

## STATUTORY INSTRUMENTS

# 1997 No. 1183 (N.I. 12)

## The Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 <sup>F1</sup>

- - - - - 8th April 1997

**F1** functions transf. by SR 1999/481

### Modifications etc. (not altering text)

**C1** Order: applied (with modifications) (1.10.2010) [Employment and Support Allowance \(Transitional Provisions and Housing Benefit\) \(Existing Awards\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/312\)](#), regs. 1, **16**, Sch. 2

### Title and commencement

**1.**—(1) This Order may be cited as the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997.

(2) This Order shall come into operation on such day or days as the Department may by order appoint<sup>F2</sup>.

**F2** fully exercised by SR 1997/400

### Interpretation

**2.**—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992;

[<sup>F3</sup>“appeal tribunal” means an appeal tribunal constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998;]

“benefit” means [<sup>F4</sup>universal credit,] any benefit under the Contributions and Benefits Act, a jobseeker's allowance [<sup>F5</sup>, an employment and support allowance][<sup>F6</sup>, personal independence payment] or mobility allowance;

“compensation scheme for motor accidents” means any scheme or arrangement under which funds are available for the payment of compensation in respect of motor accidents caused, or alleged to have been caused, by uninsured or unidentified persons;

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“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“the Department” means the Department of Health and Social Services;

“listed benefit” means a benefit listed in column (2) of Schedule 2;

“National Insurance Fund” means the Northern Ireland National Insurance Fund;

“payment” means payment in money or money's worth;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department;

[<sup>F7</sup>“scheme administrator”, in relation to the Diffuse Mesothelioma Payment Scheme, has the meaning given by section 18 of the Mesothelioma Act 2014.]

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

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| <b>F3</b> | Art. 2(2): definition of "appeal tribunal" inserted (29.11.1999 for certain purposes otherwise prosp.) by Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), arts. 1(2), 78(1), <b>Sch. 6 para. 119</b> ; S.R. 1999/472, art. 2(1)(a)(2), <b>Sch. 1</b> (with transitional provisions in arts. 20, 21) |
| <b>F4</b> | Words in art. 2 inserted (27.9.2017) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), art. 2(2), <b>Sch. 2 para. 32</b> ; S.R. 2017/190, art. 4(1)(2)(g)(i)  |
| <b>F5</b> | Words in art. 2(2) in definition of "benefit" inserted (27.10.2008) by Employment and Support Allowance (Consequential Provisions) Regulations (Northern Ireland) 2008 (S.R. 2008/286), regs. 1(b), <b>3(2)</b>   |
| <b>F6</b> | Words in art. 2(2) inserted (20.6.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), art. 2(2), <b>Sch. 9 para. 33</b> ; S.R. 2016/215, art. 3(2)  |
| <b>F7</b> | Words in art. 2(2) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), <b>Sch. 1 para. 10</b> ; S.I. 2014/459, art. 3(c)  |

## Introductory

### Cases in which this Order applies

3.—(1) This Order applies in cases where—

- a person makes a payment (whether on his own behalf or not) to or in respect of any other person in consequence of any accident, injury or disease suffered by the other, and
- any listed benefits have been, or are likely to be, paid to or for the other during the relevant period in respect of the accident, injury or disease.

(2) The reference in paragraph (1)(a) to a payment in consequence of any accident, injury or disease is 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 accident, injury or disease, <sup>F8</sup>...
- in pursuance of a compensation scheme for motor accidents[<sup>F9</sup>, or
- under the Diffuse Mesothelioma Payment Scheme (established under the Mesothelioma Act 2014);]

but does not include a payment mentioned in Part I of Schedule 1.

(3) Paragraph (1)(a) applies to a payment made—

- voluntarily, or in pursuance of a court order or an agreement, or otherwise, and

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- (b) in the United Kingdom or elsewhere.
- (4) In a case where this Order applies—
  - (a) the “injured person” is the person who suffered the accident, injury or, disease,
  - (b) the “compensation payment” is the payment within paragraph (1)(a), ad
  - (c) “recoverable benefit” is any listed benefit which has been or is likely to be paid as mentioned in paragraph (1)(b).

**F8** Word in [art. 3\(2\)\(a\)](#) omitted (31.3.2014) by virtue of [Mesothelioma Act 2014 \(c. 1\)](#), s. 19(1), [Sch. 1 para. 11\(a\)](#); [S.I. 2014/459](#), art. 3(c)

**F9** [Art. 3\(2\)\(c\)](#) and preceding word inserted (31.3.2014) by [Mesothelioma Act 2014 \(c. 1\)](#), s. 19(1), [Sch. 1 para. 11\(b\)](#); [S.I. 2014/459](#), art. 3(c)

### [<sup>F10</sup>**Lump sum payments: regulation-making power**

**3A.**—(1) The Department may by regulations make provision about the recovery of the amount of a payment to which paragraph (2) applies (a “lump sum payment”) where—

- (a) a compensation payment in consequence of a disease is made to or in respect of a person (“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) This paragraph applies to—
  - (a) a payment made in accordance with the Pneumoconiosis, etc. , (Workers' Compensation) (Northern Ireland) Order 1979 (in this Article referred to as “ the 1979 Order ”);
  - (b) a payment made in accordance with the Mesothelioma, etc., Act (Northern Ireland) 2008,  
<sup>F11</sup> ...
  - (c) an extra-statutory payment (within the meaning given by paragraph (5)(d))<sup>F12</sup>, and
  - (d) a payment under the Diffuse Mesothelioma Payment Scheme (established under the Mesothelioma Act 2014),

(but this paragraph does not apply to a payment within sub-paragraph (d) in a case where the compensation payment is itself such a payment). ]

- (3) Regulations under this Article may, in particular—
  - (a) make provision about the recovery of the amount of a lump sum payment made to or in respect of a dependant of P;
  - (b) make provision enabling the recovery of the amount of a lump sum payment from a compensation payment (including provision enabling the recovery of an amount which reduces the compensation payment to nil);
  - (c) enable the amount of a lump sum payment made before commencement to be recovered from a compensation payment made after commencement;
  - (d) make provision about certificates in respect of lump sum payments;
  - (e) apply any provision of this Order, with or without modifications.
- (4) References in paragraph (1) to a payment made in consequence of a disease—
  - (a) are references to a payment made [<sup>F13</sup>as specified in Article 3(2)(a) or (c)] in respect of the disease, but

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- (b) do not include references to a payment mentioned in Part 1 of Schedule 1.
- (5) In this Article—
- (a) “commencement” means the date on which this Article comes into operation,
  - (b) “compensation payment” means a payment within Article 3(1)(a),
  - (c) “dependant” has the meaning given by Article 5 of the 1979 Order, and
  - (d) “extra-statutory payment” means a payment made by the Department to or in respect of a person following the rejection by the Department of a claim under the 1979 Order. ]

- F10** Art. 3A inserted (27.8.2008 for certain purposes otherwise 1.10.2008) by Mesothelioma, etc., [Act \(Northern Ireland\) 2008 \(c. 9\)](#), **ss. 8, 12(1)**; S.R. 2008/351, **art. 2(1)**, Sch.
- F11** Word in [art. 3A\(2\)\(b\)](#) omitted (31.3.2014) by virtue of [Mesothelioma Act 2014 \(c. 1\)](#), s. 19(1), **Sch. 1 para. 18(2)(a)**; S.I. 2014/459, art. 3(c)
- F12** [Art. 3A\(2\)\(d\)](#) and words inserted (31.3.2014) by [Mesothelioma Act 2014 \(c. 1\)](#), s. 19(1), **Sch. 1 para. 18(2)(b)**; S.I. 2014/459, art. 3(c)
- F13** Words in [art. 3A\(4\)\(a\)](#) substituted (31.3.2014) by [Mesothelioma Act 2014 \(c. 1\)](#), s. 19(1), **Sch. 1 para. 18(3)**; S.I. 2014/459, art. 3(c)

### Compensation payments to which this Order applies

**4.** This Order applies in relation to compensation payments made on or after the day on which this Article comes into operation, unless they are made in pursuance of a court order or agreement made before that day.

### “The relevant period”

**5.—(1)** In relation to a person (“the claimant”) who has suffered any accident, injury or disease, “the relevant period” has the meaning given by the following paragraphs.

(2) Subject to paragraph (4), if it is a case of accident or injury, the relevant period is the period of five years from the day on which the accident or injury in question occurred.

(3) Subject to paragraph (4), if it is a case of disease, the relevant period is the period of five years beginning with (and including) the date on which the claimant first claims a listed benefit in consequence of the disease.

(4) If at any time before the end of the period referred to in paragraph (2) or (3)—

- (a) a person makes a compensation payment in final discharge of any claim made by or in respect of the claimant and arising out of the accident, injury or disease, or
- (b) an agreement is made under which an earlier compensation payment is treated as having been made in final discharge of any such claim,

the relevant period ends at that time.

### *Certificates of recoverable benefits*

### Applications for certificates of recoverable benefits

**6.—(1)** Before a person (“the compensator”) makes a compensation payment he shall apply to the Department for a certificate of recoverable benefits.

(2) Where the compensator applies for a certificate of recoverable benefits, the Department shall—

- (a) send to him a written acknowledgement of receipt of his application, and

- (b) subject to paragraph (7), issue the certificate before the end of the following period.
- (3) The period is—
  - (a) the prescribed period, or
  - (b) if there is no prescribed period, the period of four weeks,which begins with the day on which the application is received.
- (4) The certificate is to remain in force until the date specified in it for that purpose.
- (5) The compensator may apply for fresh certificates from time to time.
- (6) Where a certificate of recoverable benefits ceases to be in force, the Department may issue a fresh certificate without an application for one being made.
- (7) Where the compensator applies for a fresh certificate while a certificate ( “the existing certificate”) remains in force, the Department shall issue the fresh certificate before the end of the following period.
- (8) The period is—
  - (a) the prescribed period, or
  - (b) if there is no prescribed period, the period of four weeks,which begins with the day on which the existing certificate ceases to be in force.
- (9) For the purposes of this Order, regulations may provide for the day on which an application for a certificate of recoverable benefits is to be treated as received.

#### **Information contained in certificates**

- 7.—(1) A certificate of recoverable benefits shall specify, for each recoverable benefit—
  - (a) the amount which has been or is likely to have been paid on or before a specified date, and
  - (b) if the benefit is paid or likely to be paid after the specified date, the rate and period for which, and the intervals at which, it is or is likely to be so paid.
- (2) In a case where the relevant period has ended before the day on which the Department receives the application for the certificate, the date specified in the certificate for the purposes of paragraph (1) shall be the day on which the relevant period ended.
- (3) In any other case, the date specified for those purposes shall not be earlier than the day on which the Department received the application.
- (4) The Department may estimate, in such manner as it thinks fit, any of the amounts, rates or periods specified in the certificate.
- (5) Where the Department issues a certificate of recoverable benefits, it shall provide the information contained in the certificate to—
  - (a) the person who appears to it to be the injured person, or
  - (b) any person who it thinks will receive a compensation payment in respect of the injured person.
- (6) A person to whom a certificate of recoverable benefits is issued or who is provided with information under paragraph (5) is entitled to particulars of the manner in which any amount, rate or period specified in the certificate has been determined, if he applies to the Department for those particulars.