STATUTORY RULES OF NORTHERN IRELAND

2014 No. 162

SOCIAL SECURITY

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

Made - - - -	*6th June 2014*
Coming into operation	*1st July 2014*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by section 165(4) to (6) of the Social Security Administration (Northern Ireland) Act 1992(**1**) and Articles 3A(1) and (3), 16(2) to (4), 21, 23(3) and 25(1), (2), (6A) and (7) of, and paragraph 4 of Schedule 1 to, the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997(**2**) and now vested in it(**3**).

This Rule contains only regulations made by virtue of, or consequential upon, paragraph 18 of Schedule 1 to the Mesothelioma Act 2014(**4**).

Citation and commencement

1. These Regulations may be cited as the Social Security (Recovery of Benefits) (Lump Sum Payments) (Amendment) Regulations (Northern Ireland) 2014 and shall come into operation on 1st July 2014.

Amendment of the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations

2.—(1) The Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008(**5**) are amended in accordance with paragraphs (2) to (16).

(2) For regulation 1(2) (interpretation) substitute—

"(2) In these Regulations—

"the 2014 Act" means the Mesothelioma Act 2014;

(**1**) 1992 c. 8; section 165(6) was amended by Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

(**2**) S.I. 1997/1183 (N.I. 12); Article 3A was inserted by section 8 of the Mesothelioma, etc., Act (Northern Ireland) 2008 (c. 9 (N.I.)) and amended by paragraph 18 of Schedule 1 to the Mesothelioma Act 2014 (c. 1) and Articles 16(4) and 21 were amended by paragraph 16 of, and Article 25(6A) was inserted by paragraph 20 of, Schedule 1 to that Act

(**3**) *See* Article 8(b) of S.R. 1999 No. 481

(**4**) 2014 c. 1

(**5**) S.R. 2008 No. 355; relevant amending Regulations are S.R. 2009 No. 239

"the Order" means the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997;

"compensator" means a person making a compensation payment and includes the scheme administrator who makes a payment in accordance with the Diffuse Mesothelioma Payment Scheme;

"the Diffuse Mesothelioma Payment Scheme" means the scheme established by the Diffuse Mesothelioma Payment Scheme Regulations 2014(**6**);

"lump sum payment" means a payment to which any of sub-paragraphs (a) to (d) of Article 3A(2) of the Order(**7**) applies, except in relation to regulation 18(1)(b);

"recoverable benefit" has the same meaning as in Article 3(4)(c) of the Order;

"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;

"specified lump sum payment" means a lump sum payment within Article 3A(2)(a), (b) or (c) of the Order.".

(3) In regulation 4 (recovery of lump sum payments)—

(a) in the heading at the end add "from compensation payment made otherwise than under the Diffuse Mesothelioma Payment Scheme";

(b) in paragraph (1)—

(i) for "a payment to which Article 3A(2) of the Order applies ("a lump sum payment")" substitute "a lump sum payment",

(ii) omit "and" after sub-paragraph (a), and

(iii) after sub-paragraph (a) insert—

"(ab) the compensation payment is not a payment under the Diffuse Mesothelioma Payment Scheme; and"; and

(c) after paragraph (1) insert—

"(1A) The Department may also recover the amount of lump sum payments to which Article 3A(2)(d) of the Order applies where—

(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 Article 3A(2)(d) of the Order applies; and

(c) a compensation payment in consequence of P's diffuse mesothelioma is made to that other dependant.".

(4) After regulation 4 insert—

(**6**) S.I. 2014/916; relevant amending instrument is S.I. 2014/917

(**7**) Sub-paragraph (d) was inserted by paragraph 18(2) of Schedule 1 to the Mesothelioma Act 2014

"**Recovery of specified lump sum payments from compensation payment under the Diffuse Mesothelioma Payment Scheme**

4A. The Department 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 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) of that regulation;

(b) in that paragraph at the beginning insert "Except as stated in paragraph (2),"; and

(c) after that paragraph add—

"(2) In any case where—

(a) the lump sum payment falls within Article 3A(2)(d) of the Order; or

(b) regulation 4A applies;

these Regulations apply only in relation to compensation payments which are made on or after the coming into operation of the Social Security (Recovery of Benefits) (Lump Sum Payments) (Amendment) Regulations (Northern Ireland) 2014.".

(6) In regulation 7(1)(g)(**8**) (exempted trusts and payments) 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) In regulation 10 (liability to pay Department amount of lump sum payments)—

(a) in paragraph (3) for "is less than the lump sum payments" substitute "is less than the recoverable lump sum payments";

(b) after paragraph (4) insert—

"(4A) In any case where recoverable lump sum payments include one or more lump sum payments to which Article 3A(2)(d) of the Order applies, the liability referred to in paragraph (1) in respect of those lump sum payments arises prior to any such liability in respect of any other recoverable lump sum payments.";

(c) in paragraph (7) at the beginning insert "Subject to paragraph (8),"; and

(d) after paragraph (7) add—

"(8) In the case of a lump sum payment to which Article 3A(2)(d) of the Order 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 Article 3A(2)

(**8**) Sub-paragraph (g) was inserted by regulation 2 of S.R. 2009 No. 239

(d) of the Order 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) In regulation 12 (reduction of compensation)—

(a) in paragraph (1) at the beginning insert "Except where regulation 12A applies,";

(b) in paragraph (7) at the beginning insert "Subject to paragraph (8),"; and

(c) after paragraph (7) add—

"(8) In the case of a lump sum payment to which Article 3A(2)(d) of the Order 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 Article 3A(2)(d) of the Order 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 the 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 Article 10A of the Order(**9**).

(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 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) In regulation 13 (regulation 12: supplementary)—

(**9**) Article 10A was inserted by paragraph 12 of Schedule 1 to the Mesothelioma Act 2014