



# Social Security Administration (Northern Ireland) Act 1992

## 1992 CHAPTER 8

### PART IV

#### RECOVERY FROM COMPENSATION PAYMENTS

#### 77 Interpretation of Part IV.

(1) In this Part of this Act—

“benefit” means any benefit under the Contributions and Benefits Act except child benefit and, subject to regulations under subsection (2) below, the “relevant benefits” are such of those benefits as may be prescribed for the purposes of this Part of this Act;

“certificate of deduction” means a certificate given by the compensator specifying the amount which he has deducted and paid to the Department in pursuance of section 78 below;

“certificate of total benefit” means a certificate given by the Department in accordance with this Part of this Act;

“compensation payment” means any payment falling to be made (whether voluntarily, or in pursuance of a court order or an agreement, or otherwise)—

- (a) to or in respect of the victim in consequence of the accident, injury or disease in question, and
- (b) either—
  - (i) by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of that accident, injury or disease; or
  - (ii) in pursuance of a compensation scheme for motor accidents,

but does not include benefit or an exempt payment or so much of any payment as is referable to costs incurred by any person;

“compensation scheme for motor accidents” means any scheme or arrangement under which funds are available for the payment of compensation

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in respect of motor accidents caused, or alleged to have been caused, by uninsured or unidentified persons;

“compensator”, “victim” and “intended recipient” shall be construed in accordance with section 78(1) below;

“payment” means payment in money or money’s worth, and cognate expressions shall be construed accordingly;

“the recoupment provisions” means this Part and section 101 of the Great Britain Administration Act;

“relevant deduction” means the deduction required to be made from the compensation payment in question by virtue of the recoupment provisions;

“relevant payment” means the payment required to be made to the Department by virtue of the recoupment provisions;

“relevant period” means—

- (a) in the case of a disease, the period of 5 years beginning with the date on which the victim first claims a relevant benefit in consequence of the disease; or
- (b) in any other case, the period of 5 years immediately following the day on which the accident or injury in question occurred;

but where before the end of that period the compensator makes a compensation payment in final discharge of any claim made by or in respect of the victim and arising out of the accident, injury or disease, the relevant period shall end on the date on which that payment is made;

“total benefit” means the gross amount referred to in section 78(1)(a) below.

- (2) If statutory sick pay is prescribed as a relevant benefit, the amount of that benefit for the purposes of this Part of this Act shall be a reduced amount determined in accordance with regulations by reference to the percentage from time to time specified in section 154(1)(a) of the Contributions and Benefits Act (percentage of statutory sick pay recoverable by employers by deduction from contributions).
- (3) For the purposes of this Part of this Act the following are the “exempt payments”—
  - (a) any small payment, as defined in section 81 below;
  - (b) any payment made to or for the victim under Article 3 of the <sup>M1</sup>Criminal Justice (Northern Ireland) Order 1980 ;
  - (c) any payment to the extent that it is made—
    - (i) in consequence of an action under the <sup>M2</sup>Fatal Accidents (Northern Ireland) Order 1977; or
    - (ii) in circumstances where, had an action been brought, it would have been brought under that Order;
  - (d) without prejudice to section 6(4) of the <sup>M3</sup>Vaccine Damage Payments Act 1979 (which provides for the deduction of any such payment in the assessment of any award of damages), any payment made under that Act to or in respect of the victim;
  - (e) any award of compensation made to or in respect of the victim by the Secretary of State under Article 3 or 10 of the <sup>M4</sup>Criminal Injuries (Compensation) (Northern Ireland) Order 1988;
  - (f) 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

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contributed to the trust was directly or indirectly provided by persons who are, or are alleged to be, liable in respect of—

- (i) the accident, injury or disease suffered by the victim in question; or
  - (ii) the same or any connected accident, injury or disease suffered by another;
- (g) any payment made out of property held for the purposes of any prescribed trust (whether the payment also falls within paragraph (f) above or not);
- (h) any payment made to the victim by an insurance company within the meaning of the <sup>M5</sup>Insurance Companies Act 1982 under the terms of any contract of insurance entered into between the victim and the company before—
- (i) the date on which the victim first claims a relevant benefit in consequence of the disease in question; or
  - (ii) the occurrence of the accident or injury in question;
- (i) any redundancy payment falling to be taken into account in the assessment of damages in respect of an accident, injury or disease.
- (4) Regulations may provide that any prescribed payment shall be an exempt payment for the purposes of this Part of this Act.
- (5) Except as provided by any other statutory provision, in the assessment of damages in respect of an accident, injury or disease the amount of any relevant benefits paid or likely to be paid shall be disregarded.
- (6) If, after making the relevant deduction from the compensation payment, there would be no balance remaining for payment to the intended recipient, any reference in this Part to the making of the compensation payment shall be construed in accordance with regulations.
- (7) This Part of this Act shall apply in relation to any compensation payment made after 3rd September 1990 (the date of the coming into operation of Article 24 of the <sup>M6</sup>Social Security (Northern Ireland) Order 1989 which, with Schedule 4 to that Order, made provision corresponding to that made by this Part) to the extent that it is made in respect of—
- (a) an accident or injury occurring on or after 1st January 1989; or
  - (b) a disease, if the victim's first claim for a relevant benefit in consequence of the disease is made on or after that date.

#### Marginal Citations

- M1** S.I. 1980/704 (N.I. 6).
- M2** S.I. 1977/1251 (N.I. 18).
- M3** 1979 c. 17.
- M4** S.I. 1988/793 (N.I. 4).
- M5** 1982 c. 50.
- M6** S.I. 1989/1342 (N.I. 13).

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*Recovery from damages, etc. of sums equivalent to benefit*

**78 Recovery of sums equivalent to benefit from compensation payments in respect of accidents, injuries and diseases.**

- (1) A person (“the compensator”) making a compensation payment, whether on behalf of himself or another, in consequence of an accident, injury or disease suffered by any other person (“the victim”) shall not do so until the Department has furnished him with a certificate of total benefit and shall then—
- (a) deduct from the payment an amount, determined in accordance with the certificate of total benefit, equal to the gross amount of any relevant benefits paid or likely to be paid to or for the victim during the relevant period in respect of that accident, injury or disease;
  - (b) pay to the Department an amount equal to that which is required to be so deducted; and
  - (c) furnish the person to whom the compensation payment is or, apart from this section, would have been made (“the intended recipient”) with a certificate of deduction.
- (2) Any right of the intended recipient to receive the compensation payment in question shall be regarded as satisfied to the extent of the amount certified in the certificate of deduction.

*Payments, deductions and certificates*

**79 Time for making payment to Department.**

The compensator’s liability to make the relevant payment arises immediately before the making of the compensation payment, and he shall make the relevant payment before the end of the period of 14 days following the day on which the liability arises.

**80 The certificate of total benefit.**

- (1) It shall be for the compensator to apply to the Department for the certificate of total benefit and he may, subject to subsection (5) below, from time to time apply for fresh certificates.
- (2) The certificate of total benefit shall specify—
- (a) the amount which has been, or is likely to be, paid on or before a specified date by way of any relevant benefit which is capable of forming part of the total benefit;
  - (b) where applicable—
    - (i) the rate of any relevant benefit which is, has been, or is likely to be paid after the date so specified and which would be capable of forming part of the total benefit; and
    - (ii) the intervals at which any such benefit is paid and the period for which it is likely to be paid;
  - (c) the amounts (if any) which, by virtue of the recoupment provisions, are to be treated as increasing the total benefit; and
  - (d) the aggregate amount of any relevant payments made on or before a specified date (reduced by so much of that amount as has been paid by the Department

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to the intended recipient before that date in consequence of the recoupment provisions).

- (3) On issuing a certificate of total benefit, the Department shall be taken to have certified the total benefit as at every date for which it is possible to calculate an amount that would, on the basis of the information so provided, be the total benefit as at that date, on the assumption that payments of benefit are made on the days on which they first become payable.
- (4) The Department may estimate, in such manner as it thinks fit, any of the amounts, rates or periods specified in the certificate of total benefit.
- (5) A certificate of total benefit shall remain in force until such date as may be specified in the certificate for that purpose and no application for a fresh certificate shall be made before that date.
- (6) Where a certificate ceases to be in force, the Department may issue a fresh certificate, whether or not an application has been made to it for such a certificate.
- (7) The compensator shall not make the compensation payment at any time when there is no certificate of total benefit in force in respect of the victim, unless his liability to make the relevant deduction and the relevant payment has ceased to be enforceable by virtue of section 92 below.

## **81 Exemption from deduction in cases involving small payments.**

- (1) Regulations may make provision exempting persons from liability to make the relevant deduction or the relevant payment in prescribed cases where the amount of the compensation payment in question, or the aggregate amount of two or more connected compensation payments, does not exceed the prescribed sum.
- (2) Regulations may make provision for cases where an amount has been deducted and paid to the Department which, by virtue of regulations under subsection (1) above, ought not to have been so deducted and paid, and any such regulations may, in particular, provide for the Department to pay that amount to the intended recipient or the compensator or to pay a prescribed part of it to each of them.
- (3) The reference in section 77(3)(a) above to a “small payment” is a reference to a payment from which by virtue of this section no relevant deduction falls to be made.
- (4) For the purposes of this section—
  - (a) two or more compensation payments are “connected” if each is made to or in respect of the same victim 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 section 77(3)(a) above.

## **82 Multiple compensation payments.**

- (1) This section applies where—
  - (a) a compensation payment (an “earlier payment”) has been made to or in respect of the victim; and

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- (b) subsequently another such payment (a “later payment”) falls to be made to or in respect of the same victim in respect of the same accident, injury or disease (whether by the same or another compensator).
- (2) In determining the amount of the relevant deduction and payment required to be made in connection with the later payment, the amount referred to in section 78(1)(a) above shall be reduced by the amount of any relevant payment made in connection with the earlier payment, or, if more than one, the aggregate of those relevant payments.
- (3) In relation to the later payment, the compensator shall take the amount of the reduction required by subsection (2) above to be such as may be specified under section 80(2)(d) above in the certificate of total benefit issued to him in connection with that later payment.
- (4) In any case where—
  - (a) the relevant payment made in connection with an earlier payment is not reflected in the certificate of total benefit in force in relation to a later payment, and
  - (b) in consequence, the aggregate of the relevant payments made in relation to the later payment and every earlier payment exceeds what it would have been had that relevant payment been so reflected,
 the Department shall pay the intended recipient an amount equal to the excess.
- (5) In determining any rights and liabilities in respect of contribution or indemnity, relevant payments shall be treated as damages paid to or for the intended recipient in respect of the accident, injury or disease in question.

### **83 Collaboration between compensators.**

- (1) This section applies where compensation payments in respect of the same accident, injury or disease fall (or apart from the recoupment provisions would fall) to be made to or in respect of the same victim by two or more compensators.
- (2) Where this section applies, any two or more of those compensators may give the Department notice that they are collaborators in respect of compensation payments in respect of that victim and that accident, injury or disease.
- (3) Where such a notice is given and any of the collaborators makes a relevant payment in connection with such a compensation payment, each of the other collaborators shall be treated as if the aggregate amount of relevant payments specified in his certificate of total benefit, as in force at the time of that relevant payment, or in a fresh certificate which does not purport to reflect the payment, were increased by the amount of that payment.

### **84 Structured settlements.**

- (1) This section applies where—
  - (a) in final settlement of a person’s claim, an agreement is entered into—
    - (i) for the making of periodical payments (whether of an income or capital nature) to or in respect of the victim; or
    - (ii) for the making of such payments and one or more lump sum payments; and

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- (b) apart from this section, those payments would fall to be regarded for the purposes of the recoupment provisions as compensation payments.
- (2) Where this section applies, the recoupment provisions (other than this section) shall have effect on the following assumptions, that is to say—
- (a) the relevant period in the case of the compensator in question shall be taken to end (if it has not previously done so) on the day of settlement;
  - (b) the compensator in question shall be taken—
    - (i) to have been liable to make on that day a single compensation payment of the amount referred to in section 78(1)(a) above (reduced or increased in accordance with such of the recoupment provisions as would have applied in the case of a payment on that day); and
    - (ii) to have made from that single payment a relevant deduction of an amount equal to it; and
  - (c) the payments under the agreement referred to in subsection (1) above shall be taken to be exempt payments.
- (3) The intended recipient shall not by virtue of anything in this section become entitled to be paid any sum, whether by the compensator or the Department, and if on a review or appeal under section 93 or 95 below it appears that the amount paid by a compensator in pursuance of this section was either greater or less than it ought to have been, then—
- (a) any excess shall be repaid to the compensator instead of to the intended recipient; but
  - (b) any deficiency shall be paid to the Department by the intended recipient.
- (4) Where any further compensation payment falls to be made to or in respect of the victim otherwise than under the agreement in question, subsection (2)(a) above shall be disregarded for the purpose of determining the end of the relevant period in relation to that further payment.
- (5) In any case where—
- (a) the person making the periodical payments (“the secondary party”) does so in pursuance of arrangements entered into with another (as in a case where an insurance company purchases an annuity for the victim from another such company), and
  - (b) apart from those arrangements, that other (“the primary party”) would have been regarded as the compensator,
- then for the purposes of the recoupment provisions, the primary party shall be regarded as the compensator and the secondary party shall not be so regarded.
- (6) In determining for the purposes of this section whether any periodical payments would fall to be regarded as compensation payments, section 77(3)(a) above shall be disregarded.
- (7) In this section “the day of settlement” means—
- (a) if the agreement referred to in subsection (1) above is approved by a court, the day on which that approval is given; and
  - (b) in any other case, the day on which the agreement is entered into.

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## 85 Insolvency.

Where the intended recipient has been adjudged bankrupt, nothing in the <sup>M7</sup>Insolvency (Northern Ireland) Order 1989 shall affect the operation of the recoupment provisions.

### Marginal Citations

M7 [S.I. 1989/2405 \(N.I. 19\)](#).

## 86 Protection of legal aid charges.

(1) In any case where—

- (a) the compensation payment is subject to any charge under the <sup>M8</sup>Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, and
- (b) after the making of the relevant deduction, the balance of the compensation payment is insufficient to satisfy that charge,

the Department shall make such a payment as will secure that the deficiency is made good to the extent of the relevant payment.

(2) Where the Department makes a payment under this section, then for the purposes of section 80 above, the amount of the payment shall be treated as increasing the total benefit.

### Marginal Citations

M8 [S.I. 1981/228 \(N.I. 8\)](#).

## 87 Overpaid benefits.

In any case where—

- (a) during the relevant period, there has, in respect of the accident, injury or disease, been paid to or for the victim any relevant benefit to which he was not entitled (“the overpaid benefit”), and
- (b) the amount of the relevant payment is such that, after taking account of the rest of the total benefit, there remains an amount which represents the whole or any part of the overpaid benefit,

then, notwithstanding anything in section 69 above or any regulations under that section or Article 54 of the 1986 Order, the receipt by the Department of the relevant payment shall be treated as the recovery of the whole or, as the case may be, that part of the overpaid benefit.

## 88 Death.

In the case of any compensation payment the whole or part of which is made—

- (a) in consequence of an action under the <sup>M9</sup>Fatal Accidents (Northern Ireland) Order 1977, or
- (b) in circumstances where, had an action been brought, it would have been brought under that Order,

regulations may make provision for estimating or calculating the portion of the payment which is to be regarded as so made for the purposes of section 77(3)(c) above.



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M9 [S.I. 1977/1251 \(N.I. 18\)](#).

### 89 Payments into court.

- (1) Nothing in the recoupment provisions requires a court to make any relevant deduction from, or payment out of, money in court.
- (2) Where a party to an action makes a payment into court which, had it been paid directly to the other party, would have constituted a compensation payment, the making of that payment shall be regarded for the purposes of the recoupment provisions as the making of a compensation payment, but the compensator—
  - (a) may either—
    - (i) withhold from the payment into court an amount equal to the relevant deduction; or
    - (ii) make such a payment into court before the certificate of total benefit has been issued to him; and
  - (b) shall not become liable to make the relevant payment, or to furnish a certificate of deduction, until he has been notified that the whole or any part of the payment into court has been paid out of court to or for the other party.
- (3) Where a person making a payment into court withholds an amount in accordance with subsection (2)(a)(i) above—
  - (a) he shall, at the time when he makes that payment, furnish the court with a certificate of the amount so withheld; and
  - (b) the amount paid into court shall be regarded as increased by the amount so certified,but no person shall be entitled by virtue of this subsection to the payment out of court of any amount which has not in fact been paid into court.
- (4) Where a payment into court is made as mentioned in subsection (2)(a)(ii) above, the compensator—
  - (a) shall apply for the certificate of total benefit no later than the day on which the payment into court is made; and
  - (b) shall become liable to make the relevant payment as mentioned in subsection (2)(b) above, notwithstanding that the relevant deduction has not been made.
- (5) Where any such payment into court as is mentioned in subsection (2) above is accepted by the other party to the action within the initial period, then, as respects the compensator in question, the relevant period shall be taken to have ended on the day on which the payment into court (or, if there were two or more such payments, the last of them) was made; but where the payment into court is not so accepted, then—
  - (a) the relevant period as respects that compensator shall end on the day on which he is notified that the payment has been paid out of court to or for that other party; and
  - (b) in determining the amount of the relevant payment, that compensator shall be treated as if his payment into court had been made on that day.

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- (6) In subsection (5) above “the initial period” means the period of 21 days following the making of the payment into court (or, if there were two or more such payments, the last of them), but rules of court may make provision varying the length of that period.
- (7) Where a payment into court is paid out wholly to or for the party who made the payment (otherwise than to or for the other party to the action) the making of the payment into court shall cease to be regarded as the making of a compensation payment.
- (8) Rules of court may make provision regulating or prescribing the practice and procedure to be followed in relation to such payments into court as are mentioned in subsection (2) above.

### *Administration and adjudication*

## **90 Provision of information.**

- (1) Any person who is, or is alleged to be, liable in respect of an accident, injury or disease, or any person acting on his behalf, shall furnish the Department with the prescribed information relating to any person seeking compensation, or in respect of whom compensation is sought, in respect of that accident, injury or disease.
- (2) Any person who claims a relevant benefit or who has been in receipt of such a benefit or, if he has died, the personal representatives of such a person, shall furnish the Department with the prescribed information relating to any accident, injury or disease suffered by that person.
- (3) A person who makes any payment (whether a compensation payment or not) on behalf of himself or another—
  - (a) in consequence of any accident, injury or disease suffered, or any damage to property sustained, by any other person, or
  - (b) which is referable to any costs incurred by any such other person by reason of such an accident, injury, disease or damage,
 shall, if the Department so requests him in writing, furnish the Department with such particulars relating to the size and composition of the payment as may be specified in the request.
- (4) Any person—
  - (a) who is the employer of a person who suffers or has suffered an accident, injury or disease, or
  - (b) who has been the employer of such a person at any time during the relevant period,
 shall furnish the Department with the prescribed information relating to the payment of statutory sick pay in respect of that person.
- (5) In subsection (4) above “employer” has the same meaning as it has in Part XI of the Contributions and Benefits Act.
- (6) Any person furnishing information under this section shall do so in the prescribed manner, at the prescribed place and within the prescribed time.

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## **91 Applications for certificates of total benefit.**

- (1) If at any time before he makes the compensation payment in question the compensator requests the Department to furnish him with a certificate of total benefit relating to the victim in question—
  - (a) the Department shall comply with that request before the end of the period of 4 weeks, or such other number of weeks as may be prescribed, following the day on which the request is, or is deemed in accordance with regulations to be, received, and
  - (b) any certificate so furnished shall, in particular, specify for the purposes of section 80(2)(a) above a date not earlier than the date of the request.
- (2) Where the Department furnishes any person with a certificate of total benefit, it shall also provide the information contained in that certificate to the person who appears to it to be the victim in relation to the compensation payment in question.
- (3) The victim may apply to the Department for particulars of the manner in which any amount, rate or period specified in a certificate of total benefit has been determined.

## **92 Liability of compensator unenforceable if certificate not issued within time limit.**

- (1) The liability of the compensator to make the relevant deduction and payment relating to the first compensation payment after the default date shall not be enforceable if—
  - (a) he has made a request under section 91(1) above which—
    - (i) accurately states the prescribed particulars relating to the victim and the accident, injury or disease in question; and
    - (ii) specifies the name and address of the person to whom the certificate is to be sent;
  - (b) he has in his possession a written acknowledgment, sent to him in accordance with regulations, of the receipt of the request; and
  - (c) the Department does not, within the time limit referred to in section 91(1) above, send the certificate to the person specified in the request as the person to whom the certificate is to be sent, at the address so specified;and accordingly, where those liabilities cease to be enforceable, nothing in the recoupment provisions shall prevent the compensator from making that compensation payment.
- (2) In any case where—
  - (a) the liability to make the relevant deduction and payment becomes unenforceable by virtue of this section, but
  - (b) the compensator nevertheless makes that deduction and payment,he shall be treated for all purposes as if the liability had remained enforceable.
- (3) Where the compensator, in reliance on this section, does not make the relevant deduction and payment, then—
  - (a) he shall within 14 days of the default date give the Department notice of that fact together with such other particulars as may be prescribed; and
  - (b) in determining the amount of the relevant deduction and payment to be made in connection with any subsequent compensation payment made by the same or any other compensator, the amount which, apart from this section, would have fallen to be deducted and paid by him shall continue to form part of the total benefit and shall not be treated as if it had been paid.

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- (4) 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 no liability shall become unenforceable by virtue of this section 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.
- (5) In this section “the default date” means the date on which the time limit mentioned in subsection (1)(c) above expires.

### **93 Review of certificates of total benefit.**

- (1) The Department may review any certificate of total benefit if the Department is satisfied that it was issued in ignorance of, or was based on a mistake as to, some material fact or that a mistake (whether in computation or otherwise) has occurred in its preparation.
- (2) On any such review the Department may either—
- (a) confirm the certificate, or
  - (b) issue a fresh certificate containing such variations as the Department considers appropriate,
- but the Department shall not so vary the certificate as to increase the total benefit.
- (3) In any case where—
- (a) one or more relevant payments have been made, and
  - (b) in consequence of a review under this section, it appears that the aggregate amount so paid exceeds the amount that ought to have been paid,
- the Department shall pay the intended recipient an amount equal to the excess.

### **94 Appeals.**

- (1) An appeal shall lie in accordance with this section against any certificate of total benefit at the instance of the compensator, the victim or the intended recipient, on the ground—
- (a) that any amount, rate or period specified in the certificate is incorrect, or
  - (b) that benefit paid or payable otherwise than in consequence of the accident, injury or disease in question has been brought into account.
- (2) No appeal shall be brought under this section until—
- (a) the claim giving rise to the compensation payment has been finally disposed of; and
  - (b) the relevant payment, or where more than one such payment may fall to be made, the final relevant payment, has been made.
- (3) Notwithstanding subsection (2) above, where—
- (a) an award of damages (“provisional damages”) has been made under paragraph 10(2)(a) of Schedule 6 to the <sup>M10</sup>Administration of Justice Act 1982; and
  - (b) the relevant payment or, where more than one such payment falls to be made, the final relevant payment in relation to the provisional damages so awarded has been made,

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an appeal may be brought under this section against any certificate of total benefit by reference to which the amount of that relevant payment, or any of those relevant payments, was made.

- (4) Regulations may make provision—
- (a) as to the manner in which, and the time within which, appeals under this section are to be brought, and
  - (b) for the purpose of enabling any such appeal to be treated as an application for review under section 93 above,
- and regulations under paragraph (b) above may, in particular, provide that the circumstances in which such a review may be carried out shall not be restricted to those specified in section 93 above.
- (5) If any of the medical questions arises for determination on an appeal under this section, the Department shall refer that question to a medical appeal tribunal, whose determination shall be binding, for the purposes of the appeal, on any social security appeal tribunal to whom a question is referred under subsection (7) below.
- (6) A medical appeal tribunal, in determining any of the medical questions, shall take into account any decision of any court relating to the same, or any similar, issue arising in connection with the accident, injury or disease in question.
- (7) If any question concerning any amount, rate or period specified in the certificate of total benefit arises for determination on an appeal under this section, the Department shall refer that question to a social security appeal tribunal, but where any medical questions arising on the appeal have been referred to a medical appeal tribunal—
- (a) the Department shall not refer any question to the social security appeal tribunal until the Department has received the determination of the medical appeal tribunal on the questions referred to them; and
  - (b) the Department shall notify the social security appeal tribunal of the determinations of the medical appeal tribunal.
- (8) On a reference under subsection (7) above a social security appeal tribunal may either—
- (a) confirm the amounts, rates and periods specified in the certificate of total benefit; or
  - (b) specify any increases, reductions or other variations which are to be made on the issue of the fresh certificate under subsection (9) below.
- (9) When the Department has received the determinations of the tribunals on the questions referred to them under subsections (5) and (7) above, it shall in accordance with those determinations either—
- (a) confirm the certificate against which the appeal was brought, or
  - (b) issue a fresh certificate.
- (10) Regulations may make provision with respect to the procedure for the reference under this section of questions to medical appeal tribunals or social security appeal tribunals.
- (11) An appeal shall lie to a Commissioner at the instance of the Department, the compensator, the victim or the intended recipient from a decision of a medical appeal tribunal or a social security appeal tribunal under this section on the ground that the decision was erroneous in point of law; and for the purposes of appeals under this subsection—

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- (a) section 21(7) to (10) above shall apply in relation to an appeal from the decision of a social security appeal tribunal; and
  - (b) section 46(3) above shall apply in relation to an appeal from the decision of a medical appeal tribunal.
- (12) In this section “the medical questions” means—
- (a) any question whether, as the result of a particular occurrence, the victim suffered an injury, sickness or disease;
  - (b) any question as to the period for which the victim suffered any injury, sickness or disease.

#### Marginal Citations

M10 1982 c. 53.

### 95 Recovery in consequence of an appeal.

- (1) Where it appears, in consequence of an appeal under section 94 above, that the aggregate amount of the relevant payment or payments actually made exceeds the amount that ought to have been paid, the Department shall pay the intended recipient an amount equal to that excess.
- (2) Where it appears, in consequence of such an appeal, that the aggregate amount of the relevant payment or payments actually made is less than the amount that ought to have been paid, the intended recipient shall pay the Department an amount equal to the deficiency.
- (3) Without prejudice to any other method of enforcement, an amount payable under subsection (2) above may be recovered by deduction from any benefits which are prescribed benefits for the purposes of section 69 above.

### 96 Recovery of relevant payment in cases of default.

- (1) This section applies in any case where the compensator has made a compensation payment but—
  - (a) has not requested a certificate of total benefit in respect of the victim, or
  - (b) if he has done so, has not made the relevant payment within the time limit imposed by section 79 above.
- (2) Where this section applies, the Department may—
  - (a) if no certificate of total benefit has been issued to the compensator, issue to him such a certificate and a demand for the relevant payment to be made forthwith, or
  - (b) if a certificate of total benefit has been issued to the compensator, issue to him a copy of that certificate and such a demand,
 and the amount so certified shall, to the extent that it does not exceed the amount of the compensation payment, be recoverable by the Department from the compensator.
- (3) Any amount recoverable under this section shall, if the county court so orders, be enforceable as if it were payable under an order of that court.
- (4) A document bearing a certificate which—

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- (a) is signed by a person authorised in that behalf by the Department, and
  - (b) states that the document, apart from the certificate, is a record of the amount recoverable under this section,
- shall be conclusive evidence that that amount is so recoverable; and a certificate purporting to be signed as aforesaid shall be deemed to be so signed unless the contrary is proved.
- (5) Where this section applies in relation to two or more connected compensators, the Department may proceed against them as if they were jointly and severally liable for an amount equal to the difference between—
    - (a) the total benefit determined in accordance with the latest connected certificate of total benefit issued to any of them, and
    - (b) the aggregate amount of any connected relevant payments previously made.
  - (6) Nothing in subsection (5) above authorises the recovery from any person of an amount in excess of the compensation payment by virtue of which this section applies to him (or, if there are two or more such payments which are connected, the aggregate amount of those payments).
  - (7) In subsections (5) and (6) above, “connected” means relating to the same victim and the same accident, injury or disease.

#### *Miscellaneous*

### **97 Foreign compensators: duties of intended recipient.**

- (1) Where, immediately before the making of the compensation payment, the compensator is not resident and does not have a place of business in Northern Ireland, any deduction, payment or other thing which would, apart from this section, fall to be made or done under the recoupment provisions by the compensator shall instead be made or done by the intended recipient and references to the compensator shall be construed accordingly.
- (2) The Department may by regulations make such provision as it considers expedient for the purpose of modifying the recoupment provisions in their application in such a case.

### **98 Interest on damages: reductions in respect of relevant payments.**

In assessing the amount of interest payable in respect of an award of damages, the amount of the award shall be treated as reduced by a sum equal to the amount of the relevant payment (if any) required to be made in connection with the payment of the damages and, if both special and general damages are awarded, any such reductions shall be treated as made first against the special damages and then, as respects any remaining balance, against the general damages.

### **[99 The Crown.**

This Part of this Act applies in relation to the making of a compensation payment by the Crown as it applies in relation to the making of a compensation payment by any other compensator.]

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

- C1** S. 99 omitted (*temp.*) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 6, 7(2), **Sch. 4**, Pt. I, paras.1, 11



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