

2014 No. 162

SOCIAL SECURITY

The Social Security (Recovery of Benefits) (Lump Sum Payments) (Amendment) Regulations (Northern Ireland) 2014

Made - - - - *6th June 2014*

Coming into operation - *1st July 2014*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by section 165(4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(a) and Articles 3A(1) and (3), 16(2) to (4), 21, 23(3) and 25(1), (2), (6A) and (7) of, and paragraph 4 of Schedule 1 to, the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(b) and now vested in it(c).

This Rule contains only regulations made by virtue of, or consequential upon, paragraph 18 of Schedule 1 to the Mesothelioma Act 2014(d).

Citation and commencement

1. These Regulations may be cited as the Social Security (Recovery of Benefits) (Lump Sum Payments) (Amendment) Regulations (Northern Ireland) 2014 and shall come into operation on 1st July 2014.

Amendment of the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations

2.—(1) The Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008(e) are amended in accordance with paragraphs (2) to (16).

(2) For regulation 1(2) (interpretation) substitute—

“(2) In these Regulations—

“the 2014 Act” means the Mesothelioma Act 2014;

“the Order” means the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997;

(a) 1992 c. 8; section 165(6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(b) S.I. 1997/1183 (N.I. 12); Article 3A was inserted by section 8 of the Mesothelioma, etc., Act (Northern Ireland) 2008 (c. 9 (N.I.)) and amended by paragraph 18 of Schedule 1 to the Mesothelioma Act 2014 (c. 1) and Articles 16(4) and 21 were amended by paragraph 16 of, and Article 25(6A) was inserted by paragraph 20 of, Schedule 1 to that Act

(c) See Article 8(b) of S.R. 1999 No. 481

(d) 2014 c. 1

(e) S.R. 2008 No. 355; relevant amending Regulations are S.R. 2009 No. 239

“compensator” means a person making a compensation payment and includes the scheme administrator who makes a payment in accordance with the Diffuse Mesothelioma Payment Scheme;

“the Diffuse Mesothelioma Payment Scheme” means the scheme established by the Diffuse Mesothelioma Payment Scheme Regulations 2014^(a);

“lump sum payment” means a payment to which any of sub-paragraphs (a) to (d) of Article 3A(2) of the Order^(b) applies, except in relation to regulation 18(1)(b);

“recoverable benefit” has the same meaning as in Article 3(4)(c) of the Order;

“recoverable lump sum payment”—

(a) in relation to a compensation payment which is a payment under the Diffuse Mesothelioma Payment Scheme, means any specified lump sum payment which is recoverable by virtue of regulation 4A;

(b) in relation to any other description of compensation payment, means any lump sum payment which is recoverable by virtue of regulation 4;

“specified lump sum payment” means a lump sum payment within Article 3A(2)(a), (b) or (c) of the Order.”.

(3) In regulation 4 (recovery of lump sum payments)—

(a) in the heading at the end add “from compensation payment made otherwise than under the Diffuse Mesothelioma Payment Scheme”;

(b) in paragraph (1)—

(i) for “a payment to which Article 3A(2) of the Order applies (“a lump sum payment”)” substitute “a lump sum payment”,

(ii) omit “and” after sub-paragraph (a), and

(iii) after sub-paragraph (a) insert—

“(ab) the compensation payment is not a payment under the Diffuse Mesothelioma Payment Scheme; and”;

(c) after paragraph (1) insert—

“(1A) The Department may also recover the amount of lump sum payments to which Article 3A(2)(d) of the Order applies where—

(a) any such payment has been, or is likely to be, made to one or more dependants of P;

(b) by virtue of a notice given under section 3(3) of the 2014 Act, any other dependant of P has ceased to be eligible for a lump sum payment to which Article 3A(2)(d) of the Order applies; and

(c) a compensation payment in consequence of P’s diffuse mesothelioma is made to that other dependant.”.

(4) After regulation 4 insert—

“Recovery of specified lump sum payments from compensation payment under the Diffuse Mesothelioma Payment Scheme

4A. The Department may recover the amount of a specified lump sum payment where—

(a) a compensation payment in consequence of diffuse mesothelioma is made to or in respect of P, or a dependant of P, and a lump sum payment has been, or is likely to be, made to P or in respect of P;

(a) S.I. 2014/916; relevant amending instrument is S.I. 2014/917

(b) Sub-paragraph (d) was inserted by paragraph 18(2) of Schedule 1 to the Mesothelioma Act 2014

- (b) that compensation payment is a payment under the Diffuse Mesothelioma Payment Scheme; and
 - (c) the disease in consequence of which the specified lump sum payment was made is also diffuse mesothelioma.”.
- (5) In regulation 6 (compensation payments to which these Regulations apply)—
- (a) renumber the existing provision as paragraph (1) of that regulation;
 - (b) in that paragraph at the beginning insert “Except as stated in paragraph (2),”; and
 - (c) after that paragraph add—
 - “(2) In any case where—
 - (a) the lump sum payment falls within Article 3A(2)(d) of the Order; or
 - (b) regulation 4A applies;
 these Regulations apply only in relation to compensation payments which are made on or after the coming into operation of the Social Security (Recovery of Benefits) (Lump Sum Payments) (Amendment) Regulations (Northern Ireland) 2014.”.
- (6) In regulation 7(1)(g)(a) (exempted trusts and payments) after “diseases” insert “provided that any payment made in respect of diffuse mesothelioma out of this Trust is not made to or in respect of a person who has received a payment under the Diffuse Mesothelioma Payment Scheme”.
- (7) In regulation 9 (information contained in certificates) after paragraph (2) insert—
- “(2A) Where a certificate has been applied for by the scheme administrator, the certificate may contain information which would assist the scheme administrator in making a determination in accordance with the Diffuse Mesothelioma Payment Scheme.”.
- (8) In regulation 10 (liability to pay Department amount of lump sum payments)—
- (a) in paragraph (3) for “is less than the lump sum payments” substitute “is less than the recoverable lump sum payments”;
 - (b) after paragraph (4) insert—
 - “(4A) In any case where recoverable lump sum payments include one or more lump sum payments to which Article 3A(2)(d) of the Order applies, the liability referred to in paragraph (1) in respect of those lump sum payments arises prior to any such liability in respect of any other recoverable lump sum payments.”;
 - (c) in paragraph (7) at the beginning insert “Subject to paragraph (8),”; and
 - (d) after paragraph (7) add—
 - “(8) In the case of a lump sum payment to which Article 3A(2)(d) of the Order applies which has been made to one or more dependants of P, this regulation also applies to the extent that the compensator is making any of the payments listed in—
 - (a) paragraph (7)(a), where such a payment is made to another dependant of P who has ceased to be eligible for a lump sum payment to which Article 3A(2)(d) of the Order applies by virtue of having given notice under section 3(3) of the 2014 Act;
 - (b) paragraph (7)(b), where such a dependant is an intended beneficiary of that payment.”.
- (9) In regulation 12 (reduction of compensation)—
- (a) in paragraph (1) at the beginning insert “Except where regulation 12A applies,”;
 - (b) in paragraph (7) at the beginning insert “Subject to paragraph (8),”; and

(a) Sub-paragraph (g) was inserted by regulation 2 of S.R. 2009 No. 239

- (c) after paragraph (7) add—
- “(8) In the case of a lump sum payment to which Article 3A(2)(d) of the Order applies which has been made to one or more dependants of P, this regulation also applies to the extent that the compensator is making any of the payments listed in—
- (a) paragraph (7)(a), where such a payment is made to another dependant of P who has ceased to be eligible for a lump sum payment to which Article 3A(2)(d) of the Order applies by virtue of having given notice under section 3(3) of the 2014 Act;
 - (b) paragraph (7)(b), where such a dependant is an intended beneficiary of that payment.”.
- (10) After regulation 12 insert—

“Reduction of compensation payment under the Diffuse Mesothelioma Payment Scheme

12A.—(1) This regulation applies in a case where the compensation payment is a payment under the Diffuse Mesothelioma Payment Scheme.

- (2) The gross amount of the compensation payment—
- (a) is to be reduced by the amount of the recoverable lump sum payments; and
 - (b) accordingly, is to be reduced to nil in any case where the amount of the recoverable lump sum payments is equal to or greater than the gross amount of the compensation payment.

(3) The reduction in paragraph (2) is to be made before any reduction in respect of recoverable benefits under Article 10A of the Order(a).

(4) Any claim by a person to receive the compensation payment is to be treated for all purposes as discharged if—

- (a) the person is paid the gross amount of the compensation payment less the amount of the recoverable lump sum payments; or
- (b) the amount of the recoverable lump sum payments is equal to or greater than the gross amount of the compensation payment and the person is given a statement by the scheme administrator saying that the compensation payment has been reduced to nil.

(5) In the application of paragraph (4) to any case where the compensation payment is to be made to two or more dependants of P, the deduction of the amount of the recoverable lump sum payments is to be made before calculating the amount to be paid to each dependant in accordance with regulation 16(2)(iii) of the Diffuse Mesothelioma Payment Scheme Regulations 2014.”.

- (11) In regulation 13 (regulation 12: supplementary)—
- (a) in the heading for “Regulation 12” substitute “Regulations 12 and 12A”;
 - (b) in paragraphs (1), (2), (3)(a) and (4)(a) after “regulation 12” insert “or 12A”; and
 - (c) in paragraph (2) after “regulation 4(1)(a)” insert “or 4A(a), as the case may be,”.
- (12) In regulation 14(4) (reduction of compensation: complex cases)—
- (a) after “regulation 12” insert “or 12A”; and
 - (b) for “that regulation” substitute “either of those regulations”.
- (13) In regulation 16 (information to be provided by P)—
- (a) in the heading at the end add “and the scheme administrator”;
 - (b) renumber the existing provision as paragraph (1) of that regulation;

(a) Article 10A was inserted by paragraph 12 of Schedule 1 to the Mesothelioma Act 2014

(c) in that paragraph for “Article 25(2)” substitute “Article 25(2)(a)”; and

(d) after that paragraph add—

“(2) For the purposes of Article 25(2)(b) of the Order, the prescribed information is the amount of the lump sum payment falling within Article 3A(2)(d) of the Order and the date on which it was paid.”.

(14) In regulation 17(b) (provision of information) after “from P” insert “or the scheme administrator, as the case may be”.

(15) In regulation 19 (adjustments)—

(a) after paragraph (5) insert—

“(5A) This paragraph applies where—

(a) the amount of the payment made by the compensator was calculated under regulation 12A; and

(b) the Department has made a payment under paragraph (1).

(5B) Where paragraph (5A) applies, the amount of the compensation payment is to be recalculated under regulation 12A to take account of the fresh certificate and the compensator must pay the amount of the increase (if any) to the applicant (as defined by regulation 3 of the Diffuse Mesothelioma Payment Scheme Regulations 2014).”; and

(b) after paragraph (7) add—

“(8) This paragraph applies where—

(a) the amount of the payment made by the compensator was calculated under regulation 12A; and

(b) the fresh certificate issued after the review or appeal was required as a result of any applicant for payment under the Diffuse Mesothelioma Payment Scheme supplying to the compensator information knowing it to be incorrect or insufficient, and the compensator supplying that information to the Department without knowing it to be incorrect or insufficient.

(9) Where paragraph (8) applies, the compensator may recalculate the compensation payment under regulation 12A to take account of the fresh certificate and may require the repayment by the applicant responsible for supplying the incorrect or insufficient information of the difference (if any) between the payment made and the payment so recalculated.”.

(16) In Schedule 1 (modification of certain provisions of the Order)—

(a) after “regulation 4”, in both places, insert “or 4A”;

(b) in sub-paragraph (d)—

(i) in head (ii)(bb) and (cc) for “lump sum payments” substitute “recoverable lump sum payments”, and

(ii) in head (iii)(bb) after “Article 10” insert “or 10A” and after “regulation 12” insert “or 12A”;

(c) in sub-paragraphs (f)(iii), (g)(iii), (k)(iii)(bb) and (l)(ii) after “Article 10” insert “or 10A” and after “regulation 12” insert “or 12A”;

(d) in sub-paragraph (m)(i) after “Articles 8 and 10” insert “or 10A” and after “regulations 10 and 12” insert “or 12A”;

(e) in sub-paragraph (o)—

(i) in head (i)—

(aa) omit “and” after sub-head (aa), and

(bb) after sub-head (bb) add—

“(cc) “and” after sub-paragraph (a) were omitted, and

- (dd) after sub-paragraph (b) there were added—
 - “and
 - (c) where the compensation which is sought is a payment under the Diffuse Mesothelioma Payment Scheme, paragraph (6A) applies.”,” and
- (ii) for head (ii) substitute—
 - “(ii) for paragraph (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—
 - (a) the prescribed information about the disease must be given to the Department by P or a dependant of P, as the case may be,
 - (b) the prescribed information about any lump sum payment which falls within Article 3A(2)(d) must be given to the Department by the scheme administrator.”,”.

Sealed with the Official Seal of the Department for Social Development on 6th June 2014

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 of these Regulations, which is consequential upon the establishment of the Diffuse Mesothelioma Payment Scheme (“DMPS”) under the Mesothelioma Act 2014 (“the 2014 Act”), amends the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008 (“the 2008 Regulations”) to—

enable the recovery of lump sum payments made under the Pneumoconiosis etc. (Workers’ Compensation) (Northern Ireland) Order 1979 (“the 1979 Order”) (including any extra statutory payments related to that Order) and the Mesothelioma, etc., Act (Northern Ireland) 2008 (“the 2008 Act”) from scheme payments made under the DMPS; and

make provision for the recovery of payments made under the DMPS from any later paid compensation.

Paragraph (2) substitutes regulation 1(2), in particular to include the scheme administrator of the DMPS within the definition of a “compensator” and substitute the definition of a “lump sum payment” and insert a new definition of “specified lump sum payment” to distinguish between a payment made under the DMPS when it is recoverable in the same way as any other lump sum payment from later paid compensation and where the DMPS payment is itself the compensation payment and other specified lump sum payments are liable to be recovered from it.

Paragraph (3) amends regulation 4 and in particular inserts a new paragraph (1A) to enable the Department for Social Development (“the Department”) to recover the value of a DMPS payment from later paid compensation where the compensation is paid to a dependant who has declined a payment under the DMPS.

Paragraph (4) inserts a new regulation 4A to enable the Department to recover lump sum payments paid under the 1979 Order, the 2008 Act or those payments made on an extra statutory basis from DMPS payments.

Paragraph (5) amends regulation 6 to make it clear that the 2008 Regulations only apply to DMPS payments made on or after these Regulations come into operation.

Paragraph (6) amends regulation 7(1)(g) to provide that a payment made from the UK Asbestos Trust is not exempt from recovery if it is made following a payment under the DMPS.

Paragraph (7) inserts a new paragraph (2A) into regulation 9 to provide that the certificate of recoverable benefit may contain information which might assist the scheme administrator of the DMPS in reaching a determination under the 2014 Act.

Paragraph (8) inserts a new paragraph (4A) into regulation 10 which has the effect of giving priority to the recovery of payments under the DMPS over the recovery of other lump sum payments and adds a new paragraph (8) which makes clear that the recovery of a DMPS payment can be made from compensation paid to a dependant who opted not to receive a DMPS payment under section 3(3) of the 2014 Act. A new paragraph (8), making an equivalent amendment, is added to regulation 12 by paragraph (9).

Paragraph (10) inserts a new regulation 12A to provide for the Department to recover recoverable lump sum payments from a DMPS payment and for the reduction to be effected before any payment is divided between two or more eligible dependants under the DMPS.

Paragraphs (11) to (14) make a number of consequential amendments to the 2008 Regulations.

Paragraph (15) amends regulation 19 to deal with cases where the compensation payment is a payment under the DMPS and adjustments need to be made to the amount of benefit recovery after a payment has been made under that scheme.

Paragraph (16) amends Schedule 1, which modifies provisions of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 in respect of the recovery of lump sum payments, to take account of amendments made by the 2014 Act and these Regulations.

The enabling provisions under which these Regulations are made were amended by Schedule 1 to the 2014 Act which came into force on 31st March 2014 by virtue of the Mesothelioma Act 2014 (Commencement No. 1) Order 2014 (S.I. 2014/459 (C. 21)) and as these Regulations are made by virtue of, or are consequential upon, provisions of that Act and are made before the end of the period of 6 months from their commencement, they are, accordingly, exempt, by virtue of section 150(5)(b) of the Social Security Administration (Northern Ireland) Act 1992, from prior reference to the Social Security Advisory Committee.

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