

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (RECOVERY OF BENEFITS) (LUMP SUM PAYMENTS)
AMENDMENT REGULATIONS 2009**

2009 No. 1494

1. This explanatory memorandum has been prepared by Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Statutory Instrument exempts payments made from two trusts set up by the US company Federal Mogul to handle compensation claims in respect of work related asbestos exposure [the UK Asbestos Trust and the EL Scheme Trust ('the Trusts')] from the compensation recovery of lump sum payments. The compensation recovery scheme enables recovery of any payments made under the government workers' compensation scheme from any subsequent civil compensation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 These regulations implement revised ministerial policy in respect of lump sum compensation recovery for certain individuals. The Government issued a press release in February 2009 announcing its intention to exempt the Trusts from lump sum recovery.

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Payments made from the Trusts are being exempted from the provisions of lump sum compensation recovery. This means that the Trusts will not have to refund to the Secretary of State any lump sum payments already made and the injured party will not have their compensation award reduced on account of any lump sum already paid. Prior to these regulations the Trusts would have had to refund any lump sum payments already paid to the Secretary of State and would have reduced the

compensation settlement accordingly.

7.2 The compensation recovery scheme is based on the long-standing principle that a person should not get compensation twice over for the same need, once through the benefit system and again through compensation. The scheme also helps ensure that ‘the polluter pays’. That is the compensators fulfil their own obligations and are not subsidised by the taxpayer.

7.3 This is achieved by recovering from the compensator any benefits paid in respect of the same accident, injury or disease for which the compensation is being paid. The compensator can in turn reduce the compensation award where the compensation and benefit are paid for the same reason e.g. loss of benefit. In 2008 compensation recovery was extended to cover lump sum payments.

7.4 Federal Mogul is a US company, which bought a number of UK companies including Turner & Newall and related subsidiaries. Following realisation of the extent of the company’s asbestos claim liabilities the company went into administration. Two Trust Funds were set up to meet the asbestos claims of former employees. However, the Trusts are not in a position to meet the liabilities in full and the vast majority of claimants will receive only a fraction of their compensation.

7.5 In 2007 payments made from the Trusts were exempted from the Social Security (Recovery of Benefits) Act 1997 for recovery of benefits. This meant that no payments needed to be made from the Trusts to the Secretary of State in respect of recoverable benefits. Exemption of the Trusts did not undermine the key principles of the compensation recovery scheme. This is because injured persons would not receive double compensation due to receiving significantly less than the full amount of their compensation. Neither did the compensator gain a windfall from the exemption as the Trusts have a finite value; the exemption simply meant more of the Trusts’ funds would be paid to injured persons.

7.6 In 2008 compensation recovery for lump sums was introduced. At that time the Trusts were not exempted from lump sum recovery. However, following representations from various interested parties concerned that former employees of Turner & Newall were worse off as a result of the introduction of lump sum recovery in October 2008 the Government decided to exempt the Trusts from the lump sum recovery regime.

7.7 Former employees were worse off because, before the change, the Trusts chose not to reduce compensation payments on account of any 1979 Act payment already made.

Example

pre Oct 08

1979 Lump Sum Payment

£10,000

Compensation Payment	£40,000
Total Received	£50,000

post Oct 08 (but prior to these regulations)

1979 Lump Sum Payment	£10,000
Compensation Payment (£40,000 reduced by lump sum repayment)	£30,000
Total Received	£40,000

This shows that the change in October 2008 meant recipients of payments from the Trusts were worse off by the amount of the lump sum payment they received.

7.8 Also when the terms of the Trusts were accepted the clients understood that they would be able to claim and retain a government compensation payment made in accordance with the Pneumoconiosis etc. (Workers' Compensation) Act 1979 ("a 1979 Act payment") as well as receiving their trust payment. The Trust had agreed not to reduce compensation by any amount of the 1979 Act payment.

7.9 It was decided that exemption from lump sum recovery would not only help these individuals, the majority of whom would only be receiving a fraction of their gross compensation award, but also ensure that settlements would be in line with their expectations at the times the Trusts were set up. These are exceptional circumstances and so far as we are aware there are no other Trusts in a similar position.

7.10 The public will be able to read a consolidated version of the affected regulations in The Law Relating to Social Security ("The Blue Volumes") on the DWP website. http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/a1_6783.pdf

8. Consultation outcome

8.1 The regulations are subject to statutory consultation with the Social Security Advisory Committee, who have indicated that they are content with the regulations.

8.2 The representations from and discussions with the Trusts and trade unions constituted consultation as these groups would almost certainly have been aware of the existence of similarly affected individuals. Additionally, the exemption of the Trusts from recovery of benefits is well known and we are confident that there are no other groups in a similar position. The change is also beneficial.

9. Guidance

9.1 Guidance will be issued to staff at Compensation Recovery Unit (CRU) advising them of the exemption of the Trusts.

9.2 The administrators of the Trusts will also be informed that they will no longer need to notify CRU of claims made to the Trusts following the exemption of these Trusts.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil. However there will be a very small positive impact on the Trusts in terms of administrative savings as they will no longer have to register these cases with the compensation recovery unit.

10.2 The impact on the public sector is negligible.

10.3 A full Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 An internal review will be undertaken one month after the coming into force of the regulations to ensure that no exempt cases have been referred after that date.

13. Contact

Alan Clark at the Department for Work and Pensions Tel: 02077122559 or email: alan.clark1@dwp.gsi.gov.uk can answer any queries regarding the instrument.