

2014 No. 1456

SOCIAL SECURITY

**The Social Security (Recovery of Benefits) (Lump Sum
Payments) (Amendment) Regulations 2014**

<i>Made</i>	- - - -	<i>4th June 2014</i>
<i>Laid before Parliament</i>		<i>10th June 2014</i>
<i>Coming into force</i>	- -	<i>1st July 2014</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 189(4), (5) and (6) of the Social Security Administration Act 1992(a), sections 1A(1) and (3), 14(2), (3) and (4), 19, 21(3), 23(1), (2), (6A) and (7), 29 and 30(4) of, and paragraph 4 of Schedule 1 to, the Social Security (Recovery of Benefits) Act 1997(b).

These Regulations have not been referred to the Social Security Advisory Committee because they contain only regulations made by virtue of, or consequential on, paragraph 17(1) to (3) of Schedule 1 to the Mesothelioma Act 2014(c) and are made before the end of a period of 6 months beginning with the coming into force of that provision(d).

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security (Recovery of Benefits) (Lump Sum Payments) (Amendment) Regulations 2014.

(2) These Regulations come into force on 1st July 2014.

Amendments to the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008

2. The Schedule to these Regulations makes amendments to the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008(e).

Signed by authority of the Secretary of State for Work and Pensions

4th June 2014

Mike Penning
Minister of State
Department for Work and Pensions

(a) 1992 c.5.
(b) 1997 c.27. Section 1A was inserted by section 54 of the Child Maintenance and Other Payments Act 2008 (c.6) and was amended by paragraph 17(1), (2) and (3) of Schedule 1 to the Mesothelioma Act 2014 (c.1) which came into force on 31st March 2014 see S.I. 2014/459 (c.21). Subsection (6A) of section 23 was inserted by paragraph 19 of Schedule 1 to the Mesothelioma Act 2014. Section 29 defines “prescribed” and “regulations”.
(c) 2014 c.1.
(d) See section 173(5) of the Social Security Administration Act 1992 (c.5).
(e) S.I. 2008/1596.

SCHEDULE

Regulation 2

Amendments to the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008

1. The Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008 are amended as follows.

2. In regulation 1(2) (interpretation)—

- (a) after the definition of “the Act” insert—
 - ““the 2014 Act” means the Mesothelioma Act 2014;”;
- (b) in the definition of “compensator”, after “payment”, insert “and includes the scheme administrator who makes a payment in accordance with the Diffuse Mesothelioma Payment Scheme;”;
- (c) after the definition of “Compensation Recovery Unit” insert—
 - ““Diffuse Mesothelioma Payment Scheme” means the scheme established by the Diffuse Mesothelioma Payment Scheme Regulations 2014(a);”;
- (d) in the definition of “lump sum payments” for the words ““lump sum payments” are” to “applies” substitute—
 - ““lump sum payment” means a payment to which any of paragraphs (a) to (d) of section 1A(2) of the Act applies(b);”;
- (e) for the definition of “recoverable lump sum payments” substitute—
 - ““recoverable lump sum payment”—
 - (a) in relation to a compensation payment which is a payment under the Diffuse Mesothelioma Payment Scheme, means any specified lump sum payment which is recoverable by virtue of regulation 4A;
 - (b) in relation to any other description of compensation payment, means any lump sum payment which is recoverable by virtue of regulation 4;”;
- (f) after that definition insert—
 - ““specified lump sum payment” means a lump sum payment within paragraph (a), (b) or (c) of section 1A(2) of the Act;”.

3.—(1) Regulation 4 (recovery of lump sum payments)(c) is amended as follows.

(2) For the heading, substitute “Recovery of lump sum payments from compensation payment made otherwise than under Diffuse Mesothelioma Payment Scheme”.

(3) In paragraph (1)—

- (a) for “a payment to which section 1A(2) of the Act applies (“a lump sum payment”)” substitute “a lump sum payment”; and
- (b) after sub-paragraph (a) insert—
 - “(ab) the compensation payment is not a payment under the Diffuse Mesothelioma Payment Scheme; and”.

(4) After paragraph (1) insert—

“(1A) The Secretary of State may also recover the amount of lump sum payments to which section 1A(2)(d) of the Act applies where—

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- (a) S.I. 2014/916; relevant amending instrument is S.I. 2014/917.
 - (b) Section 1A(2)(d) was inserted by paragraph 17(1) and (2) of Schedule 1 to the Mesothelioma Act 2014.
 - (c) Section 1(2) of the Social Security (Recovery of Benefits) Act 1997 (“the 1997 Act”) was amended by paragraphs 1 and 2 of Schedule 1 to the Mesothelioma Act 2014 so as to add a payment under the Diffuse Mesothelioma Payment Scheme to the list of payments referred to in section 1(1)(a) of the 1997 Act which are made in consequence of any accident, injury or disease. Section 1A(5) of the 1997 Act defines “compensation payment” as being a payment within section 1(1)(a) of that Act.

- (a) any such payment has been, or is likely to be, made to one or more dependants of P;
- (b) by virtue of a notice given under section 3(3) of the 2014 Act, any other dependant of P has ceased to be eligible for a lump sum payment to which section 1A(2)(d) of the Act applies; and
- (c) a compensation payment in consequence of P's diffuse mesothelioma is made to that other dependant."

4. After regulation 4 insert—

“Recovery of specified lump sum payments from compensation payment under Diffuse Mesothelioma Payment Scheme

4A. The Secretary of State may recover the amount of a specified lump sum payment where—

- (a) a compensation payment in consequence of diffuse mesothelioma is made to or in respect of P, or to a dependant of P, and a lump sum payment has been, or is likely to be, made to P or in respect of P;
- (b) that compensation payment is a payment under the Diffuse Mesothelioma Payment Scheme; and
- (c) the disease in consequence of which the specified lump sum payment was made is also diffuse mesothelioma.”.

5. In regulation 6 (compensation payments to which these Regulations apply)—

- (a) renumber the existing provision as paragraph (1);
- (b) at the beginning of that paragraph insert “Except as stated in paragraph (2)”; and
- (c) after that paragraph insert—

“(2) In any case where—

- (a) the lump sum payment falls within section 1A(2)(d) of the Act; or
- (b) paragraphs (a) to (c) of regulation 4A apply;

these Regulations apply only in relation to compensation payments which are made on or after 31st March 2014.”.

6. In regulation 7 (exempted trusts and payments), in paragraph (1)(g)(a) after “diseases”, insert “provided that any payment made in respect of diffuse mesothelioma out of this Trust is not made to or in respect of a person who has received a payment under the Diffuse Mesothelioma Payment Scheme”.

7. In regulation 9 (information contained in certificates) after paragraph (2) insert—

“(2A) Where a certificate has been applied for by the scheme administrator, the certificate may contain information which would assist the scheme administrator in making a determination in accordance with the Diffuse Mesothelioma Payment Scheme.”.

8.—(1) Regulation 10 (liability to pay Secretary of State amount of lump sum payments) is amended as follows.

(2) In paragraph (3) for “is less than the lump sum payments” substitute “is less than the recoverable lump sum payments”.

(3) After paragraph (4) insert—

“(4A) In any case where recoverable lump sum payments include one or more lump sum payments to which section 1A(2)(d) of the Act applies, the liability referred to in paragraph

(a) Sub-paragraph (g) was inserted by S.I. 2009/1494.

(1) in respect of those lump sum payments arises prior to any such liability in respect of any other recoverable lump sum payment.”.

(4) In paragraph (7) at the beginning insert “Subject to paragraph (8),”.

(5) After paragraph (7) insert—

“(8) In the case of a lump sum payment to which section 1A(2)(d) of the Act applies which has been made to one or more dependants of P, this regulation also applies to the extent that the compensator is making any of the payments listed in—

- (a) paragraph (7)(a), where such a payment is made to another dependant of P who has ceased to be eligible for a lump sum payment to which section 1A(2)(d) of the Act applies by virtue of having given notice under section 3(3) of the 2014 Act;
- (b) paragraph (7)(b), where such a dependant is an intended beneficiary of that payment.”.

9.—(1) Regulation 12 (reduction of compensation) is amended as follows.

(2) In paragraph (1) at the beginning, insert “Except where regulation 12A applies,”.

(3) In paragraph (7) at the beginning insert “Subject to paragraph (8),”.

(4) After paragraph (7) insert—

“(8) In the case of a lump sum payment to which section 1A(2)(d) of the Act applies which has been made to one or more dependants of P, this regulation also applies to the extent that the compensator is making any of the payments listed in—

- (a) paragraph (7)(a), where such a payment is made to another dependant of P who has ceased to be eligible for a lump sum payment to which section 1A(2)(d) of the Act applies by virtue of having given notice under section 3(3) of the 2014 Act;
- (b) paragraph (7)(b), where such a dependant is an intended beneficiary of that payment.”.

10. After regulation 12 insert—

“Reduction of compensation payment under Diffuse Mesothelioma Payment Scheme

12A.—(1) This regulation applies in a case where the compensation payment is a payment under the Diffuse Mesothelioma Payment Scheme.

(2) The gross amount of the compensation payment—

- (a) is to be reduced by the amount of the recoverable lump sum payments; and
- (b) accordingly, is to be reduced to nil in any case where the amount of the recoverable lump sum payments is equal to or greater than the gross amount of the compensation payment.

(3) The reduction in paragraph (2) is to be made before any reduction in respect of recoverable benefits under section 8A of the Act^(a).

(4) Any claim by a person to receive the compensation payment is to be treated for all purposes as discharged if—

- (a) the person is paid the gross amount of the compensation payment less the amount of the recoverable lump sum payments; or
- (b) the amount of the recoverable lump sum payments is equal to or greater than the gross amount of the compensation payment and the person is given a statement by the scheme administrator saying that the compensation payment has been reduced to nil.

(5) In the application of paragraph (4) to any case where the compensation payment is to be made to two or more dependants of P, the deduction of the amount of the recoverable

(a) Section 8A was inserted into the Act by paragraph 3 of Schedule 1 to the Mesothelioma Act 2014.

lump sum payments is to be made before calculating the amount to be paid to each dependant in accordance with regulation 16(2)(iii) of the Diffuse Mesothelioma Payment Scheme Regulations 2014.”.

11.—(1) Regulation 13 (regulation 12: supplementary) is amended as follows.

(2) In the heading, for “Regulation 12” substitute “Regulations 12 and 12A”.

(3) In each of paragraphs (1), (2), (3)(a) and (4)(a), after “regulation 12” insert “or 12A”.

(4) In paragraph (2), after “regulation 4(1)(a)” insert “or 4A(a) (as the case may be)”.

12. In paragraph (4) of regulation 14 (reduction of compensation: complex cases), after “regulation 12” (in both places where it occurs) insert “or 12A”.

13. In regulation 16 (information to be provided by P)—

(a) in the heading, after “provided by P” insert “and the scheme administrator”;

(b) renumber the existing provision as paragraph (1);

(c) in that paragraph, for “section 23(2) of the Act” substitute “section 23(2)(a) of the Act”;
and

(d) after that paragraph, insert—

“(2) For the purposes of section 23(2)(b) of the Act, the prescribed information is the amount of the lump sum payment falling within section 1A(2)(d) and the date on which it was paid.”.

14. In regulation 17 (provision of information), in paragraph (b), after “from P” insert “or the scheme administrator, as the case may be”.

15. In regulation 19 (adjustments)—

(a) after paragraph (5), insert—

“(5A) This paragraph applies where—

(a) the amount of the payment made by the compensator was calculated under regulation 12A; and

(b) the Secretary of State has made a payment under paragraph (1).

(5B) Where paragraph (5A) applies, the amount of the compensation payment is to be recalculated under regulation 12A to take account of the fresh certificate and the compensator must pay the amount of the increase (if any) to the applicant as defined by regulation 3 of the Diffuse Mesothelioma Payment Scheme Regulations 2014.”;

(b) after paragraph (7), insert—

“(8) This paragraph applies where—

(a) the amount of the payment made by the compensator was calculated under regulation 12A; and

(b) the fresh certificate issued after the review or appeal was required as a result of any applicant for payment under the Diffuse Mesothelioma Payment Scheme supplying to the compensator information knowing it to be incorrect or insufficient, and the compensator supplying that information to the Secretary of State without knowing it to be incorrect or insufficient.

(9) Where paragraph (8) applies, the compensator may recalculate the compensation payment under regulation 12A to take account of the fresh certificate and may require the repayment by the applicant responsible for supplying the incorrect or insufficient information of the difference (if any) between the payment made and the payment so recalculated.”.

16.—(1) Schedule 1 (which modifies certain provisions of the Social Security (Recovery of Benefits) Act 1997 (“the 1997 Act”) in their application to recovery of lump sum payments) is amended as follows.

- (2) In paragraph 1 after “regulation 4” insert “or 4A”.
- (3) In paragraph 4 (which modifies section 11 of the 1997 Act)(a)—
- (a) in sub-paragraphs (c)(i) and (d)(i), for “lump sum payments” substitute “recoverable lump sum payments”;
 - (b) in sub-paragraph (g), after “section 8” insert “or 8A” and after “regulation 12” insert “or 12A”.
- (4) In paragraph 6 (which modifies section 13 of the 1997 Act)(b), for the words from “as if in” to the end, substitute—
- “as if in subsection (2)—
- (a) in paragraph (b), there were omitted “of recoverable benefits”;
 - (b) in paragraph (bb), for “section 7(2)(a)” there were substituted “regulation 11(2)(a) of the Lump Sum Payments Regulations”;
 - (c) in paragraph (c), for “section 8 or 8A the injured person” there were substituted “regulation 12 or 12A of the Lump Sum Payments Regulations) P.”.
- (5) In paragraph 7 (which modifies section 14 of the 1997 Act), in sub-paragraph (c), after “section 8” insert “or 8A” and after “regulation 12” insert “or 12A”.
- (6) In paragraph 11 (which modifies section 19 of the 1997 Act), in sub-paragraph (c)(ii), after “section 8” insert “or 8A” and after “regulation 12” insert “or 12A”.
- (7) In paragraph 12 (which modifies section 20 of the 1997 Act), in sub-paragraph (b), after “section 8” insert “or 8A” and after “regulation 12” insert “or 12A”.
- (8) In paragraph 13 (which modifies section 21 of the 1997 Act), in sub-paragraph (a), after “sections 6 and 8” insert “or 8A” and after “regulations 10 and 12” insert “or 12A”.
- (9) In paragraph 15 (which modifies section 23 of the 1997 Act)—
- (a) after sub-paragraph (b) insert—
 - “(ba) after subsection (1)(b) there were inserted—
 - “and
 - (c) where the compensation which is sought is a payment under the Diffuse Mesothelioma Payment Scheme, subsection (6A) applies.”;”;
 - (b) in sub-paragraph (c), in the text substituted for subsection (2)—
 - (i) the words from “the prescribed information” to the end become paragraph (a) of subsection (2); and
 - (ii) after paragraph (a) insert—
 - “(b) the prescribed information about any lump sum payment which falls within section 1A(2)(d) must be given to the Secretary of State by the scheme administrator.”.
- (10) In paragraph 18 (which modifies section 29 of the 1997 Act)(c), in sub-paragraph (b)(iii), after “regulation 4” insert “or 4A”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008 (“the 2008 Regulations”).

First they amend the 2008 Regulations for the purpose, of enabling recovery of lump sum payments made under the Pneumoconiosis etc. (Workers’ Compensation) Act 1979 (“the 1979 Act”), the Child Maintenance and Other Payments Act 2008 (“the 2008 Act”) and any extra

(a) Section 11(2) is amended by paragraph 5 of Schedule 1 to the Mesothelioma Act 2014.
 (b) Section 13(2) was amended by paragraph 6 of Schedule 1 to the Mesothelioma Act 2014.
 (c) A definition of “scheme administrator” was inserted into section 29 by paragraph 7 of Schedule 1 to the Mesothelioma Act 2014.

statutory payments related to the 1979 Act from scheme payments made under the Diffuse Mesothelioma Payment Scheme set up by the Mesothelioma Act 2014 (“the 2014 Scheme”).

Secondly, they make amendments to the 2008 Regulations to make provision for the recovery of Diffuse Mesothelioma Payment Scheme payments from any later paid compensation: for example damages awarded by a court where a compensator comes to light after a 2014 Scheme payment has been made .

Regulation 2 introduces the Schedule to the Regulations where the amendments are detailed.

Paragraph 2 of the Schedule inserts a number of new definitions in regulation 1(2) of the 2008 Regulations. In particular paragraph 2 amends the definition of a “compensator” to take account of the scheme administrator of the 2014 Scheme being a compensator. It amends (sub-paragraph (d)) the definition of a “lump sum payment” and inserts (sub-paragraph (f)) a new definition of “specified lump sum payment”; this helps to distinguish between a payment made under the 2014 Scheme when it is recoverable in the same way as any other lump sum payment from later paid compensation and where the 2014 Scheme payment is itself the compensation payment and where the other specified lump sum payments are liable to be recovered from it.

Paragraph 3 makes a number of consequential amendments to regulation 4 of the 2008 Regulations and in particular inserts a new paragraph (1A) into regulation 4. This new paragraph enables the Secretary of State to recover the value of a 2014 Scheme payment from later paid compensation where the compensation is paid to a dependant who has declined a payment under the 2014 Scheme.

Paragraph 4 inserts a new regulation 4A into the 2008 Regulations. This new regulation enables the Secretary of State to recover lump sum payments paid under the 1979 Act, the 2008 Act or those payments made on an extra statutory basis from 2014 Scheme payments.

Paragraph 5 makes amendments to regulation 6 of the 2008 Regulations to make it clear that the 2008 Regulations only apply to 2014 Scheme payments made on or after the relevant provisions of the Mesothelioma Act 2014 came into force.

Paragraph 6 makes an amendment to regulation 7(1)(g) so as to provide that a payment made from the UK Asbestos Trust is not exempt from recovery if it is made following a payment under the 2014 Scheme .

Paragraph 7 inserts a new paragraph (2A) into regulation 9 of the 2008 Regulations to provide that the certificate of recoverable benefit may contain information which might assist the scheme administrator of the Diffuse Mesothelioma Payment Scheme in reaching a determination under the Mesothelioma Act 2014 Act.

Paragraph 8 makes consequential amendments to regulation 10 of the 2008 Regulations. In particular a new paragraph (4A) is inserted into regulation 10 which has the effect of giving priority to the recovery of payments under the 2014 Scheme over the recovery of other lump sum payments. An additional paragraph (paragraph 8) is also added to regulation 10 which makes clear that the recovery of a 2014 Scheme payment can be made from compensation paid to a dependant who opted not to receive a 2014 Scheme payment under section 3(3) of the 2014 Act. An equivalent amendment is made to regulation 12 of the 2008 Regulations by paragraph 9.

Paragraph 10 inserts a new regulation 12A into the 2008 Regulations. This new regulation makes provision for the Secretary of State to recover recoverable lump sum payments from a 2014 Scheme payment. It also makes provision for the reduction to be effected before any payment is divided between two or more eligible dependants under the 2014 Scheme.

Paragraphs 11-14 make a number of consequential amendments to regulations 13, 14, 16, 17 and 19 of the 2008 Regulations.

Paragraph 15 makes amendments to regulation 19 of the 2008 Regulations to deal with cases where the compensation payment is a payment under the 2014 Scheme and adjustments need to be made to the amount of benefit recovery after a payment has been made under that scheme.

Paragraph 16 makes a number of amendments to Schedule 1 to the 2008 Regulations. That Schedule modifies the Social Security (Recovery of Benefits) Act 1997 in respect of the recovery of lump sum payments. Paragraph 16 amends those modifications to take account of the amendments made by these Regulations.

A full impact assessment has not been produced for the instrument as it has no impact on the private sector or on civil society organisations.

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