

2008 No. 1596

SOCIAL SECURITY

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

<i>Made</i> - - - -	<i>18th June 2008</i>
<i>Laid before Parliament</i>	<i>25th June 2008</i>
<i>Coming into force</i> - -	<i>1st October 2008</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 189(4) and (6) of the Social Security Administration Act 1992(a), sections 1A, 14(2), (3) and (4), 18, 19, 21(3), 23(1), (2) and (7) and 29 of, and paragraphs 4 and 8 of Schedule 1 to, the Social Security (Recovery of Benefits) Act 1997(b), section 79(6) of the Social Security Act 1998(c) and section 53 of the Child Maintenance and Other Payments Act 2008(d), which contains only regulations made by virtue of, or consequential on sections 54 and 57(2) of the Child Maintenance and Other Payments Act 2008 and which are made before the end of a period of 6 months beginning with the coming into force of those sections(e):

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 2008 and shall come into force on 1st October 2008.

(2) In these Regulations—

“the Act” means the Social Security (Recovery of Benefits) Act 1997;

“compensator” means a person making a compensation payment;

“Compensation Recovery Unit” means the Compensation Recovery Unit of the Department for Work and Pensions at Durham House, Washington, Tyne and Wear, NE38 7SF;

“lump sum payments” are payments to which section 1A(2) of the Act applies, except in relation to regulation 18(1)(b);

“recoverable benefits” has the same meaning as in section 1(4)(c) of the Act;

(a) 1992 c. 5.

(b) 1997 c. 27. Section 1A was inserted by section 54 of the Child Maintenance and Other Payments Act 2008 (c. 6) and section 29 is cited for the meaning ascribed to the word “prescribed”.

(c) 1998 c. 14.

(d) 2008 c. 6.

(e) See section 173(5)(b) of the Social Security Administration Act 1992 (c. 5).

“recoverable lump sum payments” means any lump sum payments which are recoverable by virtue of regulation 4.

Application of the Act

2.—(1) The provisions of the Act 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) section 1(3) (cases in which this Act applies);
- (b) sections 10 to 14 (reviews and appeals);
- (c) sections 15 and 17 (courts);
- (d) sections 18 and 19 (reduction of compensation: complex cases);
- (e) sections 20 to 23 (miscellaneous);
- (f) sections 26 and 27 (provisions relating to Northern Ireland);
- (g) sections 28 to 31 (general);
- (h) section 33 (consequential amendments and repeals);
- (i) section 34(1) and (3) (short title and extent);
- (j) Schedule 1 (compensation payments – exempted payments and power to disregard small 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 Secretary of State may recover the amount of a payment to which section 1A(2) of the Act 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), references to a payment made in consequence of a disease—

- (a) are references 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) do not include references to a payment mentioned in Part 1 of Schedule 1 to the Act.

Application of these Regulations to a dependant of P

5.—(1) Subject to paragraph (2), in these Regulations and any provision of the Act 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 sections 15 and 23(2) of, and paragraphs 3(a) and 5(1) of Part 1 of Schedule 1 to, the Act.

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 54 of the Child Maintenance and Other Payments Act 2008 comes into force.

Exempted trusts and payments

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

- (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 Act—

- (a) any payment made under the Vaccine Damage Payments Act 1979^(a) to or in respect of P;
- (b) any award of compensation made to or in respect of P under the Criminal Injuries Compensation Act 1995^(b) or by the Criminal Injuries Compensation Board under the Criminal Injuries Compensation Scheme 1990 or any earlier scheme or under the Criminal Injuries Compensation (Northern Ireland) Order 2002^(c);
- (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;
- (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 National Health Service (Injury Benefits) Regulations 1995^(d), the National Health Service (Scotland) (Injury Benefits) Regulations 1998^(e) or the Health and Personal Social Services (Injury Benefits) Regulations (Northern Ireland) 2001^(f);
- (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;

(a) 1979 c.17.

(b) 1995 c. 53.

(c) S.I. 2002/796 (N.I. 1).

(d) S.I. 1995/866.

(e) S.I. 1998/1594 (S. 84).

(f) S.R. 2001 No. 367.

- (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 Secretary of State for a certificate.

(2) Where the compensator applies for a certificate, the Secretary of State 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.

(3) An application for a certificate is to be treated for the purposes of the Act as received by the Secretary of State on the day on which it is received by the Compensation Recovery Unit, or if the application is received after normal business hours, or on a day which is not a normal business day at that office, 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 section 1A(2) of the Act 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 section 1A(2)(a) applies.

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

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

- (a) the person who appears to the Secretary of State to be P; or
- (b) any person who the Secretary of State 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 (3) 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 Secretary of State for those particulars.

PART 3

Liability of person paying compensation

Liability to pay Secretary of State amount of lump sum payments

10.—(1) A person who makes a compensation payment in any case is liable to pay the Secretary of State 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 Secretary of State an amount equal to the total amount of the recoverable benefits payable under section 6 of the Act.

(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—

- (a) (i) under the Fatal Accidents Act 1976(a);
(ii) to the extent that it is made in respect of a liability arising by virtue of section 1 of the Damages (Scotland) Act 1976(b); or
(iii) under the Fatal Accidents (Northern Ireland) Order 1977(c),
to that dependant; or
- (b) in respect of P, and that dependant is an intended beneficiary of part or all of that payment.

(a) 1976 c. 30.

(b) 1976 c. 13. Section 1 was amended by the Administration of Justice Act 1982 (c. 53), section 14(1), the International Transport Conventions Act 1983 (c. 14), section 3(6) and paragraph 2 of Schedule 1 and the Damages (Scotland) Act 1993 (c. 5), section 1.

(c) S.I. 1977/1251 (N.I. 18).

Recovery of payment due under regulation 10

- 11.**—(1) This regulation applies where a compensator has made a compensation payment but—
- (a) has not applied for a certificate; or
 - (b) has not made a payment to the Secretary of State under regulation 10 before the end of the period allowed under that regulation.
- (2) The Secretary of State may—
- (a) issue the compensator who made the compensation payment with a certificate, if none has been issued; or
 - (b) issue that compensator with a copy of the certificate or (if more than one has been issued) the most recent one,

and (in either case) issue that compensator with a demand that payment of any amount due under regulation 10 be made immediately.

(3) The Secretary of State may, in accordance with paragraphs (4) and (5), recover the amount for which a demand for payment is made under paragraph (2) from the compensator who made the compensation payment.

(4) If the compensator who made the compensation payment resides or carries on business in England and Wales and a county court so orders, any amount recoverable under paragraph (3) is recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court.

(5) If the compensator who made the payment resides or carries on business in Scotland, any amount recoverable under paragraph (3) may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

- (6) A document bearing a certificate which—
- (a) is signed by a person authorised to do so by the Secretary of State; and
 - (b) states that the document, apart from the certificate, is a record of the amount recoverable under paragraph (3),

is conclusive evidence that that amount is so recoverable.

(7) A certificate under paragraph (6) purporting to be signed by a person authorised to do so by the Secretary of State is to be treated as so signed unless the contrary is proved.

PART 4

Reduction of compensation payment

Reduction of compensation payment

12.—(1) This regulation applies in a case where, in relation to any compensation payment in consequence of a disease made to, or in respect of P, a lump sum payment has been, or is likely to be made to, or in respect of P.

(2) In such a case, any claim of a person to receive the compensation payment is to be treated for all purposes as discharged if—

- (a) that person is paid the amount (if any) of the compensation payment calculated in accordance with this regulation; and
- (b) if the amount of the compensation payment so calculated is nil, that person is given a statement saying so by the compensator who (apart from this regulation) would have paid the gross amount of the compensation payment.

(3) For an award of compensation for which paragraph (1) is satisfied, so much of the gross amount of the compensation payment as is equal to the amount of the lump sum payment is to be reduced (to nil, if necessary) by deducting the amount of the recoverable lump sum payment.

(4) Paragraph (3) is to have effect as if a requirement to reduce a payment by deducting an amount which exceeds that payment were a requirement to reduce that payment to nil.

(5) The amount of the compensation payment calculated in accordance with this regulation is—

(a) the gross amount of the compensation payment;

less

(b) the reductions made under paragraph (3),

(and, accordingly, the amount may be nil).

(6) The reduction specified in paragraph (3) is to be attributed to the heads of compensation in the following order—

(a) damages for non-pecuniary loss;

(b) damages for pecuniary loss,

and, the reduction is to be made before any reduction in respect of recoverable benefits under section 8 of the Act.

(7) Where the lump sum payment has been made to a dependant of P, the reduction specified in paragraph (3) may be attributed—

(a) to any damages awarded to that dependant—

(i) under the Fatal Accidents Act 1976;

(ii) to the extent that they are made in respect of a liability arising by virtue of section 1 of the Damages (Scotland) Act 1976; or

(iii) under the Fatal Accidents (Northern Ireland) Order 1977,
other than those paid for funeral expenses;

(b) to any part of a compensation payment paid in respect of P, where that dependant is an intended beneficiary of part or all of that compensation.

Regulation 12: supplementary

13.—(1) A compensator who makes a compensation payment calculated in accordance with regulation 12 must inform the person to whom the payment is made—

(a) that the payment has been so calculated; and

(b) of the date for payment by reference to which the calculation has been made.

(2) If the amount of a compensation payment calculated in accordance with regulation 12 is nil, a compensator giving a statement saying so is to be treated for the purposes of these Regulations as making a payment within regulation 4(1)(a) on the day on which the statement is given.

(3) Where a compensator—

(a) makes a compensation payment calculated in accordance with regulation 12; and

(b) if the amount of the compensation payment so calculated is nil, gives a statement saying so,

the compensator is to be treated, for the purpose of determining any rights and liabilities in respect of contribution or indemnity, as having paid the gross amount of the compensation payment.

(4) For the purposes of these Regulations—

(a) the gross amount of the compensation payment is the amount of the compensation payment apart from regulation 12; and

(b) the amount of any recoverable lump sum payment is the amount determined in accordance with the certificate.

Reduction of compensation: complex cases

14.—(1) This regulation applies where—

- (a) a compensation payment in the form of a lump sum (an “earlier payment”) has been made to or in respect of P; and
- (b) subsequently another such payment (a “later payment”) is made to or in respect of the same P in consequence of the same disease.

(2) In determining the liability under regulation 10(1) arising in connection with the making of the later payment, the amount referred to in that regulation is to be reduced by any amount paid in satisfaction of that liability as it arose in connection with the earlier payment.

(3) Where—

- (a) a payment made in satisfaction of the liability under regulation 10(1) arising in connection with an earlier payment is not reflected in the certificate in force at the time of a later payment; and
- (b) in consequence, the aggregate of payments made in satisfaction of the liability exceeds what it would have been had that payment been so reflected,

the Secretary of State is to pay the compensator who made the later payment an amount equal to the excess.

(4) Where—

- (a) a compensator receives a payment under paragraph (3); and
- (b) the amount of the compensation payment made by that compensator was calculated under regulation 12,

then the compensation payment is to be recalculated under regulation 12, and the compensator must pay the amount of the increase (if any) to the person to whom the compensation payment was made.

(5) Where both the earlier payment and the later payment are made by the same compensator, that compensator may—

- (a) aggregate the gross amounts of the payments made;
- (b) calculate what would have been the reduction made under regulation 12(3) if that aggregate amount had been paid at the date of the last payment on the basis that—
 - (i) the aggregate amount is to be taken to be the gross amount; and
 - (ii) the amount of any recoverable lump sum payment is to be taken to be the amount determined in accordance with the most recent certificate;
- (c) deduct from that reduction calculated under sub-paragraph (b) the amount of the reduction under regulation 12(3) from any earlier payment; and
- (d) deduct from the latest gross payment the net reduction calculated under sub-paragraph (c) (and accordingly the latest payment may be nil).

(6) Where a refund is made under paragraph (3), the Secretary of State is to send the compensator (with the refund) and the person to whom the compensation payment was made a statement showing—

- (a) the total amount that has already been paid by that compensator to the Secretary of State;
- (b) the amount that ought to have been paid by that compensator; and
- (c) the amount to be repaid to that compensator by the Secretary of State.

(7) Where the reduction of a compensation payment is recalculated by virtue of paragraph (4) or (5) the compensator must give notice of the calculation to P.

PART 5

Miscellaneous

Information to be provided by the compensator

15. The following information is prescribed for the purposes of sections 21(3)(a) and 23(1) of the Act—

- (a) the full name and address of P;
- (b) where known, the date of birth or national insurance number of P, or both if both are known; and
- (c) the nature of the disease.

Information to be provided by P

16. The following information is prescribed for the purposes of section 23(2) of the Act—

- (a) whether P has claimed or may claim a compensation payment, and if so, the full name and address of the person against whom the claim was or may be made;
- (b) the amount of any compensation payment and the date on which it was made;
- (c) the amount of the lump sum payment claimed, the type of that payment and the date on which it was paid.

Provision of information

17. A person required to give information to the Secretary of State under regulation 15 or 16 is to do so by sending it to the Compensation Recovery Unit not later than 14 days after—

- (a) where the person is one to whom regulation 15 applies, the date on which the compensator receives a claim for compensation from P in respect of the disease;
- (b) where the person is one to whom regulation 16 applies, the date on which the Secretary of State requests the information from P.

Periodical payments

18.—(1) This regulation applies where in final settlement of P's claim, an agreement is entered into—

- (a) for the making of periodical payments (whether of an income or capital nature); or
- (b) for the making of such payments and lump sum payments,

and, those payments would fall to be treated for the purposes of the Act as compensation payments.

(2) Where this regulation applies—

- (a) the compensator in question is to be taken to have made a single compensation payment on the day of settlement;
- (b) the total of the payments due to be made under the agreement referred to in paragraph (1) are to be taken to be a compensation payment for the purposes of the Act; and
- (c) that single compensation payment is a payment from which lump sum payments may be recovered under these Regulations.

(3) In any case where—

- (a) the person making the periodical payments (“the secondary party”) does so in pursuance of arrangements entered into with another (“the primary party”) (as in a case where the primary party purchases an annuity for P from the secondary party); and

(b) apart from those arrangements, the primary party would have been regarded as the compensator,
then for the purposes of the Act, the primary party is to be regarded as the compensator and the secondary party is not to be so regarded.

(4) In this regulation—

“the day of settlement” means—

- (a) if the agreement referred to in paragraph (1) 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;

“a single compensation payment” means the total amount of the payments due to be made under the agreement referred to in paragraph (1).

Adjustments

19.—(1) Where the conditions specified in subsection (1) and paragraphs (a) and (b) of subsection (2) of section 14 of the Act are satisfied, the Secretary of State is to pay the difference between the amount that has been paid and the amount that ought to have been paid to the compensator.

(2) Where the conditions specified in subsection (1) and paragraphs (a) and (b) of subsection (3) of section 14 of the Act are satisfied, the compensator is to pay the difference between the amount that has been paid and the amount that ought to have been paid to the Secretary of State.

(3) Where the Secretary of State is making a refund under paragraph (1), or demanding a payment of a further amount under paragraph (2), the Secretary of State is to send to the compensator (with the refund or demand) and to the person to whom the compensation payment was made a statement showing—

- (a) the total amount that has already been paid to the Secretary of State;
- (b) the amount that ought to have been paid; and
- (c) the difference, and whether a repayment by the Secretary of State or a further payment by the compensator to the Secretary of State is required.

(4) This paragraph applies where—

- (a) the amount of the compensation payment by the compensator was calculated under regulation 12; and
- (b) the Secretary of State has made a payment under paragraph (1).

(5) Where paragraph (4) applies, the amount of the compensation payment is to be recalculated under regulation 12 to take account of the fresh certificate and the compensator must pay the amount of the increase (if any) to the person to whom the compensation payment was made.

(6) This paragraph applies where—

- (a) the amount of the compensation payment made by the compensator was calculated under regulation 12;
- (b) the compensator has made a payment under paragraph (2); and
- (c) the fresh certificate issued after the review or appeal was required as a result of P or such other person to whom the compensation payment was made supplying to the compensator information, knowing it to be incorrect or insufficient, with the intent of enhancing the compensation payment calculated under regulation 12, and the compensator supplying that information to the Secretary of State without knowing it to be incorrect or insufficient.

(7) Where paragraph (6) applies, the compensator may recalculate the compensation payment under regulation 12 to take account of the fresh certificate and may require the repayment of the difference (if any) between the payment made and the payment as so recalculated by the person to whom the compensator made the compensation payment.

Signed by authority of the Secretary of State for Work and Pensions.

18th June 2008

William D McKenzie
Parliamentary Under-Secretary of State,
Department for Work and Pensions

SCHEDULE 1

Regulation 2(1)

Modification of certain provisions of the Act

1. This Schedule applies to any case to which regulation 4 applies.
2. Where this Schedule applies, section 1 (cases in which this Act applies) is to apply as if in subsection (3), for “Subsection (1)(a)” there were substituted “Section 1A(1)(a)”.
3. Where this Schedule applies, section 10 (review of certificates of recoverable benefits)(a) is to apply as if in—
 - (a) the heading and in subsection (1), there were omitted “of recoverable benefits” in each place it occurs;
 - (b) subsection (3), for “benefits” there were substituted “lump sum payments, except where that certificate has been reviewed under regulation 9ZA(1)(e) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (review of certificates),”.
4. Where this Schedule applies, section 11 (appeals against certificates of recoverable benefits)(b) is to apply as if in—
 - (a) the heading and in subsections (1) and (2)(a), there were omitted “of recoverable benefits” in each place it occurs;
 - (b) subsection (1)(a), there were omitted “, rate or period”;
 - (c) subsection (1)(b)—
 - (i) for “listed benefits” there were substituted “lump sum payments”;
 - (ii) there were omitted “accident, injury or”;
 - (d) subsection (1)(c)—
 - (i) for “listed benefits” there were substituted “lump sum payments”;
 - (ii) for “the injured person during the relevant period” there were substituted “P”;
 - (e) subsection (1)(d), for “1(1)(a)” there were substituted “1A(1)(a)”;
 - (f) subsection (2)(aa) for “section 7(2)(a)” there were substituted “regulation 11(2)(a) of the Lump Sum Payments Regulations”;
 - (g) subsection (2)(b), for “section 8 the injured person” there were substituted “regulation 12 of the Lump Sum Payments Regulations) P”;
 - (h) subsection (3), for “section 6” there were substituted “regulation 10 of the Lump Sum Payments Regulations”.
5. Where this Schedule applies, section 12 (reference of questions to medical appeal tribunal)(c) is to apply as if in—

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- (a) Section 10 was amended by the Social Security Act 1998 (c. 14), section 86(1) and paragraph 149 of Schedule 7.
 - (b) Section 11 was amended by the Social Security Act 1998, section 86(1) and paragraph 150 of Schedule 7 and by the Constitutional Reform Act 2005 (c. 4), section 59(5) and paragraph 1(2) of Schedule 11 and subsection (6) of section 11 was repealed by the Social Security Act 1998, Schedule 8.
 - (c) Section 12 was amended by the Social Security Act 1998, section 86(1) and paragraph 151 of Schedule 7 and subsections (6) to (8) of section 12 were repealed by the Social Security Act 1998, Schedule 8.

- (a) the heading for “questions to medical appeal tribunal” there were substituted “appeal to appeal tribunal”;
- (b) subsection (3), there were omitted “accident, injury or”;
- (c) subsection (4)(a), for “amounts, rates and periods” there were substituted “amount, type and date of payments”;
- (d) subsections (4)(a) and (c), there were omitted “of recoverable benefits” in each place it occurs.

6. Where this Schedule applies, section 13 (appeal to Social Security Commissioner)(a) is to apply as if in—

- (a) subsection (2)(b), there were omitted “of recoverable benefits”;
- (b) subsection (2)(c) for “section 8) the injured person” there were substituted “regulation 12 of the Lump Sum Payments Regulations) P”.

7. Where this Schedule applies, section 14 (reviews and appeals: supplementary) is to apply as if in—

- (a) subsection (1), there were omitted “of recoverable benefits”;
- (b) subsections (2) and (3), for “section 6” there were substituted “regulation 10 of the Lump Sum Payments Regulations” in each place it occurs;
- (c) subsection (4), for “section 8” there were substituted “regulation 12 of the Lump Sum Payments Regulations”.

8. Where this Schedule applies, for section 15 (court orders) is to apply as if there were substituted—

“15.—(1) This section applies where a court makes an order for a compensation payment to be made in a case where a compensation payment is to be made to a dependant of P—

- (a) under the Fatal Accidents Act 1976 (c. 30);
- (b) to the extent that it is made in respect of a liability arising by virtue of section 1 of the Damages (Scotland) Act 1976 (c. 13);
- (c) under the Fatal Accidents (Northern Ireland) Order 1977 (S.I. 1977/1251 (N.I. 18)); or
- (d) in respect of P, where that dependant is an intended beneficiary of part or all of that compensation,

and a lump sum payment has been made to that dependant, unless the order is made with the consent of that dependant and the person by whom the payment is to be made.

(2) The court must specify in the order the amount of the payment made—

- (a) under the Fatal Accidents Act 1976;
- (b) to the extent that it is made in respect of a liability arising by virtue of section 1 of the Damages (Scotland) Act 1976;
- (c) under the Fatal Accidents (Northern Ireland) Order 1977; or
- (d) in respect of P, where a dependant of P is an intended beneficiary of part or all of that compensation,

which is attributable to each or any dependant of P who has received a lump sum payment.”.

9. Where this Schedule applies, section 17 (benefits irrelevant to assessment of damages) is to apply as if—

- (a) in the heading for “benefits” there were substituted “lump sum payments”;

(a) Section 13 was amended by the Social Security Act 1998, section 86(1) and (2) and paragraph 152 of Schedule 7 and subsection (4) of section 14 was repealed by the Social Security Act 1998, Schedule 8.

- (b) there were omitted “accident, injury or”;
- (c) for “listed benefits” there were substituted “lump sum payments”.

10. Where this Schedule applies, section 18 (lump sum and periodical payments) is to apply as if—

- (a) in subsection (1)—
 - (i) for “the injured person” there were substituted “P”;
 - (ii) there were omitted “accident, injury or”;
- (b) in subsection (2), for “section 8” there were substituted “regulation 12 of the Lump Sum Payments Regulations”;
- (c) for subsection (3) there were substituted—

“(3) For the purposes of subsection (2), the regulations may provide for—

 - (a) the gross amounts of the compensation payments to be aggregated and for the aggregate amount to be the gross amount of the compensation payment for the purposes of regulation 12 of the Lump Sum Payments Regulations; and
 - (b) for the amount of any lump sum payment to be taken to be the amount determined in accordance with the most recent certificate.”;
- (d) in subsection (4), for “the injured person’s” there were substituted “P’s”;
- (e) in subsection (5), there were omitted paragraph (a).

11. Where this Schedule applies, section 19 (payments by more than one person) is to apply as if in—

- (a) subsection (1)—
 - (i) for “injured person” there were substituted “P”;
 - (ii) there were omitted “accident, injury or”;
- (b) subsection (2)—
 - (i) for “section 6” there were substituted “regulation 10 of the Lump Sum Payments Regulations”;
 - (ii) for “benefits” there were substituted “lump sum payments”;
- (c) subsection (3)—
 - (i) in paragraph (a), for “benefits” there were substituted “lump sum payments”;
 - (ii) in paragraph (b), for “section 8” there were substituted “regulation 12 of the Lump Sum Payments Regulations”.

12. Where this Schedule applies, section 20 (amounts overpaid under section 6) is to apply as if in—

- (a) the heading and in subsection (1), for “section 6” there were substituted “regulation 10 of Lump Sum Payments Regulations” in each place it occurs;
- (b) subsection (4)(a), for “section 8” there were substituted “regulation 12 of the Lump Sum Payments Regulations”.

13. Where this Schedule applies, section 21 (compensation payments to be disregarded) is to apply as if in—

- (a) subsections (1) and (5)(a), for “sections 6 and 8” there were substituted “regulations 10 and 12 of the Lump Sum Payments Regulations” in each place it occurs;
- (b) subsection (2)(a), there were omitted “of recoverable benefits”;
- (c) subsection (3)(a)—
 - (i) for “the injured person” there were substituted “P”;
 - (ii) there were omitted “accident, injury or”;

- (d) subsection (4), for “section 4” there were substituted “regulation 8 of the Lump Sum Payments Regulations”;
- (e) subsection (5)(b), for “section 6” there were substituted “regulation 10 of the Lump Sum Payments Regulations”.

14. Where this Schedule applies, section 22(1) (liability of insurers) is to apply as if—

- (a) in paragraph (a), there were omitted “accident, injury or”;
- (b) for “section 6” there were substituted “regulation 10 of the Lump Sum Payments Regulations”.

15. Where this Schedule applies, section 23 (provision of information) is to apply as if—

- (a) in subsection (1), for—
 - (i) “any accident, injury or” there were substituted “a”;
 - (ii) “any person (“the injured person”)” there were substituted “P”;
 - (iii) “the injured person” there were substituted “P”;
- (b) in subsection (1)(a), there were omitted “accident, injury or”;
- (c) for subsection (2), there were substituted—

“(2) Where P or a dependant of P, receives or claims a lump sum payment which is or is likely to be paid in respect of the disease suffered by P, the prescribed information about the disease must be given to the Secretary of State by P or a dependant of P, as the case may be.”;
- (d) in subsection (3), for “listed benefit” there were substituted “lump sum payment”;
- (e) in subsection (4)—
 - (i) for “any accident, injury or” there were substituted “a”;
 - (ii) there were omitted “, or any damage to property,”;
- (f) there were omitted subsections (5), (6) and (8).

16. Where this Schedule applies, section 26 (residence of the injured person – Northern Ireland) is to apply as if—

- (a) in subsections (1)(a) and (b)(i), (2)(a), (b) and (c) and (3)(d)(ii), there were omitted “of recoverable benefits” in each place it occurs;
- (b) in subsections (1)(c)(ii) and (2)(c)(i), for “section 6” there were substituted “regulation 10 of the Lump Sum Payments Regulations”;
- (c) in subsections (1) and (2), for “injured person’s address” there were substituted “address of P”;
- (d) for subsection (3)(a), there were substituted—
 - “(a) “the address of P” is the address first notified in writing to the person making the payment by or on behalf of P as the residence of P (or if P had died, by or on behalf of the person entitled to receive the compensation payment as the last residence of P),”;
- (e) in subsection (3)(d)(i) and the heading to this section, for “the injured person” there were substituted “P” in each place it occurs.

17. Where this Schedule applies, section 27 (jurisdiction of courts – Northern Ireland) is to apply as if in—

- (a) subsections (1) and (2), for “section 7” there were substituted “regulation 11 of the Lump Sum Payments Regulations” in each place it occurs;
- (b) subsection (3)(a)(i), for—
 - (i) “the injured person” the first time it occurs, there were substituted “P”;
 - (ii) “the injured person or, if he” there were substituted “P or, if P”.

18. Where this Schedule applies, section 29 (general interpretation)(a) is to apply as if—

- (a) there were omitted the following definitions—
 - (i) “benefit”;
 - (ii) “compensation scheme for motor accidents”;
 - (iii) “listed benefit”;
- (b) in the appropriate place, there were inserted the following definitions—
 - (i) “certificate” means a certificate which includes amounts in respect of recoverable benefits and of recoverable lump sum payments, including where any of those amounts are nil;
 - (ii) “P” is to be construed in accordance with regulation 5 of the Lump Sum Payments Regulations;
 - (iii) “recoverable lump sum payments” means any lump sum payments which are recoverable by virtue of regulation 4 of the Lump Sum Payments Regulations;
 - (iv) “the Lump Sum Payments Regulations” means the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008.

19. Where this Schedule applies, Part 1 of Schedule 1 (compensation payments – exempted payments)(b) is to apply as if—

- (a) in paragraph 2 and 3(a), for “the injured person” there were substituted “P” in each place it occurs;
- (b) in paragraph 3(a) and (b) there were omitted “accident, injury or” in each place it occurs;
- (c) for paragraph 5(1) there were substituted—

“(1) Any payment made to P or a dependant of P by an insurer under the terms of any contract of insurance entered into between P and the insurer before the date on which P or a dependant of P first claims a lump sum payment in consequence of the disease in question suffered by P.”;
- (d) in paragraph 6 for “an accident, injury or” there were substituted “a”.

20. Where this Schedule applies, paragraph 9 of Part 2 of Schedule 1 (compensation payments – power to disregard small payments) is to apply as if in—

- (a) sub-paragraph (1), for “sections 6 and 8” there were substituted “regulations 10 and 12 of the Lump Sum Payments Regulations”;
- (b) sub-paragraph (3)(a)—
 - (i) for “injured person” there were substituted “P”;
 - (ii) there were omitted “accident, injury or”.

SCHEDULE 2

Regulation 3

Consequential amendments

1. The Social Security and Child Support (Decisions and Appeals) Regulations 1999(c) are amended as follows—

- (a) in regulation 1(3) (interpretation), after the definition of “referral” insert—

““the Lump Sum Payments Regulations” means the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008;”;

(a) Section 29 was amended by the Social Security Act 1998, section 86(1) and paragraph 153 of Schedule 7.

(b) Part 1 of Schedule 1 was amended by the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), section 165 and paragraph 181 of Schedule 9 and S.I. 2001/3649, article 358.

(c) S.I. 1999/991.

(b) after regulation 9 (certificates of recoverable benefits), insert—

“Review of certificates

9ZA.—(1) A certificate may be reviewed under section 10 of the 1997 Act where the Secretary of State is satisfied that—

- (a) a mistake (whether in the computation of the amount specified or otherwise) occurred in the preparation of the certificate;
- (b) the lump sum payment recovered from a compensator who makes a compensation payment (as defined in section 1A(5) of the 1997 Act) is in excess of the amount due to the Secretary of State;
- (c) incorrect or insufficient information was supplied to the Secretary of State by the compensator who applied for the certificate and in consequence the amount of lump sum payment specified in the certificate was less than it would have been had the information supplied been correct or sufficient;
- (d) a ground for appeal is satisfied under section 11 of the 1997 Act or an appeal has been made under that section; or
- (e) a certificate has been issued and, for any reason, a recoverable lump sum payment was not included in that certificate.

(2) In this regulation and regulations 1(3) in paragraph (b) of the definition of “party to the proceedings”, 29, 31, 33, 36(2)(a)(ii) and 58(1), where applicable—

- (a) any reference to the 1997 Act is to be construed so as to include a reference to that Act as applied by regulation 2 of the Lump Sum Payments Regulations and, where applicable, as modified by Schedule 1 to those Regulations;
 - (b) “certificate” has the same meaning as in regulation 1(2) of the Lump Sum Payments Regulations;
 - (c) “lump sum payment” is a payment to which section 1A(2) of the 1997 Act applies;
 - (d) “P” is to be construed in accordance with regulations 4(1)(a)(i) and 5 of the Lump Sum Payments Regulations.”;
- (c) in regulation 29 (further particulars required relating to certificate of recoverable benefits appeals or applications)—
- (i) in the heading to that regulation and paragraphs (1), (1)(a) and (6), after “recoverable benefits” insert “or, as the case may be, recoverable lump sum payments”;
 - (ii) in paragraph (2), after “1997 Act” insert “or, in the case of lump sum payments, regulation 14 of the Lump Sum Payments Regulations”;
- (d) in regulation 31 (time within which an appeal is to be brought)—
- (i) in paragraph (3), after “recoverable benefits” insert “or, as the case may be, recoverable lump sum payments”;
 - (ii) in paragraph (3)(a) after “1997 Act” add “or, in the case of lump sum payments, regulation 10 of the Lump Sum Payments Regulations”;
 - (iii) for paragraph (3)(c) substitute—
“(c) where an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of a claim made by or in respect of—
 - (i) an injured person, arising out of the accident, injury or disease; or
 - (ii) P, arising out of the disease,not later than one month after the date of that agreement.”;
- (e) in regulation 33(2)(a) (making of appeals and applications), after “recoverable benefits” insert “or, as the case may be, recoverable lump sum payments”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the recovery of lump sum payments being payments to which section 1A(2) of the Social Security (Recovery of Benefits) Act 1997 (c. 27) (“the 1997 Act”) applies. Section 1A was inserted into the 1997 Act by section 54 of the Child Maintenance and Other Payments Act 2008 (c. 6) (“the 2008 Act”).

Regulation 2 sets out the provisions of the 1997 Act which apply for the purposes of these Regulations and introduces Schedule 1 which modifies certain of those provisions.

Regulation 3 makes consequential amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991).

Regulation 4 sets out the circumstances in which the Secretary of State may recover lump sum payments.

Regulation 5 provides for the application of these Regulations to the dependant of a person with a disease to which these Regulations apply where that dependant is the person to whom, or in respect of whom, a lump sum payment is made.

Regulation 6 provides that these Regulations apply to a compensation payment made on or after the day on which section 54 of the 2008 Act comes into force.

Regulation 7 sets out the trusts and payments which are prescribed for the purposes of paragraphs 4 and 8, respectively, of Schedule 1 to the 1997 Act as being exempted payments.

Regulation 8 sets out the procedure for applications by a compensator for a certificate, including the date on which an application for a certificate is to be treated as received by the Secretary of State and the 4 week time limit for the Secretary of State to issue the certificate.

Regulation 9 sets out the information which must be contained in a certificate, the person to whom information must be provided, the right of that person to require more detailed particulars of the information contained in the certificate and provides for the Secretary of State to estimate the amount of lump sum payments specified in the certificate.

Regulation 10 sets out the liability to pay the Secretary of State in respect of any recoverable lump sum payment.

Regulation 11 provides for the procedure to be followed where the compensator has not applied for a certificate and no payment has been made to the Secretary of State within the time limit set out in regulation 10.

Regulations 12 and 13 make provision for the reduction of a compensation payment by the amount of the lump sum payment or where the lump sum payment is equal to, or greater than, the compensation payment, reducing that payment to nil. This regulation also provides for the attribution of the reduction and reductions to be made in respect of compensation payments made where a lump sum payment has been made to a dependant.

Regulation 14 sets out the procedure for making a reduction in a case where two compensation payments are made at different times to the same person in consequence of the same disease.

Regulations 15 to 17 set out the requirements and time limits in respect of the provision of information by the person or dependant who has been paid a lump sum and the compensator.

Regulation 18 makes provision for the recovery of lump sum payments where the compensation payments are periodical payments. This regulation provides that where there is an agreement to make periodical payments, the whole of the compensation due to be paid under such an agreement

is a compensation payment from which lump sum payments may be recovered under these Regulations.

Regulation 19 provides for the making of adjustments to the amount due to be paid to the Secretary of State by the compensator where in consequence of a review or an appeal that amount has either been increased or decreased.

An assessment of the impact of these Regulations on business and the voluntary sector is included in the impact assessment that accompanied the Child Maintenance and Other Payments Bill. Copies of that assessment are available in the libraries of both Houses of Parliament, and also may be obtained from the Better Regulations Unit of the Department for Work and Pensions, level 4, the Adelphi, 1-11 John Adam Street, London WC2N 6HT, or from the Department for Work and Pensions website: <http://www.dwp.gov.uk/childmaintenance/pdfs/cm-bill-rial.pdf>

STATUTORY INSTRUMENTS

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