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STATUTORY RULES OF NORTHERN IRELAND

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**2014 No. 162**

**The Social Security (Recovery of Benefits) (Lump Sum Payments) (Amendment) Regulations (Northern Ireland) 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<sup>(1)</sup> 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;

“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<sup>(2)</sup>;

“lump sum payment” means a payment to which any of sub-paragraphs (a) to (d) of Article 3A(2) of the Order<sup>(3)</sup> 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”;

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<sup>(1)</sup> S.R. 2008 No. 355; relevant amending Regulations are S.R. 2009 No. 239

<sup>(2)</sup> S.I. 2014/916; relevant amending instrument is S.I. 2014/917

<sup>(3)</sup> Sub-paragraph (d) was inserted by paragraph 18(2) of Schedule 1 to the Mesothelioma Act 2014

- (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;
  - (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)(4) (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—

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

- “(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
  - (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(5).
- (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;
  - (c) in that paragraph for “Article 25(2)” substitute “Article 25(2)(a)”;
  - (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

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

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,

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- (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.””.