STATUTORY RULES OF NORTHERN IRELAND

2008 No. 355

SOCIAL SECURITY

The Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008

Made - - - -	*27th August 2008*
Coming into operation	*1st October 2008*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by section 165(4) and (6) of the Social Security Administration (Northern Ireland) Act 1992(**1**), Articles 3A, 16(2) to (4), 20, 21, 23(3), 25(1), (2) and (7) of, and paragraphs 4 and 8 of Schedule 1 to, the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**2**) and now vested in it(**3**), and section 9 of the Mesothelioma, etc., Act (Northern Ireland) 2008(**4**).

This Rule contains only regulations made by virtue of, or consequential upon, section 8 of the Mesothelioma, etc., Act (Northern Ireland) 2008.

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008 and shall come into operation on 1st October 2008.

(2) In these Regulations—

"the Order" means the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997;

"compensator" means a person making a compensation payment;

"lump sum payment" is a payment to which Article 3A(2) of the Order applies, except in relation to regulation 18(1)(b);

"recoverable benefit" has the same meaning as in Article 3(4)(c) of the Order;

(**1**) 1992 c. 8; section 165(6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))
(**2**) S.I. 1997/1183 (N.I. 12)); Article 3A is inserted by section 8 of the Mesothelioma, etc., Act (Northern Ireland) 2008 (c. 9 (N.I.))
(**3**) *See* Article 8(b) of S.R. 1999 No. 481
(**4**) 2008 c. 9 (N.I.)

"recoverable lump sum payment" means any lump sum payment which is recoverable by virtue of regulation 4.

(3) The Interpretation Act (Northern Ireland) 1954(**5**) applies to these Regulations as it applies to an Act of the Assembly.

Application of the Order

2.—(1) The provisions of the Order specified in paragraph (2) apply for the purposes of these Regulations with the modifications, where appropriate, prescribed in Schedule 1.

(2) The specified provisions are—

(a) Article 1(1) (title);

(b) Article 2 (interpretation);

(c) Article 3(3) (cases in which this Order applies);

(d) Articles 12 to 16 (reviews and appeals);

(e) Articles 17 and 19 (courts);

(f) Articles 20 and 21 (reduction of compensation: complex cases);

(g) Articles 22 to 25 (miscellaneous);

(h) Articles 27 to 29 (general);

(i) Article 31 (consequential amendments and repeals); and

(j) Schedule 1 (compensation payments).

Consequential amendments

3. The consequential amendments set out in Schedule 2 apply for the purposes of these Regulations.

Recovery of lump sum payments

4.—(1) The Department may recover the amount of a payment to which Article 3A(2) of the Order applies ("a lump sum payment") where—

(a) a compensation payment in consequence of a disease is made to or in respect of—

(i) a person ("P"); or

(ii) a dependant of 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) In paragraph (1), a reference to a payment made in consequence of a disease—

(a) is a reference to a payment made by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the disease; but

(b) does not include a reference to a payment mentioned in Part 1 of Schedule 1 to the Order.

(**5**) 1954 c. 33 (N.I.)

Application of these Regulations to a dependant of P

5.—(1) Subject to paragraph (2), in these Regulations and any provision of the Order as modified any reference to P is to be construed as if it included a reference to a dependant of P where that dependant is the person to whom, or in respect of whom, a lump sum payment is made.

(2) Paragraph (1) does not apply in relation to regulations 4, 10(7) and 12(7) and Articles 17 and 25(2) of, and paragraphs 3(a) and 5(1)(**6**) of Schedule 1 to, the Order.

Compensation payments to which these Regulations apply

6. These Regulations apply in relation to compensation payments made on or after the day on which section 8 of the Mesothelioma, etc., Act (Northern Ireland) 2008 comes into operation.

Exempted trusts and payments

7.—(1) The following trusts are prescribed for the purposes of paragraph 4 of Schedule 1 to the Order—

(a) the Macfarlane Trust established on 10th March 1988 partly out of funds provided by the Secretary of State to the Haemophilia Society for the relief of poverty or distress among those suffering from haemophilia;

(b) the Macfarlane (Special Payments) Trust established on 29th January 1990 partly out of funds provided by the Secretary of State for the benefit of certain persons suffering from haemophilia;

(c) the Macfarlane (Special Payments) (No. 2) Trust established on 3rd May 1991 partly out of funds provided by the Secretary of State for the benefit of certain persons suffering from haemophilia and other beneficiaries;

(d) the Eileen Trust established on 29th March 1993 out of funds provided by the Secretary of State for the benefit of persons eligible for payment in accordance with its provisions;

(e) a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for interim payments in accordance with its provisions;

(f) a trust established out of funds provided by the Secretary of State in respect of persons who suffered, or who are suffering, from variant Creutzfeldt-Jakob disease for the benefit of persons eligible for payments, other than interim payments, in accordance with its provisions.

(2) The following payments are prescribed for the purposes of paragraph 8 of Schedule 1 to the Order—

(a) any payment made under the Vaccine Damage Payments Act 1979(**7**) to or in respect of P;

(b) any award of compensation made to or in respect of P under the Criminal Injuries Compensation (Northern Ireland) Order 2002(**8**), the Criminal Injuries Compensation Act 1995(**9**) or by the Criminal Injuries Compensation Board under the Criminal Injuries Compensation Scheme 1990 or any earlier scheme;

(c) any payment made to P in respect of sensorineural hearing loss where the loss is less than 50 decibels in one or both ears;

(**6**) Paragraph 5 was amended by Article 554 of S.I. 2001/3649
(**7**) 1979 c. 17
(**8**) S.I. 2002/796 (N.I. 1)
(**9**) 1995 c. 53

(d) any contractual amount paid to P by an employer of P in respect of a period of incapacity for work;

(e) any payment made under the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001(**10**), the National Health Service (Injury Benefits) Regulations 1995(**11**) or the National Health Service (Scotland) (Injury Benefits) Regulations 1998(**12**);

(f) any payment made by or on behalf of the Secretary of State for the benefit of persons eligible for payment in accordance with the provisions of a scheme established by the Secretary of State on 24th April 1992 or, in Scotland, on 10th April 1992;

(g) any payment made from the Skipton Fund, the ex-gratia payment scheme administered by the Skipton Fund Limited, incorporated on 25th March 2004, for the benefit of certain persons suffering from hepatitis C and other persons eligible for payment in accordance with the scheme's provisions;

(h) any payment made from the London Bombings Relief Charitable Fund, the company limited by guarantee (number 5505072) and registered charity of that name established on 11th July 2005 for the purpose of (amongst other things) relieving sickness, disability or financial need of victims (including families or dependants of victims) of the terrorist attacks carried out in London on 7th July 2005.

PART 2

Certificates

Applications for certificates

8.—(1) Before making a compensation payment the compensator must apply to the Department for a certificate.

(2) Where the compensator applies for a certificate, the Department must—

(a) send to the compensator a written acknowledgment of receipt of the application; and

(b) issue the certificate before the end of the period of 4 weeks from the day on which the application is received.

(3) An application for a certificate is to be treated for the purposes of the Order as received on the day on which it is received by the Department, or if the application is received after normal business hours, or on a day which is not a normal business day, on the next such day.

Information contained in certificates

9.—(1) Subject to paragraph (2), a certificate must specify—

(a) the amounts;

(b) which of the type of payments referred to in Article 3A(2) of the Order applies; and

(c) the dates,

of any lump sum payments which have been, or are likely to have been, paid.

(2) Where the type of payment is an extra-statutory payment, the certificate may specify that type of payment as if it were a payment to which Article 3A(2)(a) of the Order applies.

(**10**) S.R. 2001 No. 367
(**11**) S.I. 1995/866
(**12**) S.I. 1998/1594 (S. 84)

(3) The Department may estimate, in such manner as it thinks fit the amount of the lump sum payments specified in the certificate.

(4) Where the Department issues a certificate, the information contained in that certificate must be provided to—

(a) the person who appears to it to be P; or

(b) any person who it thinks will receive a compensation payment in respect of P.

(5) A person to whom a certificate is issued or who is provided with information under paragraph (4) is entitled to particulars of the manner in which any amount, type of payment or date specified in the certificate has been determined, if that person applies to the Department for those particulars.

PART 3

Liability of person paying compensation

Liability to pay Department amount of lump sum payments

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

(a) in a case to which paragraph (2) applies, the recoverable lump sum payments; or

(b) in a case to which paragraph (3) applies, the compensation payment.

(2) Paragraph (1)(a) applies to a case where—

(a) the compensation payment is equal to, or more than, any recoverable lump sum payments; or

(b) a dependant is a beneficiary of part of a compensation payment made in respect of P, that part of the compensation payment is equal to, or more than, any recoverable lump sum payments which have been made to that dependant.

(3) Paragraph 1(b) applies to a case where—

(a) the compensation payment; or

(b) a dependant is a beneficiary of part of a compensation payment made in respect of P, and recoverable lump sum payments have been made to that dependant, the share of the compensation payment,

is less than the lump sum payments.

(4) The liability referred to in paragraph (1) arises—

(a) immediately before the compensation payment or, if there is more than one, the first of them is made;

(b) prior to any liability to pay the Department an amount equal to the total amount of the recoverable benefits payable under Article 8 of the Order.

(5) No amount becomes payable under this regulation before the end of the period of 14 days following the day on which the liability arises.

(6) Subject to paragraph (4), an amount becomes payable under this regulation at the end of the period of 14 days beginning with the day on which a certificate is first issued showing that the amount of recoverable lump sum payment to which it relates has been or is likely to have been paid.

(7) In the case of a lump sum payment which has been made to a dependant of P, this regulation applies only to the extent to which the compensator is making any payment—