

2006 No. 3259

COMPENSATION

**The Compensation Act 2006 (Contribution for Mesothelioma
Claims) Regulations 2006**

Approved by both Houses of Parliament

Made - - - - 6th December 2006

Coming into force in accordance with regulation 1(1)

A draft of these Regulations has been approved by a resolution of each of House of Parliament pursuant to section 3(11) of the Compensation Act 2006.

The Treasury, in exercise of the powers conferred by section 3(7)(a), (8)(b) and (11) of the Compensation Act 2006(c), make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Compensation Act 2006 (Contribution for Mesothelioma Claims) Regulations 2006 and come into force on the day after the day on which they are made.

(2) In these Regulations—

“the Act” means the Compensation Act 2006;

“the FSCS Transitional Order” means the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings)(Financial Services Compensation Scheme) Order 2001(d);

“FSMA” means the Financial Services and Markets Act 2000(e).

(3) Subject to paragraph (2), expressions used in these Regulations shall have the same meaning as the same expressions used in FSMA and in the FSCS Transitional Order.

Amendments to the FSCS Transitional Order

2.—(1) The FSCS Transitional Order is amended as follows.

(2) In article 9(1)(a) (article 9 defaults occurring before commencement) after “subject to article” insert “9A or”.

(a) The expression “responsible person” is defined in section 3(1) of the Compensation Act 2006 and by virtue of subsection 3(10)(a) include a reference to an insurer of a responsible person.
(b) The expression “transitional compensation provision” is defined in section 3(10)(b) of the Compensation Act 2006.
(c) 2006 c. 29.
(d) S.I. 2001/2967 to which there are amendments not relevant to these Regulations.
(e) 2000 c. 8.

(3) After article 9 insert—

“Contributions in relation to mesothelioma claims

9A.—(1) This article applies where—

- (a) a claimant, if he had not received payment from a responsible person, could claim by virtue of this Order (other than this article) from the scheme manager in circumstances where section 3(1) of the Compensation Act 2006 applies; and
- (b) the circumstances in paragraph (2) apply.

(2) Compensation may be paid to a responsible person (“A”) by the scheme manager only where and to the extent that—

- (a) A could claim a contribution from another responsible person in accordance with section 3(3)(a) of the Compensation Act 2006, but
- (b) A is unable or likely to be unable to obtain a contribution, because an authorised insurance company of the other responsible person is unable or likely to be unable to satisfy the claim for a contribution.

(3) The Authority may make rules modifying the new scheme to enable the scheme manager to receive, assess, determine and make payments in respect of applications for compensation from responsible persons and give guidance in relation to those rules.

(4) Such rules may, in particular, permit—

- (a) payment of compensation to a responsible person notwithstanding that he has made a payment to the victim;
- (b) payment of compensation to a responsible person not exceeding the amount a claimant would, if he had not received payment in full or of a contribution from such a person, have been able to recover from the scheme manager directly in respect of the contribution;
- (c) payment to a claimant in respect of an application for compensation made on or after 25 July 2006, including an application which relates to a victim’s claim which is settled on or after 3 May 2006 or in relation to which there are legal proceedings which are determined on or after 3 May 2006.

(5) Where payment is made to a victim by a responsible person by virtue of rules made under this article, articles 9, 10 and 12 do not apply.

(6) In this article—

“claimant” means a victim or a responsible person;

“victim” has the same meaning as in section 3 of the Compensation Act 2006 (mesothelioma: damages).

(7) In this article, “responsible person” has the same meaning as in section 3 of the Compensation Act 2006 and, except for in paragraph (2)(b) and in the definition of “claimant”, includes an insurer of a responsible person.

(8) The power granted to the Authority in this article is in addition, and without prejudice, to any other power of the Authority.”

(4) At the beginning of article 10(1) (applications in respect of compulsory liability insurance) for “A” substitute “Subject to article 9A, a”.

(5) At the beginning of article 12(1) (applications under the new scheme) for “Notwithstanding” substitute “Subject to article 9A, notwithstanding”.

Further power for Authority to make rules concerning mesothelioma claims

3.—(1) This Regulation applies where—

- (a) a claimant, if he had not received payment from a responsible person, could claim from the scheme manager in circumstances where section 3(1) of the Act applies; and

(b) the circumstances in paragraph (2) apply.

(2) Compensation may be paid to a responsible person (“A”) by the scheme manager only where and to the extent that—

(a) A could claim a contribution from another responsible person in accordance with section 3(3)(a) of the Act, but

(b) A is unable or likely to be unable to obtain a contribution, because an insurer of the other responsible person is unable or likely to be unable to satisfy the claim for a contribution.

(3) The Authority may make rules modifying the new scheme to enable the scheme manager to receive, assess, determine and make payments in respect of applications for compensation from responsible persons and give guidance in relation to those rules.

(4) Such rules may, in particular, permit—

(a) payment of compensation to a responsible person notwithstanding that he has made a payment to the victim;

(b) payment of compensation to a responsible person not exceeding the amount a claimant would, if he had not received payment in full or of a contribution from such a person, have been able to recover from the scheme manager directly in respect of the contribution;

(c) payment to a claimant in respect of an application for compensation made on or after 25 July 2006, including an application which relates to a victim’s claim which is settled on or after 3 May 2006 or in relation to which there are legal proceedings which are determined on or after 3 May 2006.

(5) In paragraph (2)(b) “insurer” means an authorised person who has permission to effect or carry out contracts of insurance, or had permission at the time the act or omission giving rise to the claim against him took place.

(6) In this Regulation “claimant” means a victim or a responsible person.

(7) Except in paragraph (2)(b) and in the definition of “claimant”, in this Regulation “responsible person” includes an insurer of a responsible person.

(8) The power granted to the Authority in this Regulation is in addition, and without prejudice, to any other power of the Authority.

Modification of FSMA in relation to FSA rules for mesothelioma claims

4. On the first occasion on which the Authority proposes to make rules or give any guidance concerning claims of the type referred to in section 3(7) of the Act, sections 155 and 157(3) of FSMA do not apply to the proposed rules or guidance.

Claire Ward
Dave Watts

6th December 2006

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001, S.I. 2001/2967 (“the FSCS Transitional Order”) and provide the Financial Services Authority (“FSA”) with an additional power to make rules for the Financial Services Compensation Scheme (“FSCS”).

Claims are covered by the FSCS where financial services providers cannot, or are not likely to be able to, satisfy claims against them.

The FSCS Transitional Order sets out provisions which allow certain transitional claims for compensation whose facts relate to the period before the commencement of the Financial Services and Markets Act 2000 (“FSMA”) to be made against the scheme manager of the FSCS, set up under section 212 of FSMA. The claims in question would apply to certain insurers subject to insolvency or other defaults which took place before the commencement of FSMA on 1 December 2001.

Regulation 2 makes amendments to the FSCS Transitional Order to enable the FSA which is responsible for making the rules of the FSCS and for giving guidance on those rules, to modify the FSCS. The modifications enable a person who is liable in tort (or an insurer of such a person) for having exposed a person to asbestos who goes on to develop mesothelioma to recover a contribution from the FSCS. The Regulations set out the circumstances where a contribution can be paid to such a person by the FSCS.

Regulation 3 provides a power for the FSA to make rules, and to give guidance on those rules, having similar effect in relation to claims other than those dealt with in the FSCS Transitional Order.

When the FSA makes rules or gives guidance under FSMA, sections 155 and 157(3) apply consultation obligations. Regulation 4 relieves the FSA of its specific statutory duty to consult on the first occasion on which it makes rules or guidance in relation to mesothelioma claims under these Regulations. Similar provision was made in relation to rules and guidance concerning general insurance and mortgage complaints.

A joint consultation was undertaken by HM Treasury and the FSA on the provisions of this instrument and the rules made under it. A copy of the consultation document is available on HM Treasury’s web-site (www.hm-treasury.gov.uk).

A regulatory impact assessment of the effect of the instrument on costs to business has been prepared and may be obtained from Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury’s web-site and a copy has been placed in the libraries of both Houses of Parliament.

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