

EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY (RECOVERY OF BENEFITS) (LUMP SUM PAYMENTS) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2009

S.R. 2009 No. 239

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under section 165(4) of the Social Security Administration (Northern Ireland) Act 1992 and Article 3A of, and paragraph 4 of Schedule 1 to, the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008 to exempt the UK Asbestos Trust and the EL Scheme Trust established for the benefit of sufferers of asbestos-related diseases from the lump sum compensation recovery scheme.
- 2.2 Regulation 1 provides for the title and commencement.
- 2.3 Regulation 2 amends regulation 7(1) of the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations (Northern Ireland) 2008 to exempt the UK Asbestos Trust established on 10th October 2006 and the EL Scheme Trust established on 23rd November 2006 for the benefit of sufferers of asbestos-related diseases from the lump sum compensation recovery scheme established under the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997.

3. Background

- 3.1 From 1 October 2008, lump sum payments made under the Pneumoconiosis etc., (Workers' Compensation) (Northern Ireland) Order 1979 and the Mesothelioma, etc., Act (Northern Ireland) 2008 are recoverable from subsequent compensation paid in respect of the same disease ("the lump sum compensation recovery scheme"). This includes compensation awarded to former Turner and Newall employees who, because of the unique position in which they find themselves, are financially worse off than they would have been prior to that date.

3.2 Federal Mogul, a United States of America company bought a number of UK companies including Turner & Newall and related subsidiaries. As a result of Federal Mogul's administration status in the United States, the asbestos liabilities arising from Turner & Newall and other UK subsidiaries will not be met in full. The UK Asbestos Trust and the EL Scheme Trust were set up to meet the asbestos claims of former employees. However, there are still insufficient funds to meet claims in full and the vast majority of sufferers of asbestos-related diseases will receive substantially less than full compensation.

4. Consultation

4.1 As the Regulations make, in relation to Northern Ireland, only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain they do not have to be submitted to the Social Security Advisory Committee.

5. Equality Impact

5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on proposals for these Regulations and concluded that, as they are entirely beneficial and apply equally to all recipients of compensation payments from the Trusts, they do not have significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1 These Regulations do not require a Regulatory Impact Assessment as they do not impose a cost on business, charities or voluntary bodies.

7. Financial Implications

7.1 The proposals are not expected to have significant financial implications. Arrangements are in place with the Department for Work and Pensions in Great Britain for future payments from the Mesothelioma scheme to be funded from the recovery of lump sum payments UK-wide to ensure that claimants in Northern Ireland receive the same rate of payments as those in Great Britain.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—

(a) is not incompatible with any of the Convention rights,

(b) is not incompatible with Community law,

(c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and

(d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Regulations are the Social Security (Recovery of Benefits) (Lump Sum Payments) (Amendment) Regulations 2009 and come into force on 13th July 2009. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.