

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish the Diffuse Mesothelioma Payment Scheme (“the Scheme”) under section 1 of the Mesothelioma Act 2014 (“the Act”) which provides for the Secretary of State to establish a scheme for the purpose of making payments to eligible people with diffuse mesothelioma and to eligible dependants of those who have died with diffuse mesothelioma. These Regulations make provision concerning the duties of the scheme administrator, further matters related to eligibility under the Act, the procedure for making applications, for the determination of applications (including the level of scheme payments), for the form in which payments are to be made and for reviews of decisions and appeals against such reviews.

Regulation 5 details the general duties of the scheme administrator including the provision of information connected to the operation of the scheme, the standard of proof to be applied in determining applications, publicising the scheme, the provision of application forms and the provision of appropriately qualified staff.

Regulations 6 and 7 provide for matters connected to the eligibility conditions under sections 2 and 3 of the Act. Regulation 6(1)(b) and Schedule 2 provide for a list of “specified payments” eligibility for which precludes a person from meeting eligibility condition in section 2(1)(e) of the Act. Regulation 6(1)(a) and Schedule 1 set out how the date of first diagnosis (which is relevant to the eligibility condition in section 2(1)(b) of the Act) is to be established. Regulation 7 specifies the circumstances (in addition to those set out in sections 2 and 3 of the Act) in which a person is considered not able to bring proceedings against a relevant employer.

Regulations 8 to 15 set out the nature of an application to the scheme and the procedure which the scheme administrator will follow in assessing the application. Regulation 8 and Schedule 3 provide for the types of information the scheme administrator is likely to require for the purpose of determining eligibility under the Act. Regulation 9 provides for certain time limits which apply to applications to the scheme. Regulations 10 to 13 provide the scheme administrator with power to request information both from applicants and from third parties. Regulations 14 and 15 make provision for the withdrawal of an application and for eligible dependents to give notice that they do not want a payment under the scheme.

Regulations 16 to 20 make provision for the determination of applications: whether a payment should be made and if so at what level (regulation 16 and Schedule 3), what, if any, conditions are to be imposed on the receipt of the payment (regulation 17), what should be included in a determination notice (regulation 18), what form the payment should take and who it should be paid to if the applicant has died before the payment has been made (regulation 19) and the circumstances in which the scheme administrator can require the payment to be repaid (regulation 20).

Regulations 21 to 25 make provision for both applicants and, where appropriate, the scheme administrator to initiate a review of a determination and for an appeal to be made to the first-tier tribunal where a person is dissatisfied with the result of a review.

Regulation 26 sets out the assessment the scheme administrator will have to make in deciding whether to help a person to bring proceedings against an employer or an insurer when it is discovered that such a party exists after the scheme has made a payment.

Regulation 27 provides for an annual review of the operation of these Regulations to be carried out by the Secretary of State.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Diffuse Mesothelioma Payment Scheme Regulations 2014 No. 916*

A full impact assessment was produced for the Mesothelioma Bill and a copy is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262466/mesothelioma-payment-scheme-ia-nov-2013.pdf. These Regulations have no separate impact on the private sector or civil society organisations from that outlined in the impact assessment which accompanied the Bill.