

## SCHEDULES

### SCHEDULE 1

Regulation 6

#### First diagnosis of diffuse mesothelioma

**1.** In this Schedule—

“P” means a person with diffuse mesothelioma;

“connected person”, in relation to P, means—

- (a) any person who, with P’s agreement, is acting on P’s behalf; or
- (b) any personal representative of P;

“health care professional” means—

- (a) a registered medical practitioner;
- (b) a registered nurse working in a clinical nurse specialist role in relation to patients with cancer;
- (c) a member of a multi-disciplinary team for the diagnosis and treatment of patients with cancer which includes one or more persons mentioned in paragraph (a) or (b) of this definition.

#### **Application by a person with diffuse mesothelioma**

**2.** For the purposes of section 2 of the Act—

- (a) a person (“P”) is to be taken as having been “first diagnosed” with diffuse mesothelioma where both of the conditions set out in paragraph 3 are met; and
- (b) the date of first diagnosis is to be determined in accordance with paragraphs 4 and 5.

**3.** The conditions referred to in paragraph 2(a) are—

- (a) that a diagnosis of diffuse mesothelioma in relation to P is made by a health care professional; and
- (b) that either P or a connected person is advised of the diagnosis by a health care professional (whether by the health care professional who made the diagnosis or by a different one).

**4.—(1)** The date of P’s first diagnosis is to be determined as follows.

(2) Where the advice that P has diffuse mesothelioma is given orally, the date of first diagnosis is the date shown in P’s clinical notes as being the date on which P or a connected person was advised of the diagnosis.

(3) Where the advice that P has diffuse mesothelioma is given in writing, the date of first diagnosis is—

- (a) if the advice is contained in a letter, the date shown on the letter;
- (b) if the advice is sent by electronic communication, the date on which the communication was sent.

(4) Where no date can be determined in accordance with sub-paragraph (2) or (3), or there is reason to doubt the accuracy of the date so determined, the date of first diagnosis is to be determined by such other evidence as the scheme administrator considers appropriate.

**5.—**(1) In determining whether the conditions set out in paragraph 3 have been met, the scheme administrator may make further enquiries to determine whether the disease that has been diagnosed is in fact diffuse mesothelioma in any case where—

- (a) the scheme administrator considers that there is reason to doubt whether the disease that has been diagnosed is diffuse mesothelioma; or
- (b) P or a connected person was advised by a healthcare professional that P's diagnosis is of anything other than diffuse mesothelioma (including a diagnosis of mesothelioma without explanation of its extent).

(2) Where, as a result of the further enquiries, the scheme administrator is satisfied that the diagnosis was one of diffuse mesothelioma, the date of first diagnosis is to be determined in accordance with the provisions of paragraph 4.

(3) Where, as a result of the further enquiries, a substituted diagnosis is made in relation to P which is one of diffuse mesothelioma, the date of first diagnosis is whichever of the following occurs first—

- (a) the date on which P is advised of the substituted diagnosis;
- (b) the date on which a connected person is advised of the substituted diagnosis;
- (c) the date on which the scheme administrator is advised of the substituted diagnosis.

#### **Application by a dependant of a person with diffuse mesothelioma**

**6.** For the purposes of section 3 of the Act, P who has died is to be taken as having been “first diagnosed” with diffuse mesothelioma as follows.

**7.** If the conditions set out in paragraph 3 were met before P's death, the date of first diagnosis is to be determined in accordance with the provisions of paragraph 4.

**8.—**(1) In any other case, P is to be taken as having been “first diagnosed” with diffuse mesothelioma where either of the conditions set out in sub-paragraph (2)(a) or (b) is met and the date of first diagnosis is to be determined in accordance with sub-paragraph (3).

(2) The conditions referred to in sub-paragraph (1) are—

- (a) that a diagnosis of diffuse mesothelioma in relation to P is made following a post-mortem examination; or
- (b) that, following P's death, a diagnosis of diffuse mesothelioma in relation to P is confirmed in writing by a health care professional without carrying out a post-mortem examination.

(3) The date of P's first diagnosis is the date shown on the report of the post-mortem examination or the date shown on the health care professional's written confirmation of the diagnosis (as the case may be).

## SCHEDULE 2

Regulation 6

### Specified Payments

- Payment under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006<sup>(1)</sup>.
- Payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>(2)</sup>.
- A compensation payment from any government department.
- A compensation payment from an authority, body corporate or employer exempted from insurance by or under the compulsory insurance legislation.
- Payment under the UK Asbestos Trust established on 10th October 2006, for the benefit of certain persons suffering from asbestos-related diseases.
- Payment under the EL Scheme Trust established on 23rd November 2006, for the benefit of certain persons suffering from asbestos-related diseases.
- Payment under a scheme established under section 213 of the Financial Services and Markets Act 2000<sup>(3)</sup> (the Financial Services Compensation Scheme).

## SCHEDULE 3

Regulation 8

### Information and other material in support of an application

## PART 1

### The application

1. An applicant may be required to state whether the applicant is—
  - (a) the person with diffuse mesothelioma;
  - (b) a person who is a dependant of a person who has died with diffuse mesothelioma.
2. An applicant within paragraph 1(a) or (b) may be required to provide, in relation to the person with diffuse mesothelioma—
  - (a) the person's name and national insurance number;
  - (b) the person's date of birth;
  - (c) the date the person was first diagnosed with diffuse mesothelioma;
  - (d) the name of all employers of the person;
  - (e) a description of the arrangements under which the person was engaged by each employer;
  - (f) a statement of the kind of activities carried on by the person whilst working for each employer and the place where those activities were carried on;
  - (g) an indication as to whether the application relies on the person with diffuse mesothelioma having been exposed to asbestos as a result of the relevant employer's negligence or breach of statutory duty (or both);
  - (h) an explanation of why the application relies on the relevant employer's negligence or breach of statutory duty (or both);

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(1) S.I. 2006/606.

(2) S.I. 2011/517.

(3) 2000 c. 8.

- (i) a statement that no action for damages has been brought against the relevant employer or any insurer with whom the relevant employer maintained employers liability insurance at the time of the person's exposure to asbestos, in respect of the disease;
  - (j) an explanation of why it is alleged the applicant is unable to bring an action against any employer or any insurer with whom such an employer maintained employers' liability insurance;
  - (k) a statement that the person has not received damages or a specified payment in respect of the disease;
  - (l) a statement that the person is not eligible to receive a specified payment.
3. An applicant within paragraph 1(b) may also be required to provide—
- (a) the name of the applicant;
  - (b) their date of birth;
  - (c) a statement of the applicant's relationship to the deceased;
  - (d) where relevant, a statement of the name of each person who is in the same degree of relationship to the deceased as the applicant;
  - (e) a statement that no one has brought an action for damages under the fatal accidents legislation, or on behalf of the deceased's estate, against the relevant employer or any insurer with whom the relevant employer maintained employers' liability insurance at the time of the person's exposure to asbestos;
  - (f) an explanation of why it is alleged that no one is able to bring an action under the fatal accidents legislation, or on behalf of the deceased's estate, against any employer of the deceased or any insurer with whom such an employer maintained employers' liability insurance;
  - (g) a statement that no one has received damages or a specified payment in respect of the disease;
  - (h) a statement that no one is eligible to receive a specified payment.

## PART 2

### Key issues

4. The key issues to be addressed by the information and other material required under Part 1 of this Schedule, are—
- (a) establishing that the person with diffuse mesothelioma was employed by a relevant employer;
  - (b) establishing that the person with diffuse mesothelioma was exposed to asbestos during the period of the person's employment;
  - (c) establishing that the exposure to asbestos resulted from a relevant employer's negligence or breach of statutory duty (or both);
  - (d) explaining why no action for damages in respect of the disease can be brought against any employer or any insurer with whom such an employer maintained employers' liability insurance;
  - (e) where the application is made by a person who is a dependant of a person who has died with diffuse mesothelioma—
    - (i) establishing that the person qualifies as a dependant of the deceased for the purposes of section 3(1) of Pneumoconiosis etc. (Workers' Compensation) Act 1979;

- (ii) explaining why no one is able to bring an action for damages under the fatal accidents legislation, or on behalf of the deceased's estate, against any employer or any insurer of such an employer.

## PART 3

### Supporting evidence

5. Supporting evidence that may be required in relation to an application includes—
- (a) medical evidence which confirms the person has been diagnosed with diffuse mesothelioma (see Schedule 1);
  - (b) witness statements (whether made by the person with diffuse mesothelioma or by others);
  - (c) the details of any investigation in contemplation of litigation which has been carried out on behalf of the applicant (including any report made by a relevant expert);
  - (d) the details of all steps taken to find any relevant insurer and the results of any search for a relevant insurer that has been carried out;
  - (e) a copy of any decision published by the Technical Committee which relates to a person named in the application as a relevant employer or an insurer of that employer.

6.—(1) Any witness statement that is provided must be signed by the person making the statement and verified by a statement of truth.

(2) “Statement of truth” means a statement that the person making the witness statement believes the matters stated as facts in the witness statement to be true.

## SCHEDULE 4

Regulation 16

### Amount of Scheme Payments

**Table 1**

Age of the person with diffuse mesothelioma (see regulation 16(3))	Scheme Payment
40 and under	£203,778
41	£201,017
42	£198,256
43	£195,495
44	£192,734
45	£189,973
46	£187,213
47	£184,452
48	£181,691
49	£178,930

**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

Age of the person with diffuse mesothelioma (see regulation 16(3))	Scheme Payment
50	£176,169
51	£173,408
52	£170,647
53	£167,886
54	£165,126
55	£162,365
56	£159,604
57	£156,843
58	£154,082
59	£151,321
60	£148,560
61	£145,799
62	£143,038
63	£140,278
64	£137,517
65	£134,756
66	£131,995
67	£129,234
68	£126,473
69	£123,712
70	£120,951
71	£118,191
72	£115,430
73	£112,669
74	£109,908
75	£107,147
76	£104,386
77	£101,625
78	£98,864
79	£96,103
80	£93,343
81	£90,582
82	£87,821
83	£85,060

Age of the person with diffuse mesothelioma (see regulation 16(3))	Scheme Payment
84	£82,299
85	£79,538
86	£76,777
87	£74,016
88	£71,256
89	£68,495
90 and over	£65,734