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SCHEDULES

SCHEDULE 2

RECOVERY OF SUMS PAID BY WAY OF SUPPLEMENTARY BENEFIT ON AWARDS MADE BY VIRTUE OF SECTION 9(1) OF THIS ACT

PART II

RECOVERY OF SUPPLEMENTARY BENEFIT PAID

Service and contents of deduction notices

- 2 (1) Where the Secretary of State receives a notification of award under section 9(4) of this Act, then, unless the amount of supplementary benefit specified therein as having been awarded to the claimant has already been repaid by the claimant, the Secretary of State shall serve on the person, if any, by whom the claimant is for the time being employed a notice under this paragraph (in this Schedule referred to as a "deduction notice") relating to the claimant.
- (2) Every deduction notice shall contain the following particulars—
- (a) particulars enabling the employer to identify the claimant;
 - (b) the amount by reference to which deductions are to be made by the employer from the claimant's earnings by virtue of the notice;
 - (c) the claimant's protected earnings; and
 - (d) such other particulars as may be prescribed.
- (3) Subject to the following provisions of this Part of this Schedule—
- (a) the amount specified in a deduction notice as the amount by reference to which deductions are to be made by the employer shall be equal to the amount of supplementary benefit specified in the notification of award to the claimant under section 9(4) of this Act or, if any part of the last-mentioned amount has been repaid by the claimant before the date of the deduction notice, shall be equal to so much of that amount as has not been so repaid before that date ; and
 - (b) the sum so specified as the claimant's protected earnings shall, subject to the regulations, be the same as that specified in that notification of award.
- (4) If, after the Secretary of State has received a notification of award under section 9(4) of this Act and served a deduction notice relating to the claimant, the Secretary of State receives a further notification of award relating to the same person, then, unless the aggregate of the amounts of supplementary benefit respectively specified in all notifications of award relating to the claimant which have been received by the Secretary of State since the beginning of the relevant engagement has already been repaid by the claimant, the Secretary of State shall serve a further deduction notice on the person, if any, by whom the claimant is for the time being employed.

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- (5) Where a further deduction notice is served at any time by virtue of sub-paragraph (4) above, then—
- (a) if at that time there is in force in relation to the claimant a previous deduction notice served after the beginning of the relevant engagement, the amount specified in the further deduction notice as the amount by reference to which deductions are to be made by the employer shall be equal to the sum of the following amounts—
- (i) the amount specified in the previous deduction notice as the amount by reference to which deductions are to be so made ; and
- (ii) the amount of supplementary benefit which, in the further notification of award in consequence of which the further deduction notice is being served, is specified as having been awarded to the claimant;
- reduced by the aggregate of any amounts repaid by the claimant on or after the date of the previous notice and before the date of the further deduction notice ;
- (b) in any other case, the amount so specified in the further deduction notice shall be the amount which would fall to be so specified in that notice in accordance with paragraph 5 below if the further deduction notice were being served by virtue of that paragraph.
- (6) Service of a further deduction notice by virtue of sub-paragraph (4) above shall have the effect of cancelling any earlier deduction notice relating to the claimant which is in force when the further deduction notice is served, but shall not affect the validity of anything done by virtue of the earlier notice while it was in force.

Period for which deduction notice has effect

- 3 (1) A deduction notice shall come into force when it is served on the employer of the claimant to whom it relates and shall (unless previously cancelled by virtue of paragraph 2(6) above or sub-paragraph (2) below) cease to have effect as soon as any of the following events occur—
- (a) the claimant dies or ceases to be in the employment of the person on whom the deduction notice was served ;
- (b) the aggregate of—
- (i) all amounts, if any, repaid by the claimant on or after the date of the deduction notice in question ; and
- (ii) all amounts, if any, deducted from the claimant's earnings by virtue of the deduction notice in question or, if the condition specified in sub-paragraph (4) below is fulfilled in the case of the notice in question, all amounts, if any, deducted from the claimant's earnings by virtue of that notice of any relevant previous deduction notice within the meaning of that sub-paragraph;
- reaches the amount specified in the notice in question as the amount by reference to which deductions are to be made by the employer;
- (c) the expiration of the period of fourteen weeks beginning with the date of the notice.
- (2) The Secretary of State may at any time give a direction in writing cancelling a deduction notice, and shall cause a copy of any such direction to be served on the

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employer concerned and on the claimant. A direction given under this sub-paragraph shall take effect when a copy of it is served on the employer concerned.

- (3) Where a deduction notice is cancelled under sub-paragraph (2) above, no further deduction notice relating to the claimant shall be served in connection with any supplementary benefit awarded to him by virtue of section 9(1) of this Act during the period of fifteen days from the beginning of the relevant engagement.
- (4) If, in the case of a deduction notice which is in force (in this sub-paragraph referred to as " the current notice ") the following condition is fulfilled, namely that at the time when that notice was served on the employer there was in force in relation to the claimant a previous deduction notice served on the same employer after the beginning of the relevant engagement, each of the following shall for the purposes of sub-paragraph (1)(b)(ii) above constitute a relevant previous deduction notice, that is to say—
 - (i) that previous deduction notice ; and
 - (ii) any earlier previous deduction notice relating to the claimant which was served on that employer after the beginning of the relevant engagement, if (subject to sub-paragraph (5) below) the claimant was continuously in the employment of that employer from the time when the earlier previous notice in question was served to the time when the current notice was served.
- (5) For the purposes of sub-paragraph (4) above the continuity of a period of employment under the same employer shall be treated as having been broken on any occasion on which a deduction notice relating to the employee, which was served on the employer after the beginning of the relevant engagement, ceased to have effect by reason of the expiration of the period of fourteen weeks mentioned in sub-paragraph (1)(c) above.

Effect of deduction notice

- 4 (1) While a deduction notice is in force in respect of an employee, the following provisions of this paragraph shall apply as regards any pay-day on which his available earnings exceed his protected earnings (as specified in the notice):

Provided that, as regards any pay-day falling within the period of seven days beginning with the day on which the deduction notice comes into force, sub-paragraphs (2) and (3)(a) below shall have effect as if for the words " shall deduct" there were substituted the words " may deduct ".

In this paragraph " the notified amount ", in relation to a deduction notice, means the amount specified in that notice in accordance with paragraph 2(2)(b) above.

- (2) If on the pay-day in question the employee's available earnings exceed his protected earnings (as specified in the deduction notice) by an amount equal to or less than one-tenth of the notified amount, the employer shall deduct from the employee's available earnings the amount of the excess.
- (3) If on the pay-day in question the employee's available earnings exceed his protected earnings (as specified in the deduction notice) by an amount greater than one-tenth of the notified amount, the employer—
 - (a) shall deduct from the employee's available earnings an amount equal to one-tenth of the notified amount; and
 - (b) may with the consent in writing of the employee deduct from the employee's available earnings a larger amount:

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Provided that the total amount deducted from the employee's available earnings by virtue of this sub-paragraph on any one payday shall not be greater than the amount by which the employee's available earnings exceed his protected earnings (as specified in the deduction notice).

- (4) Notwithstanding anything in sub-paragraph (2) or (3) above—
- (a) the employer shall not make a deduction on a pay-day by virtue of the deduction notice if the employee satisfies him that up to that pay-day he has not obtained payment of the supplementary benefit to which the deduction notice relates; and
 - (b) the employer shall not on any pay-day deduct from the employee's earnings by virtue of the deduction notice an amount greater than the amount by which, immediately before that pay-day, the notified amount exceeds the aggregate of all such amounts as, in relation to that notice, are mentioned in paragraph 3(1)(b)(i) and (ii) above.
- (5) Where on any pay-day the employer makes no deduction from the employee's earnings by reason only that the employee has satisfied him as mentioned in sub-paragraph (4)(a) above, the employer shall forthwith give notice of that fact to the Secretary of State at the prescribed place and in the prescribed manner.
- (6) Where the employer is required by sub-paragraph (2) or (3)(a) above to make a deduction on a pay-day and the amount of the deduction which he would be so required to make apart from this sub-paragraph includes a fraction of 1p, the amount which he is so required to deduct on that pay-day shall be reduced by that fraction.

Power to serve further deduction notice in certain circumstances

- 5 (1) Where a deduction notice has ceased to have effect by reason of the claimant ceasing to be in the employment of the person on whom the notice was served or by reason of the expiration of the period of fourteen weeks mentioned in paragraph 3(1)(c) above, the Secretary of State may, if he thinks fit, serve a further deduction notice on the person, if any, by whom the claimant is for the time being employed.
- (2) Notwithstanding anything in the foregoing provisions of this Schedule, in any further deduction notice served by virtue of sub-paragraph (1) above—
- (a) the amount specified as the amount by reference to which deductions are to be made by the employer shall be equal to the amount mentioned in sub-paragraph (3) below ; and
 - (b) the amount specified as the claimant's protected earnings shall, subject to the regulations, be the same as the amount specified in that behalf in the last deduction notice relating to him which was in force before the date of the further deduction notice.
- (3) The amount referred to in sub-paragraph (2)(a) above is the aggregate of the amounts of supplementary benefit respectively specified in all notifications of award under section 9(4) of this Act relating to the claimant received by the Secretary of State after the beginning of the relevant engagement and before the date of the further deduction notice in question reduced—
- (a) by so much, if any, of the aggregate of those amounts as has been repaid by the claimant before the date of the further deduction notice;

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- (b) in respect of every previous deduction notice served after the beginning of the relevant engagement which has been in force in relation to the claimant, by whichever is the greater of the following amounts—
- (i) the aggregate of the amounts actually deducted by the relevant employer from the claimant's earnings by virtue of the previous deduction notice in question ; and
 - (ii) the aggregate of the amounts which that employer was required by paragraph 4(2) or 4(3)(a) above to deduct from those earnings by virtue of that previous notice.

Liability of employers

- 6 (1) A person who by virtue of a deduction notice makes one or more deductions from the earnings of a person in his employment shall, in accordance with the regulations, pay the amount or amounts deducted to the Secretary of State.
- (2) No criminal proceedings shall lie against any person on account of a contravention of sub-paragraph (2) or (3)(a) of paragraph 4 above ; but if, on any pay-day on which the said sub-paragraph (2) or the said sub-paragraph (3)(a) requires a person to make a deduction from the earnings of a person in his employment, the employer makes no deduction from the employee's earnings, or deducts from them an amount smaller than the amount which he is thereby required to deduct, then—
- (a) so much of the last-mentioned amount as is not deducted by the employer from the employee's earnings on that payday shall be recoverable from the employer by the Secretary of State; and
 - (b) any sum recovered from the employer by the Secretary of State by virtue of paragraph (a) above in consequence of his omission to deduct the required amount from the employee's earnings on that pay-day shall, for the purposes of this Schedule, be deemed to have been repaid by the employee.
- (3) For the purposes of any proceedings brought by the Secretary of State by virtue of sub-paragraph (2)(a) above against a person in connection with a deduction notice served on him in respect of a person who at the material time was in that person's employment, it shall be presumed, except in so far as the contrary is proved, that on every pay-day which occurred while that notice was in force the employee's available earnings exceeded his protected earnings (as specified in the notice) by an amount greater than one-tenth of the notified amount (within the meaning of paragraph 4 above).

Right of Secretary of State to recover directly from claimant

- 7 (1) Where the Secretary of State has received a notification of award under section 9(4) of this Act and it is at any time not practicable for him, by means of a deduction notice, to effect recovery of—
- (a) the amount of supplementary benefit specified in that notification as having been awarded to the claimant; or
 - (b) so much of that amount as, not having previously been repaid by the claimant or deducted from the claimant's earnings by virtue of this Part of this Schedule, remains to be recovered from the claimant;
- the amount of supplementary benefit so specified or so much of it as remains to be recovered from the claimant, as the case may be, shall, by virtue of this paragraph, be recoverable from the claimant by the Secretary of State.

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- (2) For the purpose of any proceedings brought by virtue of this paragraph a certificate purporting to be signed by or on behalf of the Secretary of State and stating that it is not practicable for him, by means of a deduction notice, to effect the recovery of—
- (a) the amount of supplementary benefit specified in a notification of award under section 9(4) of this Act as having been awarded to the claimant; or
 - (b) so much of that amount as remains to be recovered from the claimant;
- shall be conclusive evidence of the matters dealt with in the certificate (other than any matter affecting the determination of the actual amount, if any, which the Secretary of State is entitled to recover from the claimant by virtue of this paragraph).

Increase of amount of award on appeal or review

- 8 If, after the Secretary of State has received a notification of award under section 9(4) of this Act and served a deduction notice relating to the claimant, the amount of the award which was the subject of the notification is increased—
- (a) on an appeal under section 15 of this Act; or
 - (b) as a result of a review by the Commission of any determination affecting that amount;

the foregoing provisions of this Schedule shall have effect as if on the date on which the increase is awarded the Secretary of State had received a further notification of award under section 9(4) of this Act specifying the amount of the increase as the amount of supplementary benefit awarded to the claimant and, subject to the regulations, specifying as the claimant's protected earnings the same amount as was specified in that behalf in the last notification of award relating to him which was received by the Secretary of State. References in the provisions of this Schedule to a notification of award shall be construed accordingly.