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STATUTORY INSTRUMENTS

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**1995 No. 866**

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

**PART IV**

**Review of Allowance and Miscellaneous**

**Damages**

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

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

- (a) whether they are paid in pursuance of a judgement or order of a court or by way of settlement or compromise of his claim and whether or not proceedings are instituted to enforce the claim; or
- (b) if they are recovered for his benefit in respect of a claim under the Fatal Accidents Act 1976<sup>(1)</sup>.

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

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

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

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

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

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