and the person is given a statement by the scheme administrator saying that the compensation payment has been reduced to nil.]

**F13** Art. 10A inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), Sch. 1 para. 12; S.I. 2014/459, art. 3(c)

### **Article 10: supplementary**

**11.**—(1) A person who makes a compensation payment calculated in accordance with Article 10<sup>[F14]</sup> or 10A] shall inform the person to whom the payment is made—

- (a) that the payment has been so calculated, and

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(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 Article 10<sup>[F15]</sup> or 10A] is nil, a person giving a statement saying so is to be treated for the purposes of this Order as making a payment within Article 3(1)(a) on the day on which he gives the statement.

(3) Where a person—

(a) makes a compensation payment calculated in accordance with Article 10<sup>[F16]</sup> or 10A], and

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

(a) the gross amount of the compensation payment is the amount of the compensation payment apart from Article 10<sup>[F17]</sup> or 10A], and

(b) the amount of any recoverable benefit is the amount determined in accordance with the certificate of recoverable benefits.

**F14** Words in art. 11(1) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), **Sch. 1 para. 16**; S.I. 2014/459, art. 3(c)

**F15** Words in art. 11(2) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), **Sch. 1 para. 16**; S.I. 2014/459, art. 3(c)

**F16** Words in art. 11(3)(a) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), **Sch. 1 para. 16**; S.I. 2014/459, art. 3(c)

**F17** Words in art. 11(4)(a) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), **Sch. 1 para. 16**; S.I. 2014/459, art. 3(c)

### *Reviews and appeals*

#### **Review of certificates of recoverable benefits**

**12.**<sup>F18</sup>(1) The Department may review any certificate of recoverable benefits if it is satisfied—

(a) that the certificate was issued in ignorance of, or was based on a mistake as to, a material fact, or

(b) that a mistake (whether in computation or otherwise) has occurred in the preparation of the certificate.

(2) On a review under this Article the Department may either—

(a) confirm the certificate,<sup>F19</sup> or

(b) (subject to paragraph (3)) issue a fresh certificate containing such variations as it considers appropriate.

<sup>F20</sup>(3) The Department may not vary the certificate so as to increase the total amount of the recoverable benefits unless it appears to the Department that the variation is required as a result of the person who applied for the certificate supplying the Department with incorrect or insufficient information.

<sup>[F21</sup>(4) The scheme administrator of the Diffuse Mesothelioma Payment Scheme may not apply for a review under this Article.]

**F18** prosp. in pt. subst. by 1998 NI 10



**F19** prosp. in pt. rep. by 1998 NI 10

**F20** prosp. in pt. inserted by 1998 NI 10

**F21** Art. 12(4) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), Sch. 1 para. 13; S.I. 2014/459, art. 3(c)

### Appeals against certificates of recoverable benefits

**13.**—(1) An appeal against a certificate of recoverable benefits may be made on the ground—

- (a) that any amount, rate or period specified in the certificate is incorrect,<sup>F22</sup> or
- (b) that listed benefits which have been, or are likely to be, paid otherwise than in respect of the accident, injury or disease in question have been brought into account.

<sup>F23</sup>(2) An appeal under this Article may be made by—

- (a) the person who applied for the certificate of recoverable benefits,<sup>F22</sup> or

<sup>F24</sup>(b) (in a case where the amount of the compensation payment has been calculated under Article 10<sup>[F25</sup>or 10A]) the injured person or other person to whom the payment is made,

<sup>[F26</sup>but the scheme administrator of the Diffuse Mesothelioma Payment Scheme may not appeal under this Article.]

<sup>[F27</sup>(2A) Regulations may provide that, in such cases or circumstances as may be prescribed, an appeal may be made under this Article only if the Department has reviewed the certificate under Article 12.

(2B) The regulations may in particular provide that that condition is met only where—

- (a) the review by the Department was on an application,
- (b) the Department considered issues of a specified description, or
- (c) the review by the Department satisfied any other condition specified in the regulations.]

(3) No appeal may be made under this Article until—

- (a) the claim giving rise to the compensation payment has been finally disposed of, and
- (b) the liability under Article 8 has been discharged.

(4) For the purposes of paragraph (3)(a), if an award of damages in respect of a claim has been made under or by virtue of paragraph 10(2)(a) of Schedule 6 to the Administration of Justice Act 1982, (orders for provisional damages in personal injury cases), the claim is to be treated as having been finally disposed of.

(5) Regulations may make provision—

- (a) as to the manner in which, and the time within which, appeals under this Article may be made,
- (b) as to the procedure to be followed where such an appeal is made, and
- (c) for the purpose of enabling any such appeal <sup>[F28</sup>(or, where in accordance with regulations under paragraph (2A) there is no right of appeal, any purported appeal)] to be treated as an application for review under Article 12.

<sup>F22</sup>(6) Regulations under paragraph (5)(c) may (among other things) provide that the circumstances in which a review may be carried out are not to be restricted to those specified in Article 12(1).

**F22** prosp. in pt. rep. by 1998 NI 10

**F23** prosp. in pt. added by 1998 NI 10

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- F24** prosp. in pt. inserted by 1998 NI 10
- F25** Words in art. 13(2)(b) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), **Sch. 1 para. 16**; S.I. 2014/459, art. 3(c)
- F26** Words in art. 13(2) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), **Sch. 1 para. 14**; S.I. 2014/459, art. 3(c)
- F27** Art. 13(2A)(2B) inserted (17.3.2016 with effect as mentioned in art. 107(7)-(9) of the amending Order) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), art. 2(2), **Sch. 11 para. 7(2)**; S.R. 2016/166, art. 2(b)
- F28** Words in art. 13(5)(c) inserted (17.3.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), art. 2(2), **Sch. 11 para. 7(3)**; S.R. 2016/166, art. 2(b)

## **F29** Reference of questions to medical appeal tribunal

**14.**—<sup>F29</sup>(1) The Department shall refer to a medical appeal tribunal any question mentioned in paragraph (2) arising for determination on an appeal under Article 13.

<sup>F29</sup>(2) The questions are any concerning—

- (a) any amount, rate or period specified in the certificate of recoverable benefits, or
- (b) whether listed benefits which have been, or are likely to be, paid otherwise than in respect of the accident, injury or disease in question have been brought into account.

(3) In determining<sup>F29</sup> any question referred to it under paragraph (1), the tribunal shall take into account any decision of a court relating to the same, or any similar, issue arising in connection with the accident, injury or disease in question.

(4) On<sup>F29</sup> a reference under paragraph (1) a medical appeal tribunal may either—

- (a) confirm the amounts, rates and periods specified in the certificate of recoverable benefits,<sup>F30</sup> or
- (b) specify any variations which are to be made on the issue of a fresh certificate under paragraph (5).

<sup>F31</sup>(5) When the Department has received the decision of the tribunal on the<sup>F29</sup> questions referred to the tribunal under paragraph (1), the Department shall in accordance with that decision either—

- (a) confirm the certificate against which the appeal was brought,<sup>F30</sup> or
- (b) issue a fresh certificate.

<sup>F31</sup><sup>F30</sup>(6) Regulations may make provision—

- (a) as to the manner in which, and the time within which, a reference under paragraph (1) is to be made, and
- (b) as to the procedure to be followed where such a reference is made.

(7) Regulations<sup>F30</sup> under paragraph (6)(b) may (among other things) provide for the non-disclosure of medical advice or medical evidence given or submitted following a reference under paragraph (1).

<sup>F30</sup>(8) In this Article “medical appeal tribunal” means a medical appeal tribunal constituted under section 48 of the Administration Act.

- F29** prosp. in pt. subst. by 1998 NI 10
- F30** prosp. in pt. rep. by 1998 NI 10
- F31** prosp. in pt. added by 1998 NI 10

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## Appeal to Social Security Commissioner

**15.—**(1) An appeal may be made to a Commissioner against any decision of<sup>F32</sup> a medical appeal tribunal under Article 14 on the ground that the decision was erroneous in point of law.

(2) An appeal under this Article may be made by—

- (a) the Department,
- (b) the person who applied for the certificate of recoverable benefits,<sup>F33</sup> or
- <sup>F34</sup>(c) (in a case where the amount of the compensation payment has been calculated in accordance with Article 10<sup>F35</sup> or 10A) the injured person or other person to whom the payment is made,

<sup>F36</sup>but the scheme administrator of the Diffuse Mesothelioma Payment Scheme may not appeal under this Article.]

<sup>F32</sup>(3) Subsections (7) to (10) of section 21 of the Administration Act apply to appeals under this Article as they apply to appeals under that section.

(4) In this Article “Commissioner” has the same meaning as in section 167(1) of the Administration Act.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>F32</b> prosp. in pt. subst. by <a href="#">1998 NI 10</a></p> <p><b>F33</b> prosp. in pt. rep. by <a href="#">1998 NI 10</a></p> <p><b>F34</b> prosp. in pt. inserted by <a href="#">1998 NI 10</a></p> <p><b>F35</b> Words in <a href="#">art. 15(2)(c)</a> inserted (31.3.2014) by <a href="#">Mesothelioma Act 2014 (c. 1)</a>, s. 19(1), <a href="#">Sch. 1 para. 16</a>; <a href="#">S.I. 2014/459</a>, art. 3(c)</p> <p><b>F36</b> Words in <a href="#">art. 15(2)</a> inserted (31.3.2014) by <a href="#">Mesothelioma Act 2014 (c. 1)</a>, s. 19(1), <a href="#">Sch. 1 para. 15</a>; <a href="#">S.I. 2014/459</a>, art. 3(c)</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Reviews and appeals: supplementary

**16.—**(1) This Article applies in cases where a fresh certificate of recoverable benefits is issued as a result of a review under Article 12 or an appeal under Article 13.

(2) If—

- (a) a person has made one or more payments to the Department under Article 8, and
- (b) in consequence of the review or appeal, it appears that the total amount paid is more than the amount that ought to have been paid,

regulations may provide for the Department to pay the difference to that person, or to the person to whom the compensation payment is made, or partly to one and partly to the other.

(3) If—

- (a) a person has made one or more payments to the Department under Article 8, and
- (b) in consequence of the review or appeal, it appears that the total amount paid is less than the amount that ought to have been paid,

regulations may provide for that person to pay the difference to the Department.

(4) Regulations under this Article may provide—

- (a) for the recalculation in accordance with Article 10<sup>F37</sup> or 10A] of the amount of any compensation payment,
- (b) for giving credit for amounts already paid, and
- (c) for the payment by any person of any balance or the recovery from any person of any excess,

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and may provide for any matter by modifying this Order.

**F37** Words in art. 16(4)(a) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), Sch. 1 para. 16; S.I. 2014/459, art. 3(c)

## *Courts*

### **Court orders**

**17.**—(1) This Article applies where a court makes an order for a compensation payment to be made in any case, unless the order is made with the consent of the injured person and the person by whom the payment is to be made.

(2) The court shall, in the case of each head of compensation listed in column (1) of Schedule 2 to which any of the compensation payment is attributable, specify in the order the amount of the compensation payment which is attributable to that head.

### **Payments into court**

**18.**—(1) Regulations may make provision (including provision modifying this Order) for any case in which a payment into court is made.

(2) The regulations may (among other things) provide—

- (a) for the making of a payment into court to be treated in prescribed circumstances as the making of a compensation payment,
- (b) for application for, and issue of, certificates of recoverable benefits, and
- (c) for the relevant period to be treated as ending on a date determined in accordance with the regulations.

(3) Rules of court and county court rules may make provision governing practice and procedure in such cases.

### **Benefits irrelevant to assessment of damages**

**19.** In assessing damages in respect of any accident, injury or disease, the amount of any listed benefits paid or likely to be paid is to be disregarded.

## *Reduction of compensation: complex cases*

### **Lump sum and periodical payments**

**20.**—(1) Regulations may make provision (including provision modifying this Order) for any case in which two or more compensation payments in the form of lump sums are made by the same person to or in respect of the injured person in consequence of the same accident, injury or disease.

(2) The regulations may (among other things) provide—

- (a) for the re-calculation in accordance with Article 10 of the amount of any compensation payment,
- (b) for giving credit for amounts already paid, and
- (c) for the payment by any person of any balance or the recovery from any person of any excess.

(3) For the purposes of paragraph (2), the regulations may provide for the gross amounts of the compensation, payments to be aggregated and for—

- (a) the aggregate amount to be taken to be the gross amount of the compensation payment for the purposes of Article 10,
- (b) so much of the aggregate amount as is attributable to a head of compensation listed in column (1) of Schedule 2 to be taken to be the part of the gross amount which is attributable to that head,

and for the amount of any recoverable benefit shown against any head in column (2) of that Schedule to be taken to be the amount determined in accordance with the most recent certificate of recoverable benefits.

(4) Regulations may make provision (including provision modifying this Order) for any case in which, in final settlement of the injured person's claim, an agreement is entered into for the making of—

- (a) periodical compensation payments (whether of an income or capital nature), or
- (b) periodical compensation payments and lump sum compensation payments.

(5) Regulations made by virtue of paragraph (4) may (among other things) provide—

- (a) for the relevant period to be treated as ending at a prescribed time,
- (b) for the person who is to make the payments under the agreement to be treated for the purposes of this Order as if he had made a single compensation payment on a prescribed date.

(6) A periodical payment may be a compensation payment for the purposes of this Article even though it is a small payment (as defined in Part II of Schedule 1).

### **Payments by more than one person**

**21.—**(1) Regulations may make provision (including provision modifying this Order) for any case in which two or more persons (“the compensators”) make compensation payments to or in respect of the same injured person in consequence of the same accident, injury or disease.

(2) In such a case, the sum of the liabilities of the compensators under Article 8 is not to exceed the total amount of the recoverable benefits, and the regulations may provide for determining the respective liabilities under that Article of each of the compensators.

(3) The regulations may (among other things) provide in the case of each compensator—

- (a) for determining or re-determining the part of the recoverable benefits which may be taken into account in his case,
- (b) for calculating or recalculating in accordance with Article 10<sup>F38</sup> or 10A] the amount of any compensation payment,
- (c) for giving credit for amounts already paid, and
- (d) for the payment by any person of any balance or the recovery from any person of any excess.

**F38** Words in art. 21(3)(b) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), Sch. 1 para. 16; S.I. 2014/459, art. 3(c)

*Status: Point in time view as at 20/06/2016.*

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## Miscellaneous

### Amounts overpaid under Article 8

**22.**—(1) Regulations may make provision (including provision modifying this Order) for cases where a person has paid to the Department under Article 8 any amount ( “the amount of the overpayment”) which he was not liable to pay.

(2) The regulations may provide—

- (a) for the Department to pay the amount of the overpayment to that person, or to the person to whom the compensation payment is made, or partly to one and partly to the other, or
- (b) for the receipt by the Department of the amount of the overpayment to be treated as the recovery of that amount.

(3) Regulations made by virtue of paragraph (2)(b) are to have effect in spite of anything in section 69 of the Administration Act (overpayments – general).

(4) The regulations may also (among other things) provide—

- (a) for the re-calculation in accordance with Article 10<sup>F39</sup> or 10A] of the amount of any compensation payment,
- (b) for giving credit for amounts already paid, and
- (c) for the payment by any person of any balance or the recovery from any person of any excess.

(5) This Article does not apply in a case where Article 16 applies.

**F39** Words in art. 22(4)(a) inserted (31.3.2014) by *Mesothelioma Act 2014 (c. 1)*, s. 19(1), **Sch. 1 para. 16**; *S.I. 2014/459*, art. 3(c)

### Compensation payments to be disregarded

**23.**—(1) If, when a compensation payment is made, the first and second conditions are met, the payment is to be disregarded for the purposes of Articles 8 and 10<sup>F40</sup> or 10A].

(2) The first condition is that the person making the payment—

- (a) has made an application for a certificate of recoverable benefits which complies with paragraph (3), and
- (b) has in his possession a written acknowledgement of the receipt of his application.

(3) An application complies with this paragraph if it—

- (a) accurately states the prescribed particulars relating to the injured person and the accident, injury or disease in question, and
- (b) specifies the name and address of the person to whom the certificate is to be sent.

(4) The second condition is that the Department has not sent the certificate to the person, at the address, specified in the application, before the end of the period allowed under Article 6.

(5) In any case where—

- (a) by virtue of paragraph (1), a compensation payment is disregarded for the purposes of Articles 8 and 10<sup>F41</sup> or 10A], but
- (b) the person who made the compensation payment nevertheless makes a payment to the Department for which (but for paragraph (1)) he would be liable under Article 8,

paragraph (1) is to cease to apply in relation to the compensation payment.

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(6) If, in the opinion of the Department, circumstances have arisen which adversely affect normal methods of communication—

- (a) the Department may by order provide that paragraph (1) is not to apply during a specified period not exceeding three months, and
- (b) the Department may continue any such order in force for further periods not exceeding three months at a time.

**F40** Words in art. 23(1) inserted (31.3.2014) by virtue of [Mesothelioma Act 2014 \(c. 1\), s. 19\(1\), Sch. 1 para. 16](#); [S.I. 2014/459, art. 3\(c\)](#)

**F41** Words in art. 23(5)(a) inserted (31.3.2014) by virtue of [Mesothelioma Act 2014 \(c. 1\), s. 19\(1\), Sch. 1 para. 16](#); [S.I. 2014/459, art. 3\(c\)](#)

### Liability of insurers

**24.**—(1) If a compensation payment is made in a case where—

- (a) a person is liable to any extent in respect of the accident, injury or disease, and
- (b) the liability is covered to any extent by a policy of insurance,

the policy is also to be treated as covering any liability of that person under Article 8.

(2) Liability imposed on the insurer by paragraph (1) cannot be excluded or restricted.

(3) For that purpose excluding or restricting liability includes—

- (a) making the liability or its enforcement subject to restrictive or onerous conditions,
- (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
- (c) excluding or restricting rules of evidence or procedure.

(4) Regulations may in prescribed cases limit the amount of the liability imposed on the insurer by paragraph (1).

(5) This Article applies to policies of insurance issued before (as well as those issued after) its coming into operation.

(6) References in this Article to policies of insurance and their issue include references to contracts of insurance and their making.

### Provision of information

**25.**—(1) Where compensation is sought in respect of any accident, injury or disease suffered by any person ( “the injured person”), the following persons shall give the Department the prescribed information about the injured person—

- (a) anyone who is, or is alleged to be, liable in respect of the accident, injury or disease, and
- (b) anyone acting on behalf of such a person.

(2) A person who receives or claims a listed benefit which is or is likely to be paid in respect of an accident, injury or disease suffered by him, shall give the Department the prescribed information about the accident, injury or disease.

(3) Where a person who has received a listed benefit dies, the duty in paragraph (2) is imposed on his personal representative.

(4) Any person who makes a payment (whether on his own behalf or not)—

- (a) in consequence of, or
- (b) which is referable to any costs incurred by reason of,

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any accident, injury or disease, or any damage to property, shall, if the Department requests him in writing to do so, give the Department such particulars relating to the size and composition of the payment as are specified in the request.

(5) The employer of a person who suffers or has suffered an accident, injury or disease, and anyone who has been the employer of such a person at any time during the relevant period, shall give the Department the prescribed information about the payment of statutory sick pay in respect of that person.

(6) In paragraph (5) “employer” has the same meaning as it has in Part XI of the Contributions and Benefits Act.

[<sup>F42</sup>(6A) The following persons must give the Department the prescribed information for the purposes of this Order—

- (a) the scheme administrator of the Diffuse Mesothelioma Payment Scheme, and
- (b) any person providing services to the scheme administrator.]

(7) A person who is required to give information under this Article shall do so in the prescribed manner, at the prescribed place and within the prescribed time.

(8) Article 3 does not apply in relation to this Article.

**F42** Art. 25(6A) inserted (31.3.2014) by [Mesothelioma Act 2014 \(c. 1\)](#), s. 19(1), [Sch. 1 para. 20](#); [S.I. 2014/459](#), art. 3(c)

## Power to amend Schedule 2

26.—(1) The Department may by regulations amend Schedule 2.

(2) Regulations made under paragraph (1) shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.

## *General*

### The Crown

27. This Order binds the Crown to the full extent authorised by the constitutional laws of Northern Ireland.

### Regulations and orders

28.—(1) Regulations or orders made under this Order other than orders made under Article I(2) or regulations made under Article [<sup>F43</sup>13(2A) or] 26(1) shall be subject to negative resolution.

[<sup>F44</sup>(1A) Regulations under Article 13(2A) must be laid before the Assembly after being made and take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations are approved by a resolution of the Assembly.]

(2) Regulations under Article 22, under Article 26 amending the list of benefits in column (2) of Schedule 2 or under paragraph 9 of Schedule 1 may not be made without the consent of the Department of Finance and Personnel.



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(3) Subsections (4), (5), (6) and (10) of section 165 of the Administration Act (regulations and orders – general) apply for the purposes of this Order as they apply for the purposes of that Act.

- F43** Words in art. 28(1) inserted (17.3.2016) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 11 para. 8\(2\)](#); S.R. 2016/166, art. 2(b)
- F44** Art. 28(1A) inserted (17.3.2016) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 11 para. 8\(3\)](#); S.R. 2016/166, art. 2(b)

### Financial arrangements

**29.**—(1) There shall be paid out of the National Insurance Fund any expenses of the Department in making payments under Article 16 or 22 to the extent that the Department estimates that those payments relate to sums paid out of that Fund.

- (2) Any sums paid to the Department under Article 8 or 16 shall be paid—
- (a) into the Consolidated Fund, to the extent that the Department estimates that the sums relate to payments out of money appropriated by Measure, and
  - (b) into the National Insurance Fund, to the extent that the Department estimates that they relate to payments out of that Fund.

### Power to make transitional, consequential etc. provisions

**30.**—(1) Regulations may make such transitional and consequential provisions, and such savings, as the Department considers necessary or expedient in preparation for, in connection with, or in consequence of—

- (a) the coming into operation of any provision of this Order, or
  - (b) the operation of any statutory provision repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in operation.
- (2) Regulations under this Article may (among other things) provide—
- (a) for compensation payments in relation to which, by virtue of Article 4, this Order does not apply to be treated as payments in relation to which this Order applies,
  - (b) for compensation payments in relation to which, by virtue of Article 4, this Order applies to be treated as payments in relation to which this Order does not apply, and
  - (c) for the modification of any statutory provision contained in this Order or referred to in paragraph (1)(b) in its application to any compensation payment.

*Article 31—Amendments and repeals*

**Status:** Point in time view as at 20/06/2016.

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## SCHEDULES

### SCHEDULE 1

Article 3.

#### COMPENSATION PAYMENTS

#### PART I

#### EXEMPTED PAYMENTS

1. Any small payment (defined in Part II of this Schedule).

2. Any payment made to or for the injured person under Article 14 of the Criminal Justice (Northern Ireland) Order <sup>F45</sup>1994, Schedule 2 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 or <sup>F46</sup>section 175 of the Armed Forces Act 2006] (compensation orders against convicted persons).

**F45** Words in Sch. 1 para. 2 substituted (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\), s. 28\(2\), Sch. 4 para. 10](#)

**F46** Words in Sch. 1 Pt. 1 para. 2 inserted (28.3.2009 for certain purposes otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\), ss. 378\(1\), 383\(2\), Sch. 16 para. 151; S.I. 2009/812, art. 3\(a\)\(b\)](#) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167, art. 4](#)

#### Modifications etc. (not altering text)

**C2** Sch. 1 para. 2 modified (24.4.2009 for certain purposes otherwise 31.10.2009) by [Armed Forces Act 2006 \(Transitional Provisions etc\) Order 2009 \(S.I. 2009/1059\), arts. 1\(3\), 205, Sch. 1 para. 42](#)

3. Any payment made in the exercise of a discretion out of property held subject to a trust in a case where no more than 50 per cent. by value of the capital contributed to the trust was directly or indirectly provided by persons who are, or are alleged to be, liable in respect of—

- (a) the accident, injury or disease suffered by the injured person, or
- (b) the same or any connected accident, injury or disease suffered by another.

4. Any payment made out of property held for the purposes of any prescribed trust (whether the payment also falls within paragraph 3 or not).

5.—<sup>F47</sup>(1) Any payment made to the injured person by an<sup>F47</sup> insurer] under the terms of any contract of insurance entered into between the injured person and<sup>F47</sup> the insurer] before—

- (a) the date on which the injured person first claims a listed benefit in consequence of the disease in question, or
- (b) the occurrence of the accident or injury in question.

<sup>F47</sup>(2) “Insurer” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance; or

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- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance.
- (3) Sub-paragraph (2) must be read with—
  - (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]

F47 SI 2001/3649

6. Any redundancy payment falling to be taken into account in the assessment of damages in respect of an accident, injury or disease.

7. So much of any payment as is referable to costs.

8. Any prescribed payment.

## PART II

### POWER TO DISREGARD SMALL PAYMENTS

9.—(1) Regulations may make provision for compensation payments to be disregarded for the purposes of Articles 8 and 10 in prescribed cases where the amount of the compensation payment, or the aggregate amount of two or more connected compensation payments, does not exceed the prescribed sum.

(2) A compensation payment disregarded by virtue of this paragraph is referred to in paragraph 1 as a “small payment”.

(3) 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 injured person 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 paragraph 1.

## SCHEDULE 2

Article 10.

### CALCULATION OF COMPENSATION PAYMENT

(1) <i>Head of compensation</i>	(2) <i>Benefit</i>
1. Compensation for earnings lost during the relevant period	<sup>F48</sup> . . . . Disablement pension payable under section 103 of the Contributions and Benefits Act [ <sup>F49</sup> Employment and support allowance] Incapacity benefit Income support Invalidity pension and allowance

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	<p>Jobseeker's allowance            Reduced earnings allowance            Severe disablement allowance            Sickness benefit            Statutory sick pay            Unemployability supplement            Unemployment benefit</p>
<p>2. Compensation for cost of care incurred during the relevant period</p>	<p>Attendance allowance            Care component of disability living allowance            [<sup>F50</sup>Daily living component of personal independence payment]            Disablement pension increase payable under section 104 or 105 of the Contributions and Benefits Act</p>
<p>3. Compensation for loss of mobility during the relevant period</p>	<p>Mobility allowance            Mobility component of disability living allowance            [<sup>F51</sup>Mobility component of personal independence payment]</p>

**F48** 1999 c.10

**F49** Entry in Sch. 2 para. 1 column (2) inserted (27.10.2008) by [Employment and Support Allowance \(Consequential Provisions\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/286\)](#), regs. 1(b), **3(3)**

**F50** Words in Sch. 2 inserted (20.6.2016) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), **Sch. 9 para. 34(a)**; S.R. 2016/215, art. 3(2)

**F51** Words in Sch. 2 inserted (20.6.2016) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), **Sch. 9 para. 34(b)**; S.R. 2016/215, art. 3(2)

**F48** 1999 c.10

**F49** Entry in Sch. 2 para. 1 column (2) inserted (27.10.2008) by [Employment and Support Allowance \(Consequential Provisions\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/286\)](#), regs. 1(b), **3(3)**

**F50** Words in Sch. 2 inserted (20.6.2016) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), **Sch. 9 para. 34(a)**; S.R. 2016/215, art. 3(2)

**F51** Words in Sch. 2 inserted (20.6.2016) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), **Sch. 9 para. 34(b)**; S.R. 2016/215, art. 3(2)

## NOTES

1.—(1) The reference to unemployment benefit also includes any income support paid with that benefit on the same instrument of payment or paid concurrently with that benefit by means of an instrument for benefit payment.

(2) For the purpose of this Note, income support includes personal expenses addition, special transitional addition and transitional addition as defined in the Income Support (Transitional) Regulations (Northern

2. Any reference to statutory sick pay—

(a) includes only 80 per cent. of payments made between 6th April 1991 and 5th April 1994, and

(b) does not include payments made on or after 6th April 1994.

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### *Schedule 3—Amendments*

### *Schedule 4—Repeals*

**Status:**

Point in time view as at 20/06/2016.

**Changes to legislation:**

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