



# Mesothelioma, etc., Act (Northern Ireland) 2008

## 2008 CHAPTER 9

An Act to make provision about lump sum payments to or in respect of persons with diffuse mesothelioma; and for connected purposes. [2nd July 2008]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### *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.

### 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 \(c. 41\)](#);
- (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.

(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 \(NI 12\)](#).

### 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.

### 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

(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 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.

### **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—

(a) on the claim, or

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

(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) to be treated as an application for reconsideration under section 4 of the determination made on the claim.

### **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.

### *Recovery of mesothelioma and other lump sum payments*

### **Amendment of Social Security (Recovery of Benefits) (Northern Ireland) Order 1997**

8. After Article 3 of the [Social Security \(Recovery of Benefits\) \(Northern Ireland\) Order 1997 \(NI 12\)](#) insert—

#### **“Lump sum payments: regulation-making power**

3A.—(1) The Department may by regulations make provision about the recovery of the amount of a payment to which paragraph (2) applies (a “lump sum payment”) where—

- (a) a compensation payment in consequence of a disease is made to or in respect of a person (“P”) to whom, or in respect of whom, a lump sum payment has been, or is likely to be, made, and
- (b) the compensation payment is made in consequence of the same disease as the lump sum payment.

(2) This paragraph applies to—

- (a) a payment made in accordance with the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979 (in this Article referred to as “the 1979 Order”);
- (b) a payment made in accordance with the Mesothelioma, etc., Act (Northern Ireland) 2008, and
- (c) an extra-statutory payment (within the meaning given by paragraph (5)(d)).

- (3) Regulations under this Article may, in particular—
- (a) make provision about the recovery of the amount of a lump sum payment made to or in respect of a dependant of P;
  - (b) make provision enabling the recovery of the amount of a lump sum payment from a compensation payment (including provision enabling the recovery of an amount which reduces the compensation payment to nil);
  - (c) enable the amount of a lump sum payment made before commencement to be recovered from a compensation payment made after commencement;
  - (d) make provision about certificates in respect of lump sum payments;
  - (e) apply any provision of this Order, with or without modifications.
- (4) References in paragraph (1) to a payment made in consequence of a disease—
- (a) are references to a payment made by or on behalf of a person who is, or is alleged to be, liable to any extent in respect of the disease, but
  - (b) do not include references to a payment mentioned in Part 1 of Schedule 1.
- (5) In this Article—
- (a) “commencement” means the date on which this Article comes into operation,
  - (b) “compensation payment” means a payment within Article 3(1)(a),
  - (c) “dependant” has the meaning given by Article 5 of the 1979 Order, and
  - (d) “extra-statutory payment” means a payment made by the Department to or in respect of a person following the rejection by the Department of a claim under the 1979 Order.”.

### *General*

#### **Regulations**

**9.—(1)** A reference in this Act to regulations is a reference to regulations made by the Department.

(2) The power to make regulations under this Act—

- (a) includes power to make such incidental, supplementary or transitional provision as the Department thinks fit;

(b) may be exercised so as to provide for a person to exercise a discretion in dealing with any matter.

(3) Regulations may make provision consequential on this Act amending, repealing or revoking any statutory provision.

### Assembly control

**10.**—(1) Subject to the following provisions of this section, any regulations made under this Act are subject to negative resolution.

(2) Regulations under section 1 or the first regulations under section 2—

(a) must be laid before the Assembly after being made; and

(b) take effect on such date as may be specified in the regulations, but (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations are approved by a resolution of the Assembly.

(3) This subsection applies to any regulations made under this Act which—

(a) but for subsection (4), would be subject to negative resolution, and

(b) are contained in a statutory rule which includes any regulations subject to the confirmatory procedure.

(4) Any regulations to which subsection (3) applies shall not be subject to negative resolution, but shall be subject to the confirmatory procedure.

(5) In this section “the confirmatory procedure” means the procedure described in subsection (2).

### Interpretation

**11.** In this Act—

“the 1979 Order” means the [Pneumoconiosis, etc., \(Workers' Compensation\) \(Northern Ireland\) Order 1979 \(NI 9\)](#);

“the Department” means the Department for Social Development;

“dependant” has the meaning given by Article 5 of the 1979 Order;

“diffuse mesothelioma” has the same meaning as in the 1979 Order;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) [1954 \(c. 33\)](#).

### Commencement

**12.**—(1) This Act (except section 11, this section and section 13) shall come into operation on such day or days as the Department may by order appoint.

(2) An order under subsection (1) may include such transitional provision or savings as the Department considers necessary or expedient in connection with bringing any provision of this Act into operation.

**Short title**

**13.** This Act may be cited as the Mesothelioma, etc., Act (Northern Ireland) 2008.