Draft Regulations laid before Parliament under section 17(2)(a) of the Mesothelioma Act 2014, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

PAYMENT SCHEME

The Diffuse Mesothelioma Payment Scheme Regulations 2014

Made - - - - 2014

Coming into force in accordance with regulation 2

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 1 and section 17(4) of the Mesothelioma Act 2014(**1**).

In accordance with section 17(2)(a) of that Act, as these are the first regulations under section 1, a draft has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation

1. These Regulations may be cited as the Diffuse Mesothelioma Payment Scheme Regulations 2014.

Commencement and ceasing to have effect

2.—(1) These Regulations, apart from regulation 7(2)(c), come into force on the day after the day on which they are made.

(2) Regulation 7(2)(c) comes into force when sections 4 to 7 (relevant persons) of the Third Parties (Rights against Insurers) Act 2010(**2**) come into force.

(3) Regulation 7(2)(a) and (b) cease to have effect when regulation 7(2)(c) comes into force.

Interpretation

3. In these Regulations—

"the Act" means the Mesothelioma Act 2014;

"applicant" unless the context requires otherwise, means a person who makes an application(**3**) on the basis that they are eligible under sections 2 or 3 of the Act;

"relevant deduction" means a deduction of—

(**1**) 2014 c. 1
(**2**) 2010 c. 10.
(**3**) As defined in section 18(1) of the Act.

(a) the amount of the recoverable benefit which is deducted by virtue of—

(i) section 8A of the Social Security (Recovery of Benefits) Act 1997(**4**), or

(ii) article 10A of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**5**); or

(b) the amount of a lump sum payment which is recovered under regulations made under—

(i) section 1A of the Social Security (Recovery of Benefits) Act 1997(**6**), or

(ii) article 3A of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**7**).

Establishment of the scheme

4. These Regulations establish the Diffuse Mesothelioma Payment Scheme for making payments to eligible people with diffuse mesothelioma and eligible dependants under sections 2 and 3 of the Act.

Scheme administrator

General duties of the scheme administrator

5.—(1) The scheme administrator must provide such information in connection with the operation of the scheme as the scheme administrator considers appropriate.

(2) Information provided under paragraph (1) may, in particular, relate to—

(a) the procedure for making an application;

(b) the medical evidence likely to be required to support a diagnosis of diffuse mesothelioma;

(c) any other evidence likely to be required to establish that a person is eligible under section 2 or 3 of the Act for a payment under the scheme;

(d) the determination of an application;

(e) reviews and appeals.

(3) The scheme administrator must—

(a) in considering an application, apply the normal civil standard of proof (the balance of probability) when deciding all matters of fact which require evidence to establish them;

(b) make the application forms available on request free of charge; and

(c) take all steps it considers reasonable to publicise the scheme.

(4) The scheme administrator must ensure that a sufficient number of persons with appropriate training and qualifications are available to decide the matters likely to arise in determining an application.

(**4**) 1997 c.27; section 8A was inserted by the Mesothelioma Act 2014, Schedule 1, paragraph 3.
(**5**) S.I. 1997/1183 (N.I. 12); article 10A was inserted by the Mesothelioma Act 2014, Schedule 1, paragraph 12.
(**6**) Section 1A was inserted by section 54 of the Child Maintenance and Other Payments Act 2008 (c. 6).
(**7**) Article 3A was inserted by section 8 of the Mesothelioma, etc., Act (Northern Ireland) 2008 (c. 9).

Eligibility

First diagnosis of diffuse mesothelioma and specified payments

6.—(1) For the purposes of sections 2 and 3 of the Act (eligible people with diffuse mesothelioma and eligible dependants) and of these Regulations—

(a) the meaning of "first diagnosed" is to be determined in accordance with Schedule 1 to these Regulations; and

(b) "specified payment" means a payment specified in Schedule 2 to these Regulations.

Circumstances in which a person is to be treated as unable to bring an action

7.—(1) For the purposes of section 18(3) of the Act, the circumstances in which a person is not to be treated as able to bring an action are that an employer against whom the person is able to bring an action in respect of diffuse mesothelioma can be found or does exist, but—

(a) that employer is a person whose circumstances are such that they fall within any of the relevant provisions; and

(b) no other employer or insurer can be found or exists against whom the person can maintain an action for damages.

(2) In this regulation "relevant provisions" means—

(a) section 1 of the Third Parties (Rights against Insurers) Act 1930(**8**);

(b) section 1 of the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930(**9**);

(c) sections 4-7 of the Third Parties (Rights against Insurers) Act 2010;

(d) section 130 of the Health and Social Care Act 2012(**10**) and any regulations made under that section;

(e) articles 41 to 43 of the Water and Sewerage Services (Northern Ireland) Order 2006(**11**); or

(f) section 17 of the Energy Act (Northern Ireland) 2011(**12**).

Applications and procedure

The application

8.—(1) Any application must be made in writing to the scheme administrator in such format as the scheme administrator may approve.

(2) An application must contain or be accompanied by such information or other material as the scheme administrator may reasonably require for the purposes of enabling the scheme administrator to determine whether the applicant is eligible under section 2 or 3 of the Act for a payment under the scheme.

(3) The scheme administrator may, in particular, require an applicant to provide the information or other material which is specified in Part 1 of Schedule 3 to these Regulations.

(4) Part 2 of Schedule 3 sets out the key issues that must be addressed by the information and other material required under Part 1 of that Schedule.

(**8**) 1930 c. 25.
(**9**) 1930 c.19.
(**10**) 2012 c.7.
(**11**) S.I. 2006/3336 (N.I. 21).
(**12**) 2011 c. 6.

(5) The scheme administrator may require the applicant to provide evidence in support of the application, including in particular evidence dealing with matters specified in Part 3 of Schedule 3.

(6) Unless paragraph (7) applies, the application must also contain a statement signed by the applicant that the applicant believes the matters stated as facts in the application to be true.

(7) Where the applicant is unable to sign the statement on account of the applicant's physical or mental condition, a person other than the applicant may sign the statement on the application stating that the person who signs it believes the matters stated as facts in the application to be true.

Time limit for making an application

9.—(1) The application by a person applying on the basis that they are eligible under section 2 of the Act (eligible people with diffuse mesothelioma) must be sent so that it is received by the scheme administrator—

(a) before the end of the day that is 3 years after the date on which the applicant was first diagnosed with diffuse mesothelioma; or

(b) if the applicant was diagnosed with diffuse mesothelioma on or after 25th July 2012 but before these Regulations came into force, before the end of the day that is 3 years after the day on which these Regulations came into force.

(2) The application by a person applying on the basis that they are eligible under section 3 of the Act (eligible dependants) must be sent so that it is received by the scheme administrator—

(a) before the end of the day that is 3 years after the date on which the person with diffuse mesothelioma was first diagnosed with the disease; or

(b) if the person with diffuse mesothelioma died on or after 25th July 2012 but before these Regulations came into force, before the end of the day that is 3 years after the day on which these Regulations came into force.

(3) The scheme administrator may extend the time limits in paragraph (1) or (2) by a further period where the scheme administrator considers that there was good reason for the failure to make the application before the end of the periods mentioned in those paragraphs and for any delay since then in making the application.

Power of scheme administrator to obtain additional documents or evidence

10. Before making a determination of an application, the scheme administrator may—

(a) in accordance with regulation 11, request an applicant to provide such additional documents or evidence in support of the application as the scheme administrator may reasonably require for the purposes of determining the application;

(b) in accordance with regulation 13, request a person other than the applicant to provide specified documents where it appears to the scheme administrator that the document is reasonably required for the purposes of determining the application.

Request to applicants to provide additional documents or evidence

11.—(1) A request for any additional documents or evidence ("requested material") which is made under regulation 10(a) must—

(a) be made in writing; and

(b) specify such period, which must not be less then 14 days from the date of the written request, as is reasonable in all the circumstances within which the requested material is to be provided.

(2) Where any requested material is not provided within the specified period, the scheme administrator must—

(a) send a written notice to the applicant reminding the applicant of the request; and

(b) specify a further reasonable period, which must not be less than 7 days from the date of the written notice, within which the requested material is to be provided.

(3) On the expiry of that further period, the scheme administrator must determine the application on the basis of all the information relating to the application which is then before the scheme administrator whether or not the requested material has been provided.

(4) Any material which the scheme administrator receives after the application is determined is to be treated as a request made by the applicant for a review of the determination under regulation 21.

(5) If, in all the circumstances, the scheme administrator is satisfied that it is appropriate to do so, the scheme administrator may meet the reasonable costs of the applicant which are incurred in obtaining any requested material.

Duty of applicants

12.—(1) As soon as reasonably practicable, an applicant must inform the scheme administrator of—

(a) any matter that comes to the applicant's attention which may be relevant to the question whether the applicant is eligible under section 2 or 3 of the Act for a payment under the scheme; and

(b) any change in the applicant's address for correspondence.

(2) An applicant must, so far as reasonably practicable, provide any other assistance to the scheme administrator which the scheme administrator requests in connection with the consideration of the application.

Request to third parties to provide documents

13.—(1) A request which is made under regulation 10(b) for a person other than the applicant to provide any document may be made following a request made by an applicant to the scheme administrator or on the scheme administrator's own initiative.

(2) The request must be made in writing and must specify—

(a) the document or documents to be produced; and

(b) such period, which must not be less than 14 days from the date of the written request, as is reasonable in all the circumstances within which any specified document is to be produced.

(3) Where any requested document is not produced within the specified period, the scheme administrator must—

(a) send a written notice to the person reminding the person of the request; and

(b) specify a further reasonable period, which must not be less than 7 days from the date of the notice, within which the requested document is to be produced.

(4) The scheme administrator may apply to the court for an order under paragraph (5) where the person has failed to produce a requested document within the further period referred to in paragraph (3).

(5) A court may make an order requiring a person to produce any document requested if it considers it appropriate to do so.

(6) "Court" means—

(a) in England and Wales or Northern Ireland a county court or the High Court, or