

*These notes refer to the Mesothelioma, etc., Act (Northern Ireland) 2008 (c.9) which received Royal Assent on 2 July 2008*

# Mesothelioma, etc., Act (Northern Ireland) 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Mesothelioma lump sum payments*

##### *Section 1: Lump sum payments*

*Section 1* provides for the Department to make a lump sum payment to either a person with diffuse mesothelioma, or to their dependant if the person with diffuse mesothelioma is deceased.

*Subsection (2)* provides that entitlement to a lump sum payment is dependent on satisfying certain conditions which are specified in *section 2*.

*Subsection (3)* provides that regulations may—

- set out the amount that should be paid as a lump sum; and
- set the amount at different levels for different people. This may be based on factors such as, for example, whether they are a person with diffuse mesothelioma or a dependant of a person with diffuse mesothelioma.

*Subsection (4)* provides that where more than one dependant may claim, the Department will decide whether the payment is paid to one or more of them. This could happen, for example, when a person with diffuse mesothelioma does not have a wife or husband, or civil partner, who was living with them, but has three children under the age of 16.

“Dependant” attracts the same meaning as it is given in the 1979 Order (see *section 11*). Dependants are—

- a wife or husband or civil partner who was living with the person with diffuse mesothelioma;
- children under 16 years of age;
- children under 21 years of age who are not receiving wages from full-time employment;
- children of any age who are permanently incapable of supporting themselves;

- a person living with the person with diffuse mesothelioma as if they were husband and wife or as if they were civil partners;
- any other relatives who are completely or mostly dependent on the person with diffuse mesothelioma immediately before their death and who are also under the age of 16, under the age of 21 and not receiving wages from full-time employment, or permanently incapable of supporting themselves.

### ***Section 2: Conditions of entitlement***

*Section 2* sets out the conditions that must be satisfied by persons with diffuse mesothelioma, and by a dependant of a person who, immediately before their death, suffered from diffuse mesothelioma in order for a lump sum payment to be made.

*Subsection (1)(a)* provides that to be entitled to a lump sum payment a person with diffuse mesothelioma must not have already received a payment in respect of diffuse mesothelioma as set out in *subsection (3)*.

*Subsection (1)(b)* provides that to be entitled to a lump sum payment a person must not be eligible, in respect of diffuse mesothelioma, for a payment of a type prescribed by regulations.

*Subsection (1)(c)* provides that there may be a requirement for the person to have links with the United Kingdom. Any links would be prescribed by regulations.

*Subsection (2)(a)* provides that a dependant will not be entitled to a lump sum payment, if the dependant, the deceased person, the deceased person's estate or any other dependant, has already received a payment in respect of diffuse mesothelioma as set out in *subsection (3)*.

*Subsection (2)(b)* provides that a dependant will not be entitled to a lump sum payment, if the dependant or the deceased person is or was eligible, in respect of diffuse mesothelioma, for a payment of a type prescribed by regulations.

*Subsection (2)(c)* provides that there may be a requirement for the deceased person to have links with the United Kingdom. Any links would be prescribed by regulations.

*Subsection (3)* provides that the payments mentioned in *subsections (1)(a) and (2)(a)* are—

- a payment under this Bill;
- a payment under Part 4 of the corresponding Westminster provision;
- a payment under the 1979 Order or the corresponding Great Britain provision;
- an extra-statutory payment made following the rejection of a claim made under the 1979 Order; or
- a payment of a type prescribed by regulations.

*Subsection (4)* provides that—

- a payment under *section 4*;
  - a payment under the corresponding Westminster provision;
  - a payment under the 1979 Order or the corresponding Great Britain provision;
  - an extra-statutory payment made following the rejection of a claim made under the 1979 Order; or
  - a payment of a type prescribed by regulations,
- will not disqualify a person from receiving a lump sum payment if that payment was or is liable to be, repaid.

### ***Section 3: Determination of claims***

*Section 3* sets out how a claim for a lump sum payment is to be decided.

*Subsection (1)* provides that a claim for a lump sum payment as made under *section 1* will be made in the manner and within the period prescribed by regulations.

*Subsection (2)* sets out that the lump sum payment can be set at different levels for different people based on different factors.

*Subsection (4)* provides that, if any questions concerning the claim arise before the claim is decided, the Department may appoint someone to inquire into the issues or to request answers to those questions. The person appointed will then report their findings to the Department.

### ***Section 4: Reconsideration***

*Section 4* enables the Department to reconsider a decision not to make a lump sum payment where there is a change in circumstances that may affect the claim since the decision was taken, or a decision to make or not to make a lump sum payment if the original decision was made in ignorance of, or based on error about a material fact of, the case.

*Subsection (2)* provides that regulations must prescribe how and within what timescale, a person may apply to the Department for a decision to be reconsidered, or for the Department to reconsider a decision without an application to do so being made.

*Subsection (3)* provides that *clause 3(4)* will apply to any reconsideration of a decision under *this section*, in the same way as it applies to the decision on a claim.

*Subsections (4) and (5)* provide that where a person, either fraudulently or otherwise, provides misleading or false information, or does not disclose relevant information, and a lump sum payment for diffuse mesothelioma is paid to them as a result of this, they will be liable to repay any lump sum payment

they receive. This liability to repay would not apply if the person can show that they had not given permission or had not been involved in the failure to disclose, or the provision of misleading or incorrect, information.

*Subsection (6)* provides that a lump sum payment can not be recovered where a decision has been reconsidered, unless the payment was obtained by providing misleading or false information, or because relevant information was not properly disclosed.

### ***Section 5: Appeal to appeal tribunal***

*Section 5* provides that a person who has made a claim for a payment under *section 1* will have a right of appeal to an appeal tribunal against a decision made by the Department on the claim, or a decision made following a reconsideration under *section 4*.

*Subsection (2)* provides that, subject to regulations under *subsection (4)(c)*, the Department must refer any appeal to an appeal tribunal constituted under Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998.

*Subsection (3)* provides the tribunal with the power to substitute a decision on matters decided in accordance with this Bill.

*Subsection (4)* provides that regulations may make provision—

- as to the manner in which, and the time within which, an appeal may be brought;
- as to the procedure to be followed if an appeal is made; and
- for the purposes of enabling an appeal to be treated as an application for a reconsideration under *clause 4*.

### ***Section 6: Appeal to Social Security Commissioner***

*Section 6* provides for a right of appeal to a Social Security Commissioner against any decision of an appeal tribunal under *section 5*, on the ground that the decision was wrong in law.

*Subsection (2)* provides that an appeal to a Commissioner may be made by the Department or by the person who brought the appeal under *section 5*.

*Subsection (3)* provides that Article 15(7) to (13) of the Social Security (Northern Ireland) Order 1998 applies to an appeal under this section, as it applies to an appeal under that Article.

### ***Section 7: Minors and persons who are incapable***

*Section 7* concerns how lump sum payments are to be made to persons under the age of 18 or incapable of managing their own affairs.

*Subsection (2)* provides for a lump sum payment in respect of these persons to be made to any trustees appointed by the Department.

*Subsection (3)* provides for those trustees to hold the lump sum payment on such trusts as the Department may declare.

***Recovery of mesothelioma and other lump sum payments***

***Section 8: Amendment of Social Security (Recovery of Benefits) (Northern Ireland) Order 1997***

*Section 8* inserts a new Article 3A into the Recovery of Benefits Order, which provides the Department with the power to make regulations providing for the recovery of the lump sum payments set out in paragraph (2) of Article 3A.

Paragraph (1) of Article 3A sets out that the Department may by regulations make provision about the recovery of a lump sum payment to which paragraph (2) applies, where—

- a compensation payment is made to, or in respect of a person to whom, or in respect of whom, a lump sum payment has been made or is likely to be made; and
- the compensation payment is made in respect of the same disease as the lump sum payment.

Paragraph (2) applies to—

- a payment made in accordance with the 1979 Order;
- an extra-statutory payment following the rejection of a claim made under the 1979 Order; or
- a payment made under the new scheme.

Paragraph (3) sets out that regulations made under Article 3A may in particular—

- make provision about the recovery of the lump sum payment made to or in respect of a dependant of the person with diffuse mesothelioma;
- make provision enabling the recovery of a lump sum payment from a compensation payment (including provision enabling the recovery of an amount that reduces the compensation payment to nil);
- enable the amount of lump sum payment made before commencement to be recovered from a compensation payment made after commencement;
- make provision about certificates in respect of lump sum payments; and
- apply any provision of the Recovery of Benefits Order, with or without modifications.

Paragraph (4) provides that references in paragraph (1) to a payment in consequence of a disease 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.

***Section 9: Regulations***

*Section 9* provides the Department with the power to make regulations, which includes power to make such incidental, supplementary, consequential or transitional provision as the Department thinks fit and provides for a person to exercise a discretion in dealing with any matter.

***Section 10: Assembly control***

*Section 10* provides that any regulations made under *section 1* and the first regulations made under *section 2* are subject to the confirmatory procedure and that any other regulations made under any other provision of this Bill are subject to the negative resolution procedure.