

1990 No. 322**SOCIAL SECURITY****The Social Security (Recoupment) Regulations 1990**

Made - - - - - 21st February 1990

*Coming into force
for the purposes of
regulations 1, 5 to
8 and 16 2nd April 1990*

*for the purposes of
regulations 2, 9, 10,
13, and 15 9th July 1990*

for all other purposes 3rd September 1990

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Whereas a draft of this instrument was laid before Parliament in accordance with the provisions of section 29(2)(d), (g) and (h) of the Social Security Act 1988(a) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by section 166(2) and (3A) of the Social Security Act 1975(b) and sections 22(3), (4)(a) and (h) and (5), 29, 30(1) and 31(3) of, and paragraphs 1(2), 4(1) and (2), 13, 15(1)(a)(i) and (b), 17(4) and (10) and 21(2) of Schedule 4 to the Social Security Act 1989(c) and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971(d), and with the consent of the Treasury to regulations 2 and 3 below(e), by this instrument, which is made before the end of the period of 6 months beginning with the coming into force of the enactments under which the regulations are made, hereby makes the following Regulations:

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Recoupment) Regulations 1990 and shall come into force—

for the purposes of this regulation and regulations 5, 6, 7, 8 and 16 on 2nd April 1990;

for the purposes of regulations 2, 9, 10, 13 and 15 on 9th July 1990; and
for all other purposes on 3rd September 1990.

(2) In these Regulations—

“the 1989 Act” means the Social Security Act 1989;

“Schedule 4” means Schedule 4 to the 1989 Act; and

“the Compensation Recovery Unit” means the Compensation Recovery Unit of the Department of Social Security at Reyrolle Building, Hebburn, Tyne and Wear.

(3) In these Regulations, unless the context otherwise requires, a reference—

(a) to a numbered regulation is to the regulation in these Regulations bearing that number; and

(b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

(a) 1989 c. 24.

(b) 1975 c. 14; section 166(3A) was inserted by the Social Security Act 1986 (c. 50), section 62(1).

(b) Section 30(1) is cited because of the meaning ascribed to the words “prescribe” and “regulations”.

(d) 1971 c. 62.

(e) See section 29(5) of the Social Security Act 1989 (c. 24).

PART II

BENEFITS AND PAYMENTS

Relevant benefits

2.—(1) The following benefits are relevant benefits for the purposes of section 22 of the 1989 Act—

- (a) attendance allowance,
- (b) disablement benefit (including disablement pensions) payable in accordance with sections 57 to 63 of the principal Act,
- (c) family credit,
- ▶¹(ca) incapacity benefit;◀
- (d) income support, under Part II of the Social Security Act 1986(a), including personal expenses addition, special transitional additions and transitional addition as defined in the Income Support (Transitional) Regulations 1987(b),
- (e) invalidity pension and allowance,
- (f) mobility allowance,
- (g) benefits payable under schemes made under the Old Cases Act,
- (h) reduced earnings allowance,
- (i) retirement allowance,
- (j) severe disablement allowance,
- (k) sickness benefit,
- (l) ▶²◀,
- (m) unemployment benefit,
- ▶³(ma) disability living allowance,
- (mb) disability working allowance◀,
- (n) any increase in any of the benefits mentioned above payable in accordance with the Social Security Acts 1975 to 1989 or the Old Cases Act or with any regulations, Order in Council, order or scheme made thereunder,
- ▶⁴(o) jobseeker's allowance.◀

(2) In paragraph (1) references to, respectively, invalidity pension and allowance, severe disablement allowance, sickness benefit and unemployment benefit include also a reference to any income support paid with each of those benefits on the same instrument of payment ▶⁵or paid concurrently with each of those benefits by means of an instrument for benefit payment◀, and for this purpose, income support includes personal expenses addition, special transitional additions and transitional addition as defined in the Income Support (Transitional) Regulation 1987.

(3) ▶²◀

Reg. 2(3), saved for transitional cases by reg. 5(1) of S.I. 1994/730, is reproduced in small print below:-

▶⁶(3) The amount of statutory sick pay for the purposes of section 22 of the 1989 Act (recovery of sums equivalent to benefit from compensation payments) is, in so far as it relates to any liability an employer may have to make a payment of statutory sick pay to an employee of his in respect of a day of incapacity for work falling on or after 6th April 1991, 80 per cent. of the payment of statutory sick pay which the employer is liable to make.◀

¹Sub-para. (ca) inserted into reg. 2 by reg. 22 of S.I. 1995/829 as from 13.4.95, subj. to saving in reg. 26 *ibid.*

²Reg. 2(1)(1) (statutory sick pay) & reg. 2(3) deleted by reg. 3 of S.I. 1994/730 as from 6.4.94 subject to saving in reg. 5(1) *ibid.*

³Sub-paras. (ma) & (mb) inserted in reg. 2(1) by reg. 17 of S.I. 1991/2742 as from 6.4.92.

⁴Sub-para. (o) inserted in reg. 2(1) by reg. 24 of S.I. 1996/1345 as from 7.10.96.

⁵Words inserted in reg. 2(2) by reg. 5 of S.I. 1996/672 as from 4.4.96.

⁶Para. (3) added to reg. 2 by reg. 3(3) of S.I. 1991/694 as from 6.4.91.

Small payments

3.—(1) A person shall be exempted from liability to make the relevant deduction or the relevant payment where the amount of the compensation payment in question, or the aggregate amount of 2 or more connected compensation payments, does not exceed £2,500.

(a) 1986 c. 50.

(b) S.I. 1987/1969; the relevant amending instruments are S.I. 1988/521, 670, 1989/1626 and 2340.

Regs. 3-4

(2) Where an amount has been deducted and paid to the Secretary of State which, by virtue of paragraph (1), ought not to have been so deducted and paid, the Secretary of State—

- (a) Where he is satisfied that the whole of the amount ought to have been paid to the intended recipient, shall pay the whole of that amount to that person; or
- (b) Where he is not so satisfied, shall either pay the whole of the amount to the compensator or pay to the compensator that part of the amount which he would have been entitled to retain and to the intended recipient that part which he would have been entitled to receive (a) had the amount not been so deducted and paid.

Exempt payments

4. The following payments shall be exempt payments for the purposes of section 22 of the 1989 Act—

- (a) any payment made out of property held for the purpose of the charitable trust called the Macfarlane Trust and established 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) any compensation payment made by British Coal in accordance with the NCB Pneumoconiosis Compensation Scheme set out in the Schedule to an agreement made on the 13th September 1974 between the National Coal Board, the National Union of Mine Workers, the National Association of Colliery Overmen Deputies and Shot-firers and the British Association of Colliery Management;
- (c) any payment made to the victim in respect of sensorineural hearing loss where the loss is less than 50 db in one or both ears; and
- (d) any contractual amount paid to an employee by an employer of his in respect of a day of incapacity for work
- ▶¹(e) any payment made from 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; ◀
- ▶²(ee) any payment made from 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; ◀²and
- (f) any payment made under the National Health Service (Injury Benefits) Regulations 1974(b) or the National Health Service (Scotland) (Injury Benefits) Regulations 1974(c) ◀
- ▶³(g) 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 him on 24th April 1992 or, in Scotland on 10th April 1992. ◀
- ▶⁴(h) any payment made from 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. ◀

¹Reg. 4(e) & (f) inserted by reg. 2 of S.I. 1990/1558 as from 3.9.90.

²Reg. 4(ee) inserted by reg. 6 of S.I. 1991/1175 as from 11.5.91.

³Reg. 4(g) inserted by reg. 7 of S.I. 1991/1101 as from 7.5.92.

⁴Reg. 4(h) added by reg. 7 of S.I. 1993/1249 as from 14.5.93.

(a) See section 2 of the Law Reform (Personal Injuries) Act 1948 (c. 41), as amended by the Social Security Act 1989, Schedule 4, paragraph 22.

(b) S.I. 1974/1547.

(c) S.I. 1978/1838.

PART III

ADMINISTRATION AND ADJUDICATION

Information to be provided by compensator

5. A 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 Secretary of State with the following information in respect of that accident, injury or disease—

- (a) the full name and the address of any person seeking compensation or in respect of whom compensation is sought;
- (b) where known the date of birth or the national insurance number of that person, or both if both are known;
- (c) where the liability arises, or is alleged to arise, in respect of—
 - (i) an accident or injury, the date of the accident or injury, or
 - (ii) a disease, the date the disease was diagnosed;
- (d) the nature of the accident, injury or disease; and
- (e) where known, whether at the time of the accident or injury or diagnosis of the disease, the person was employed under a contract of service, and if he was, the name and address of his employer at that time and the person's payroll number.

Information to be provided by victim

6.—(1) A person who claims (whether on behalf of himself or another) a relevant benefit or has been in receipt of such a benefit, shall furnish the Secretary of State with such of the following information relating to any accident, injury or disease the victim has suffered as the Secretary of State requests—

- (a) whether the accident, injury or disease resulted from any action taken by another person, or from any failure of another person to act, and if so, the full name and address of that other person;
- (b) whether he has claimed or may claim a compensation payment, and if so, the full name and the address of the person against whom the claim was or may be made;
- (c) the amount of any compensation payment and the date on which it was made;
- (d) the relevant benefit claimed, the date from which benefit was first claimed and the amount of the benefit received in the period beginning with that date and ending with the date the information is sent;
- (e) in the case of a person who has received or is entitled to receive statutory sick pay during the relevant period, the name and address of any employer who is or was liable to make these payments to him during the relevant period and the dates the employment with that employer began and ended; and
- (f) any changes in the medical diagnosis relating to the condition arising from the accident, injury or disease.

(2) in this regulation, "person" includes a deceased person's personal representative.

Information to be provided by the employer

7. 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 an employer of such a person at any time during the relevant period,

shall furnish the Secretary of State with such of the following information relating to the payment of statutory sick pay as the Secretary of State requests—

- (i) the amount of any statutory sick pay he is liable to pay or has paid to the victim since the first day of the relevant period;
- (ii) the date the liability first arose and the rate at which statutory sick pay is or was payable;
- (iii) the date that such liability terminated or is likely to terminate; and
- (iv) the causes of the incapacity for work during any periods of entitlement to statutory sick pay.

Sending information

8. A person who furnishes the Secretary of State with information shall do so by sending it in writing to the Compensation Recovery Unit not later than 14 days after—

- (a) where he is a person to whom regulation 5 applies, the date he receives a claim for compensation from the victim in respect of the accident, injury or disease;
- (b) where he is a person to whom regulation 6 or 7 applies, the date the Secretary of State requests the information from him

Particulars to be stated before liability of compensator becomes unenforceable

9. The following particulars are prescribed for the purposes of paragraph 15(1)(a)(i) of Schedule 4 (particulars to be stated before liability of compensator becomes unenforceable)—

- (a) the full name of the victim together with his address, and either his date of birth or national insurance number or both if both are known,
- (b) unless already furnished to the Secretary of State in accordance with regulation 5—
 - (i) where the liability arises or is alleged to arise in respect of an accident or injury, the date of that accident or injury, or where it arises or is alleged to arise in respect of a disease, the date the disease was diagnosed;
 - (ii) the nature of the accident, injury or disease; and
 - (ii) where known, whether at the time of the accident or injury or the diagnosis of the disease the victim was employed under a contract of service, and if he was, the name and address of his employer at that time and the persons's payroll number.

Acknowledgement of compensator's request

10. Where the compensator requests a certificate of total benefit in accordance with paragraph 15(1)(a) of Schedule 4, the Secretary of State shall send to the compensator, as soon as reasonably practicable, a written acknowledgement of the receipt of the request stating the day on which the request was received.

Appeals

11.—(1) Any appeal against a certificate of total benefit shall be in writing and shall be made by sending or delivering it to the Compensation Recovery Unit

- (a) not later than 3 months after the date the compensator made the relevant payment; or
- (b) where the certificate was reviewed by the Secretary of State in accordance with Regulation 13 not later than 3 months from the date the certificate is confirmed, or as the case may be, a fresh certificate issued.

(2) Any appeal under this regulation shall contain particulars of the grounds on which it is made.

(3) Where an earlier compensation payment has been made and subsequently one or more later payments are made to or in respect of the same victim in respect of the same accident, injury or disease (whether by the same or an other compensator), the date referred to in paragraph (1)(a) is the date of the last of those later payments.

(4) The time for making an appeal may be extended for special reasons by the chairman of the tribunal to which the appeal is referred, even though the time limit may have already expired.

(5) Any application for an extension of time under paragraph (4) shall be made in writing and shall be determined by the chairman.

(6) An application under paragraph (4) for an extension of time which has been refused shall not be renewed.

(7) Where it appears to the chairman of the tribunal to whom the appeal was referred that the appeal gives insufficient particulars to enable the question at issue to be determined, he may require the person making the appeal to furnish such further particulars as may reasonably be required.

Withdrawal of appeal

12. A person who has made an appeal under regulation 11 may withdraw that appeal—

- (a) before the hearing begins by giving notice in writing of his intention to withdraw the appeal to the Appeal Tribunal to whom the appeal was made and with the consent in writing of the Secretary of State;
- (b) after the hearing has begun and before the determination is made, with the leave of the chairman of the Appeal Tribunal.

Review

13. The Secretary of State may treat any appeal as an application for review under paragraph 16 of Schedule 4, notwithstanding that the certificate of total benefit was not issued in ignorance of or based on a mistake as to some material fact or that a mistake (whether in computation or otherwise) has not occurred in its preparation.

PART IV

MISCELLANEOUS MATTERS

Benefits exceed compensation

14. Where, after making the relevant deduction from the compensation payment, there is no balance remaining for payment to the intended recipient, any reference in Schedule 4 to the making of the compensation payment shall be construed as a reference to the acceptance by the intended recipient of an offer in respect of his claim against the compensator.

Foreign compensators

15. Where immediately before the making of a compensation payment, the compensator is not resident and does not have a place of business in Great Britain, then these Regulations shall be modified in their application to the intended recipient in accordance with the following provisions—

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- (a) regulation 5 shall apply with the additional requirement that the intended recipient supply the Secretary of State with the name of the compensator and his address; and
- (b) regulation 9 shall apply with the additional requirement that he supply the Secretary of State with details of—
 - (i) the amount of the compensation paid to him, and
 - (ii) whether that payment represents the final payment in respect of the accident, injury or disease.

Transitional provisions and saving

16.—(1) A compensator who may make a compensation payment after 2nd September 1990 in respect of an accident, injury or disease which occurred on or after 1st January 1989 but before 2nd April 1990, shall so inform the Secretary of State as soon as reasonably practicable.

(2) Where an accident or injury occurred or a disease was diagnosed before 1st January 1989 and a compensation payment in respect of that accident, injury or disease is or may be made after 2nd September 1990, then

- (a) the provisions of section 2 of the Law Reform (Personal Injuries) Act 1948(a) shall apply to that payment as though the amendment made to it in paragraph 22 of Schedule 4 to the 1989 Act, had not been enacted, and
- (b) the payment shall be calculated as if section 22(6) of that Act had not been enacted.

Signed by authority of the Secretary of State for Social Security.

13th February 1990

We consent,

21st February 1990

Henley
Parliamentary Under-Secretary of State,

D. Lightbown
Stephen Dorrell
Two of the Lords Commissioners
of Her Majesty's Treasury

(a) 1948 c. 41.

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument is made before the end of the period of 6 months beginning with the coming into force of the enactments under which the Regulations are made. The Regulations contained in this instrument are accordingly exempt by section 61(5) of the Social Security Act 1986 (c. 50), as amended by the Social Security Act 1989 (c. 24) Schedule 8, paragraph 12(3), from reference to the Social Security Advisory Committee and have not been so referred.

These Regulations contain provisions (“the recoupment provisions”) relating to the recovery of sums equivalent to benefit from compensation payments in respect of accident, injuries and diseases and are made under powers contained in section 22 of and Schedule 4 to the Social Security Act 1989 (c. 24).

Regulation 2 prescribes the benefits which are relevant for the purposes of the recoupment provisions. Small payments are exempt from liability under the recoupment provisions, and regulation 3 sets the level of a small payment (or the aggregate of payments) at £2,500 or less. Regulation 4 prescribes certain payments which are not compensation payments for the purposes of the recoupment provisions.

Regulations 5, 6 and 7 relate to the information required to be provided to the Secretary of State by respectively the compensator, the victim and, where statutory sick pay has been in payment to the victim, the victim’s employer or employers. Regulation 8 provides for the information to be sent to the Compensation Recovery unit of the Department of Social Security.

Where the Secretary of State fails to send a certificate of total benefit within 4 weeks then the compensator’s liability to the Secretary of State becomes unenforceable where he has provided the Secretary of State with the particulars set out in regulation 9 and has received a written acknowledgement of his request for the certificate (regulation 10).

Regulations 1, 12 and 13 make provision for appeals from and reviews of the amount specified on a certificate of total benefit.

Regulation 14 makes provision where no balance remains for payment to the intended recipient after deductions from the compensation payment of the amount payable to the Secretary of State, for references to compensation payments in Schedule 4 to the Social Security Act 1989 to be construed as references to the acceptance of an offer.

Regulation 15 makes modification to the Regulations where the compensator is situate abroad.

Regulation 16(1) relates to notifications of claims in respect of compensation payments which may be made after 2nd September 1990 where the accident, injury or disease occurred on or after 1st January 1989 but before 2nd April 1990, and regulation 16(2) provides for savings where it occurred before 1st January 1989.

