

CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Lump Sum Payments: Mesothelioma etc.

Mesothelioma lump sum payments

Section 46: Lump sum payments

392. This section provides for the Secretary of State to make a lump sum payment to either a person with diffuse mesothelioma, or to their dependant if the person with diffuse mesothelioma is deceased.
393. *Subsection (2)* provides that entitlement to a lump sum payment is dependent on satisfying certain conditions which are specified in *section 47*.
394. *Subsection (3)* provides that regulations may:
- set out the amount that should be paid as a lump sum; and
 - set the amount at different levels for different people. This may be based on factors such as, for example, whether they are a person with mesothelioma, or a dependant of a person with mesothelioma.
395. *Subsection (4)* defines what is meant by a 'dependant' of a person who, immediately before their death, suffered from mesothelioma. It also defines "diffuse mesothelioma" as having the same meaning as under the Pneumoconiosis etc. (Workers' Compensation) Act 1979. A dependant can bring a claim for a lump sum payment under this part of the legislation if their relative with mesothelioma has died. A dependant is defined as:
- a wife or husband or civil partner who was living with the person with mesothelioma;
 - children under 16 years of age;
 - children under 21 years of age who are not receiving wages from full time employment;
 - children of any age who are permanently unable to support themselves;
 - a person living with the person with mesothelioma as if they were husband and wife or as if they were civil partners;
 - any other relatives who are completely or mostly dependent on the person with mesothelioma immediately before their death and who are also under the age of 16, under the age of 21 and not receiving wages from full time employment, or permanently unable to support themselves.

396. Payments are to be made to the dependant who is listed first in the above definition.
397. *Subsection (5)* provides that where more than one dependent may claim, the Secretary of State will decide whether the payment is paid to one or more of them. This could happen, for example, when a person with mesothelioma does not have a wife or husband, or civil partner, who was living with them, but has three children under the age of 16.

Section 47: Conditions of entitlement

398. *Section 47* sets out the conditions that must be satisfied by persons with mesothelioma, and by a dependant of a person who, immediately before their death, suffered from mesothelioma in order for a lump sum payment to be made.
399. *Subsection (1)(a)* provides that to be entitled to a lump sum payment a person with mesothelioma must not have already received a payment in respect of mesothelioma contained in the provisions of *subsection (3)*.
400. *Subsection (1)(b)* provides that to be entitled to a lump sum payment a person must not be eligible, in respect of mesothelioma, for a payment of a type prescribed by regulations.
401. *Subsection (1)(c)* provides that there may be a requirement for the person to have links with the United Kingdom. Any links would be prescribed by regulations.
402. *Subsection (2)(a)* provides that for a dependant of a deceased person who suffered from mesothelioma immediately before their death to be entitled to a lump sum payment, neither they, nor the deceased person with mesothelioma, nor the deceased person's estate, nor any other dependant, must have already received a payment in respect of mesothelioma contained in the provisions of *subsection (3)*.
403. *Subsection (2)(b)* provides that for a dependent of a deceased person who suffered from mesothelioma immediately before their death to be entitled to a lump sum payment, neither they, nor the deceased person with mesothelioma, must be eligible, in respect of mesothelioma, for a payment of a type prescribed by regulations.
404. *Subsection (2)(c)* provides that there may be a requirement for the deceased person to have links with the United Kingdom. Any links would be prescribed by regulations.
405. *Subsection (3)* provides that the payments mentioned in *subsections (1)(a)* and *(2)(a)* are: a payment under this Part, a payment under corresponding Northern Ireland provisions, a payment under the 1979 Act, an extra-statutory payment for mesothelioma after making a claim under that Act, or a payment of a type prescribed by regulations.
406. *Subsection (4)* provides that a payment under this Part, a payment under corresponding Northern Ireland provisions, a payment under the 1979 Act, an extra-statutory payment for mesothelioma after making a claim under that Act, or a payment of a type prescribed by regulations, will not disqualify a person from receiving a mesothelioma lump sum payment if that payment was made in consequence of a misrepresentation or failure to disclose material facts (whether fraudulently or otherwise), and an obligation to repay it has arisen under section 49 of this Part or section 5 of the 1979 Act or for some other reason.
407. *Subsection (5)* defines an extra-statutory payment as a payment made by the Secretary of State when a claim has been rejected under the 1979 Act (by cross reference to the definition in the section inserted by *section 54*).

Section 48: Determination of claims

408. *Section 48* sets out how a claim for a lump sum payment is to be made.
409. *Subsection (1)* provides that a claim for a lump sum payment as made under *section 46* will be made in the manner and within the period prescribed by regulations.

410. *Subsection (2)* sets out that the lump sum payment can be set at different levels for different people based on different factors.
411. *Subsection (4)* provides that, if any questions concerning the claim arise before the claim is decided, then the Secretary of State may appoint someone to inquire into the issues or to request answers to those questions. The person appointed will then report their findings to the Secretary of State.

Section 49: Reconsideration

412. *Section 49* enables the Secretary of State to reconsider a decision not to make a lump sum payment where there is a change in circumstances that may affect the claim since the decision was taken, or a decision to make or not to make a lump sum payment if the original decision was made in ignorance or based on error about the facts of the case.
413. *Subsection (2)* provides that regulations must prescribe how and within what timescale, a person may apply to the Secretary of State for a decision to be reconsidered, or for the Secretary of State to reconsider a decision without an application to do so being made.
414. *Subsection (3)* provides that *subsection (4)* of *section 48* will apply to any reconsideration of a decision under this section, in the same way as it applies to the decision on a claim.
415. *Subsections (4)* and *(5)* provide that where a person, either fraudulently or otherwise, provides misleading or false information, or does not disclose relevant information, and a lump sum payment for mesothelioma is paid to them as a result of this, they will be liable to repay any lump sum payment they receive. This liability to repay would not apply if the person can show that they had not given permission or had not been involved in the failure to disclose, or the provision of misleading or incorrect, information.
416. *Subsection (6)* provides that a mesothelioma lump sum payment can not be recovered where a decision has been reconsidered, unless the payment was obtained by providing misleading or false information, or because relevant information was not properly disclosed.
417. *Subsection (7)* provides for any sums repaid to the Secretary of State to be paid in to the Consolidated Fund.

Section 50: Appeal to appeal tribunal

418. This section provides that a person who has made a claim for a payment under *section 46*, will have a right of appeal to an appeal tribunal against a decision made by the Secretary of State on the claim, or a decision made following a reconsideration under *section 49*.
419. *Subsection (2)* provides that, subject to regulations under *subsection (4)(c)*, the Secretary of State must refer any appeal to an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998.
420. *Subsection (3)* provides the tribunal with the power to substitute a decision on matters decided in accordance with Part 4.
421. *Subsection (4)* provides that regulations may make provision:
- as to the manner in which, and the time within which, an appeal may be brought;
 - as to the procedure to be followed if an appeal is made; and
 - for the purposes of enabling an appeal to be treated as an application for a reconsideration under *section 49*.

Section 51: Appeal to Social Security Commissioner

422. This section provides a right of appeal to a Social Security Commissioner against any decision of an appeal tribunal under [section 50](#), on the ground that the decision was wrong in law.
423. *Subsection (2)* states that an appeal to the Commissioner may be made by the Secretary of State, or by the person who brought the appeal under [section 50](#).
424. *Subsection (3)* provides that section 14(7) to (12) of the Social Security Act 1998 apply to an appeal under this section, as they apply to an appeal under that section.

Section 52: Minors and people who lack capacity

425. [Section 52](#) concerns how lump sum payments are to be made to a person under the age of 18, or a person who lacks capacity within the meaning of the Mental Capacity Act 2005 (or, in Scotland, who is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000) in relation to financial matters.
426. *Subsection (2)* provides for a lump sum payment in respect of these persons to be made to any trustees appointed by the Secretary of State.
427. *Subsection (3)* provides for those trustees to hold the lump sum payment in trust, or in Scotland, under the conditions and for the purposes that the Secretary of State may declare.

Section 53: Regulations: Part 4

428. [Section 53](#) provides power to the Secretary of State to make regulations by statutory instrument, which includes power to make such incidental, supplementary or transitional power as the Secretary of State thinks fit.
429. *Subsection (3)* provides that any regulations made under [section 46](#) of this Part must be subject to the affirmative resolution procedure. *Subsection (4)* provides that the first regulations made under [section 47](#) of this Part must be subject to the affirmative resolution procedure.
430. *Subsection (5)* provides that any other regulations made under any other provision of this Part will be subject to the negative resolution procedure.

Recovery of mesothelioma and other lump sum payments

Section 54: Amendment of Social Security (Recovery of Benefits) Act 1997

431. This section inserts a new *section 1A* into the Social Security (Recovery of Benefits) Act 1997, which provides the Secretary of State with powers to make regulations providing for the recovery of lump sum payments made under the Pneumoconiosis etc. (Workers' Compensation) Act 1979, the new scheme or those made on an extra-statutory basis following the rejection of a claim made under that Act.
432. *Subsection (1)* of new *section 1A* sets out that the Secretary of State may by regulations make provision about the recovery of a lump sum payment to which *subsection (2)* applies, where:
- a compensation payment is made to, or in respect of a person to whom, or in respect of whom, a lump sum payment has been made or is likely to be made; and
 - the compensation payment is made in respect of the same disease as the lump sum payment.
433. *Subsection (2)* applies to:

*These notes refer to the Child Maintenance and Other Payments
Act 2008 (c.6) which received Royal Assent on 5 June 2008*

- a payment made in accordance with the Pneumoconiosis etc. (Workers' Compensation) Act 1979;
- an extra-statutory payment following the rejection of a claim made under the 1979 Act; or
- a payment made under the new scheme.

434. *Subsection (3)* sets out that regulations made under new *section 1A* may in particular:

- make provision about the recovery of the lump sum payment made to, or in respect of a dependant of the person with mesothelioma;
- make provision enabling the recovery of a lump sum payment from a compensation payment (including provision enabling the recovery of an amount that reduces the compensation payment to nil);
- enable the amount of lump sum payment made before commencement to be recovered from a compensation payment made after commencement;
- make provision about certificates in respect of lump sum payments;
- apply any provision of the Social Security (Recovery of Benefits) Act 1997, with or without modifications.

435. *Subsection (4)* provides that reference in *subsection (1)* to a payment in consequence of a disease 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.

436. *Subsection (5)* sets out definitions for the purposes of new *section 1A*. In particular, commencement means the date on which the section comes into force.