



## 2008 CHAPTER 9

### *Mesothelioma lump sum payments*

#### **Lump sum payments**

- 1.—(1) A claim for a payment under this Act may be made by—
  - (a) a person with diffuse mesothelioma, or
  - (b) a dependant of a person who, immediately before death, had diffuse mesothelioma.
- (2) The Department must make the payment to the claimant if satisfied that the conditions of entitlement in section 2 are fulfilled.
- (3) Regulations—
  - (a) may prescribe the amount of any payment;
  - (b) may prescribe different amounts for different cases or classes of case or for different circumstances.
- (4) Where, because of Article 5(1)(b) or (d) of the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979 (NI 9) (in this Act referred to as “the 1979 Order”) (children, siblings etc.), a payment may be claimed by two or more persons, the payment is to be made to one of them or divided between some or all of them as the Department thinks fit.

#### **Commencement Information**

- II** S. 1 wholly in operation at 1.10.2008; s. 1 not in operation at Royal Assent see s. 12(1); s. 1(3) in operation for the purpose only of authorising the making of regulations at 27.8.2008 and for all other purposes at 1.10.2008 by S.R. 2008/351, art. 2(1)(a)(b), Sch.; s. 1 in operation at 1.10.2008 in so far as not already in operation by S.R. 2008/351, art. 2(2)

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*Changes to legislation: There are currently no known outstanding effects for the Mesothelioma, etc., Act (Northern Ireland) 2008, Cross Heading: Mesothelioma lump sum payments. (See end of Document for details)*

## Conditions of entitlement

2.—(1) In the case of a person who has diffuse mesothelioma, the conditions of entitlement are—

- (a) that no payment within subsection (3) has been made in consequence of the disease;
- (b) that the person is not eligible for any payment in consequence of the disease that is of a description prescribed by regulations;
- (c) that such requirement, if any, as may be prescribed by regulations as to the person's connection with the United Kingdom is satisfied.

(2) In the case of a dependant of a person who, immediately before death, had diffuse mesothelioma, the conditions of entitlement are—

- (a) that no payment within subsection (3) has been made in consequence of the disease to that or another dependant or to the deceased or the deceased's personal representatives;
- (b) that the dependant is not, and the deceased was not, eligible for any payment in consequence of the disease that is of a description prescribed by regulations;
- (c) that such requirement, if any, as may be prescribed by regulations as to the deceased's connection with the United Kingdom is satisfied.

(3) The payments referred to in subsections (1)(a) and (2)(a) are—

- (a) a payment under this Act or under Part 4 of the Child Maintenance and Other Payments Act 2008 (c. 6);
- (b) a payment under the 1979 Order or under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 (c. 41);
- [<sup>F1</sup>(ba) a payment under the Diffuse Mesothelioma Payment Scheme (for the scheme, see the Mesothelioma Act 2014);]
- (c) an extra-statutory payment;
- (d) damages or a payment in settlement of a claim for damages;
- (e) a payment of a description prescribed by regulations.

(4) A payment is to be disregarded for the purposes of subsection (1)(a) or (2)(a) if it has been, or is liable to be, repaid—

- (a) under section 4 of this Act or under any corresponding provision of the Child Maintenance and Other Payments Act 2008;
- (b) under Article 6 of the 1979 Order or under section 5 of the Pneumoconiosis etc. (Workers' Compensation) Act 1979;
- (c) under the terms of an extra-statutory payment;
- (d) in circumstances prescribed for the purposes of this section by regulations.

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(5) In this section “extra-statutory payment” has the meaning given by Article 3A(5)(d) of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (NI 12).

#### Textual Amendments

**F1** S. 2(3)(ba) inserted (31.3.2014) by [Mesothelioma Act 2014 \(c. 1\)](#), s. 19(1), [Sch. 2 para. 6](#); [S.I. 2014/459](#), art. 3(d)

#### Commencement Information

**I2** S. 2 wholly in operation at 1.10.2008; s. 2 not in operation at Royal Assent see s. 12(1); s. 2(1)(b)(c), (2)(b)(c), (3)(e), (4)(d) in operation for the purpose only of authorising the making of regulations at 27.8.2008 and for all other purposes at 1.10.2008 by [S.R. 2008/351](#), [art. 2\(1\)\(a\)\(b\)](#), [Sch.](#); s. 2 in operation at 1.10.2008 in so far as not already in operation by [S.R. 2008/351](#), [art. 2\(2\)](#)

### Determination of claims

**3.—(1)** A claim under section 1 must be made in the manner and within the period prescribed by regulations.

(2) Regulations may prescribe different periods for different cases or classes of cases or for different circumstances.

(3) Regulations may in particular provide that no claim may be made in cases where the prescribed period expired before the coming into operation of section 1 (or would have done but for any discretion to extend it).

(4) The Department may, before determining any claim under section 1, appoint a person to inquire into any question arising on the claim, or any matters arising in connection with it, and to report on the question, or on those matters, to the Department.

#### Commencement Information

**I3** S. 3 wholly in operation at 1.10.2008; s. 3 not in operation at Royal Assent see s. 12(1); s. 3(1)-(3) in operation for the purpose only of authorising the making of regulations at 27.8.2008 and for all other purposes at 1.10.2008 by [S.R. 2008/351](#), [art. 2\(1\)\(a\)\(b\)](#), [Sch.](#); s. 3 in operation at 1.10.2008 in so far as not already in operation by [S.R. 2008/351](#), [art. 2\(2\)](#)

### Reconsideration

**4.—(1)** Subject to subsection (2), the Department—

- (a) may reconsider a determination that a payment should not be made under this Act, on the ground that there has been a material change of circumstances since the determination was made; and

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- (b) may reconsider a determination either that a payment should or that a payment should not be made under this Act, on the ground that the determination was made in ignorance of, or was based on a mistake as to, a material fact.
- (2) Regulations must prescribe the manner in which and [<sup>F2</sup>may prescribe] the period within which—
- (a) an application may be made to the Department for reconsideration of a determination, or
- (b) the Department may institute such a reconsideration without an application.
- (3) Section 3(4) applies in relation to any reconsideration of a determination under this section as it applies in relation to the determination of a claim.
- (4) Subsection (5) applies if—
- (a) whether fraudulently or otherwise, any person misrepresents or fails to disclose any material fact, and
- (b) in consequence of the misrepresentation or failure, a payment is made under this Act.
- (5) The person to whom the payment was made is liable to repay the amount of that payment to the Department unless that person can show that the misrepresentation or failure occurred without that person's connivance or consent.
- (6) Except as provided by subsection (5), no payment under this Act is recoverable by virtue of a reconsideration of a determination under this section.
- (7) Any sums repaid to the Department by virtue of subsection (5) are to be paid into the Consolidated Fund.

#### Textual Amendments

- F2** Words in s. 4(2) inserted (17.3.2016) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 11 para. 13](#); S.R. 2016/166, art. 2(b)

#### Commencement Information

- I4** S. 4 wholly in operation at 1.10.2008; s. 4 not in operation at Royal Assent see s. 12(1); s. 4(2) in operation for the purpose only of authorising the making of regulations at 27.8.2008 and for all other purposes at 1.10.2008 by [S.R. 2008/351](#), [art. 2\(1\)\(a\)\(b\)](#), [Sch.](#); s. 4 in operation at 1.10.2008 in so far as not already in operation by [S.R. 2008/351](#), [art. 2\(2\)](#)

### Appeal to appeal tribunal

- 5.—(1)** A person who has made a claim under section 1 may appeal against a determination made by the Department—

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- (a) on the claim, or
- (b) on reconsideration under section 4 of a determination made on the claim.

[<sup>F3</sup>(1A) Regulations may provide that, in such cases or circumstances as may be prescribed, a person may appeal against a determination made on a claim only if the Department has decided whether to reconsider the determination under section 4.

(1B) The regulations may in particular provide that that condition is met only where—

- (a) the decision of the Department was on an application,
- (b) the Department considered issues of a specified description, or
- (c) the decision of the Department satisfied any other condition specified in the regulations.]

(2) Subject to regulations under subsection (4)(c), the Department must refer any appeal to an appeal tribunal constituted under Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998 (NI 10).

(3) On an appeal the tribunal may substitute for the determination concerned any determination which could have been made in accordance with this Act.

(4) Regulations may make provision—

- (a) as to the manner in which, and the time within which, an appeal may be made;
- (b) as to the procedure to be followed if an appeal is made;
- (c) for the purpose of enabling an appeal under subsection (1)(a) [<sup>F4</sup>(or, where in accordance with regulations under subsection (1A) there is no right of appeal, any purported appeal)] to be treated as an application for reconsideration under section 4 of the determination made on the claim.

#### Textual Amendments

- F3** S. 5(1A)(1B) inserted (17.3.2016) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 11 para. 14\(2\)](#); S.R. 2016/166, art. 2(b)
- F4** Words in s. 5(4)(c) inserted (17.3.2016) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 11 para. 14\(3\)](#); S.R. 2016/166, art. 2(b)

#### Commencement Information

- I5** S. 5 wholly in operation at 1.10.2008; s. 5 not in operation at Royal Assent see s. 12(1); s. 5(4)(c) in operation for the purpose only of authorising the making of regulations at 27.8.2008 and for all other purposes at 1.10.2008 by [S.R. 2008/351](#), [art. 2\(1\)\(a\)\(b\)](#), [Sch.](#); s. 5 in operation at 1.10.2008 in so far as not already in operation by [S.R. 2008/351](#), [art. 2\(2\)](#)

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### **Appeal to Social Security Commissioner**

6.—(1) An appeal may be made to a Commissioner against any decision of an appeal tribunal under section 5 on the ground that the decision was erroneous in point of law.

(2) An appeal under this section may be made by—

- (a) the Department, or
- (b) the person who brought the appeal under section 5.

(3) Article 15(7) to (13) of the Social Security (Northern Ireland) Order 1998 (NI 10) applies to an appeal under this section as it applies to an appeal under Article 15 of that Order (reading references to a tribunal as references to an appeal tribunal constituted as mentioned in section 5(2)).

(4) In this section “Commissioner” has the meaning given by section 167(1) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8).

### **Minors and persons who are incapable**

7.—(1) This section applies where a payment under this Act falls to be made to—

- (a) a person aged under 18, or
- (b) a person who is incapable of managing his or her own affairs.

(2) Subject to section 1(4) the payment is to be made for the person's benefit by paying it to such trustees as the Department may appoint.

(3) The trustees are to hold the payment on such trusts as the Department may declare.

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