



# Child Maintenance and Other Payments Act 2008

## 2008 CHAPTER 6

### PART 4 **E+W+S**

#### LUMP SUM PAYMENTS: MESOTHELIOMA ETC.

##### *Mesothelioma lump sum payments*

#### 46 Lump sum payments **E+W+S**

- (1) A claim for a payment under this Part may be made by—
  - (a) a person with diffuse mesothelioma, or
  - (b) a dependant of a person who, immediately before death, had diffuse mesothelioma.
- (2) The Secretary of State must make the payment to the claimant if satisfied that the conditions of entitlement in section 47 are fulfilled.
- (3) Regulations—
  - (a) may prescribe the amount of any payment;
  - (b) may prescribe different amounts for different cases or classes of cases or for different circumstances.
- (4) In this Part—

“dependant” has the meaning given by section 3 of the Pneumoconiosis etc. (Workers' Compensation) Act 1979 (c. 41) (“the 1979 Act”);

“diffuse mesothelioma” has the same meaning as in the 1979 Act.
- (5) Where, because of section 3(1)(b) or (d) of the 1979 Act (children, siblings etc.), a payment may be claimed by two or more persons, the payment is to be made to one of them or divided between some or all of them as the Secretary of State thinks fit.

*Status: Point in time view as at 29/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Child Maintenance and Other Payments Act 2008, Part 4. (See end of Document for details)*

### Commencement Information

- II** S. 46 wholly in force; s. 46 not in force at Royal Assent see s. 62; s. 46(3) in force for certain purposes at 10.6.2008 and otherwise at 1.10.2008 by S.I. 2008/1476, art. 3(1)(a){(2)(a)}, Sch.

## 47 Conditions of entitlement **E+W+S**

- (1) In the case of a person who has diffuse mesothelioma, the conditions of entitlement are—
- (a) that no payment within subsection (3) has been made in consequence of the disease;
  - (b) that the person is not eligible for any payment in consequence of the disease that is of a description prescribed by regulations;
  - (c) that such requirement, if any, as may be prescribed by regulations as to the person's connection with the United Kingdom is satisfied.
- (2) In the case of a dependant of a person who, immediately before death, had diffuse mesothelioma, the conditions of entitlement are—
- (a) that no payment within subsection (3) has been made in consequence of the disease to that or another dependant or to the deceased or the deceased's personal representatives;
  - (b) that the dependant is not, and the deceased was not, eligible for any payment in consequence of the disease that is of a description prescribed by regulations;
  - (c) that such requirement, if any, as may be prescribed by regulations as to the deceased's connection with the United Kingdom is satisfied.
- (3) The payments referred to in subsections (1)(a) and (2)(a) are—
- (a) a payment under this Part or under corresponding provision made for Northern Ireland;
  - (b) a payment under the 1979 Act or under corresponding provision made for Northern Ireland;
  - (c) an extra-statutory payment;
  - (d) damages or a payment in settlement of a claim for damages;
  - (e) a payment of a description prescribed by regulations.
- (4) A payment is to be disregarded for the purposes of subsection (1)(a) or (2)(a) if it has been, or is liable to be, repaid—
- (a) under section 49 of this Act or under corresponding provision made for Northern Ireland;
  - (b) under section 5 of the 1979 Act or under corresponding provision made for Northern Ireland;
  - (c) under the terms of an extra-statutory payment;
  - (d) in circumstances prescribed for the purposes of this section by regulations.
- (5) In this section “extra-statutory payment” has the meaning given by section 1A(5)(d) of the Social Security (Recovery of Benefits) Act 1997 (c. 27).

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*Changes to legislation: There are currently no known outstanding effects for the Child Maintenance and Other Payments Act 2008, Part 4. (See end of Document for details)*

#### Commencement Information

- I2** S. 47 wholly in force; s. 47 not in force at Royal Assent see s. 62; s. 47(1)(b)(c)(2)(b)(c)(3)(e)(4)(d) in force for certain purposes at 10.6.2008 and otherwise at 1.10.2008 by S.I. 2008/1476, art. 3(1)(a){(2)(a)}, Sch.

#### 48 Determination of claims **E+W+S**

- (1) A claim under section 46 must be made in the manner and within the period prescribed by regulations.
- (2) Regulations may prescribe different periods for different cases or classes of cases or for different circumstances.
- (3) Regulations may in particular provide that no claim may be made in cases where the prescribed period expired before the commencement of section 46 (or would have done but for any discretion to extend it).
- (4) The Secretary of State may, before determining any claim under section 46, appoint a person to inquire into any question arising on the claim, or any matters arising in connection with it, and to report on the question, or on those matters, to the Secretary of State.

#### Commencement Information

- I3** S. 48 wholly in force; s. 48 not in force at Royal Assent see s. 62; s. 48(1)-(3) in force for certain purposes at 10.6.2008 and otherwise at 1.10.2008 by S.I. 2008/1476, art. 3(1)(a){(2)(a)}, Sch.

#### 49 Reconsideration **E+W+S**

- (1) Subject to subsection (2), the Secretary of State—
  - (a) may reconsider a determination that a payment should not be made under this Part, on the ground that there has been a material change of circumstances since the determination was made; and
  - (b) may reconsider a determination either that a payment should or that a payment should not be made under this Part, on the ground that the determination was made in ignorance of, or was based on a mistake as to, a material fact.
- (2) Regulations must prescribe the manner in which and<sup>[F1]</sup>may prescribe] the period within which—
  - (a) an application may be made to the Secretary of State for reconsideration of a determination; or
  - (b) the Secretary of State may institute such a reconsideration without an application.
- (3) Section 48(4) applies in relation to any reconsideration of a determination under this section as it applies in relation to the determination of a claim.
- (4) Subsection (5) applies if—
  - (a) whether fraudulently or otherwise, any person misrepresents or fails to disclose any material fact, and

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- (b) in consequence of the misrepresentation or failure, a payment is made under this Part.
- (5) The person to whom the payment was made is liable to repay the amount of that payment to the Secretary of State unless that person can show that the misrepresentation or failure occurred without that person's connivance or consent.
- (6) Except as provided by subsection (5), no payment under this Part is recoverable by virtue of a reconsideration of a determination under this section.
- (7) Any sums repaid to the Secretary of State by virtue of subsection (5) are to be paid into the Consolidated Fund.

#### Textual Amendments

**F1** Words in s. 49(2) inserted (25.2.2013 for specified purposes, 29.4.2013 in so far as not already in force) by [Welfare Reform Act 2012 \(c. 5\)](#), s. 150(3), [Sch. 11 para. 16](#); [S.I. 2013/358](#), art. 2(1), [Sch. 1 paras. 18, 24](#); [S.I. 2013/983](#), art. 8

#### Modifications etc. (not altering text)

**C1** S. 49 wholly in force; s. 49 not in force at Royal Assent see s. 62; s. 49(2) in force for certain purposes at 10.6.2008 and s. 49 otherwise in force at 1.10.2008 by [S.I. 2008/1476](#), [art. 3\(1\)\(a\)](#){(2)(a)}, [Sch.](#)

## 50 Appeal to [<sup>F2</sup>First-tier Tribunal] **E+W+S**

- (1) A person who has made a claim under section 46 may appeal against a determination made by the Secretary of State—
- (a) on the claim, or
  - (b) on reconsideration under section 49 of a determination made on the claim.

[<sup>F3</sup>(1A) Regulations may provide that, in such cases or circumstances as may be prescribed, a person may appeal against a determination made on a claim only if the Secretary of State has decided whether to reconsider the determination under section 49.

- (1B) The regulations may in particular provide that that condition is met only where—
- (a) the decision of the Secretary of State was on an application,
  - (b) the Secretary of State considered issues of a specified description, or
  - (c) the decision of the Secretary of State satisfied any other condition specified in the regulations.]

(2) Subject to regulations under subsection (4)(c), the Secretary of State must refer any appeal to [<sup>F4</sup>the First-tier Tribunal]

(3) On an appeal the tribunal may substitute for the determination concerned any determination which could have been made in accordance with this Part.

- (4) Regulations may make provision—
- (a) as to the manner in which, and the time within which, an appeal may be made;
  - (b) <sup>F5</sup>.....
  - (c) for the purpose of enabling an appeal under subsection (1)(a)[<sup>F6</sup>(or, where in accordance with regulations under subsection (1A) there is no right of appeal, any purported appeal)] to be treated as an application for reconsideration under section 49 of the determination made on the claim.

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*Changes to legislation: There are currently no known outstanding effects for the Child Maintenance and Other Payments Act 2008, Part 4. (See end of Document for details)*

#### Textual Amendments

- F2** S. 50 heading: words substituted (3.11.2003) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 9(1), [Sch. 3 para. 226\(a\)](#)
- F3** S. 50(1A)(1B) inserted (25.2.2013 for specified purposes, 29.4.2013 in so far as not already in force) by [Welfare Reform Act 2012 \(c. 5\)](#), s. 150(3), [Sch. 11 para. 17\(2\)](#) (with s. 102(7)–(9)); S.I. 2013/358, art. 2(1), Sch. 1 paras. 18, 24; S.I. 2013/983, art. 8
- F4** Words in s. 50(2) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 9(1), [Sch. 3 para. 226\(b\)](#)
- F5** S. 50(4)(b) omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 9(1), [Sch. 3 para. 226\(c\)](#)
- F6** Words in s. 50(4)(c) inserted (25.2.2013 for specified purposes, 29.4.2013 in so far as not already in force) by [Welfare Reform Act 2012 \(c. 5\)](#), s. 150(3), [Sch. 11 para. 17\(3\)](#); S.I. 2013/358, art. 2(1), Sch. 1 paras. 18, 24; S.I. 2013/983, art. 8

#### Commencement Information

- I4** S. 50 wholly in force; s. 50 not in force at Royal Assent see s. 62; s. 50(4)(c) in force for certain purposes at 10.6.2008 and otherwise at 1.10.2008 by [S.I. 2008/1476](#), [art. 3\(1\)\(a\)](#){(2)(a)}, Sch.

## 51 Appeal to Social Security Commissioner **E+W+S**

**F7** .....

#### Textual Amendments

- F7** S. 51 omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 9(1), [Sch. 3 para. 227](#)

## 52 Minors and people who lack capacity **E+W+S**

- (1) This section applies where a payment under this Part falls to be made to—
- a person aged under 18, or
  - a person who lacks capacity within the meaning of the Mental Capacity Act 2005 (c. 9) (or, in Scotland, who is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)) in relation to financial matters.
- (2) Subject to section 46(5) the payment is to be made for that person's benefit by paying it to such trustees as the Secretary of State may appoint.
- (3) The trustees are to hold the payment on such trusts or, in Scotland, for such purposes and on such conditions as the Secretary of State may declare.

## 53 Regulations: Part 4 **E+W+S**

- (1) A reference in this Part to regulations is a reference to regulations made by the Secretary of State.
- (2) The power to make regulations under this Part—
- is exercisable by statutory instrument;
  - includes power to make such incidental, supplementary or transitional provision as the Secretary of State thinks fit;

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- (c) may be exercised so as to provide for a person to exercise a discretion in dealing with any matter.

[<sup>F8</sup>(2A) The power to make regulations under section 50(1A) may be exercised—

- (a) in relation to all cases to which it extends, in relation to those cases but subject to specified exceptions or in relation to any specified cases or classes of case;
- (b) so as to make, as respects the cases in relation to which it is exercised—
- (i) the full provision to which it extends or any lesser provision (whether by way of exception or otherwise);
  - (ii) the same provision for all cases, different provision for different cases or classes of case or different provision as respects the same case or class of case but for different purposes of this Act;
  - (iii) provision which is either unconditional or is subject to any specified condition.]

- (3) No regulations may be made under section 46[<sup>F9</sup>or 50(1A)] unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.

- (4) No regulations may be made under any provision of section 47 if they are the first regulations to be made under that section, unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.

- (5) A statutory instrument that—

- (a) contains regulations under this Part, and
- (b) is not subject to a requirement that a draft of the instrument be laid before, and approved by a resolution of, each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F8** S. 53(2A) inserted (25.2.2013 for specified purposes, 29.4.2013 in so far as not already in force) by Welfare Reform Act 2012 (c. 5), s. 150(3), **Sch. 11 para. 18(2)**; S.I. 2013/358, art. 2(1), Sch. 1 paras. 18, 24; S.I. 2013/983, art. 8

**F9** Words in s. 53(3) inserted (25.2.2013 for specified purposes, 29.4.2013 in so far as not already in force) by Welfare Reform Act 2012 (c. 5), s. 150(3), **Sch. 11 para. 18(3)**; S.I. 2013/358, art. 2(1), Sch. 1 paras. 18, 24; S.I. 2013/983, art. 8

#### Modifications etc. (not altering text)

**C2** S. 53 wholly in force; s. 53 not in force at Royal Assent see s. 62; s. 53 in force for certain purposes at 10.6.2008 and otherwise at 1.10.2008 by S.I. 2008/1476, **art. 3(1)(a){(2)(a)}**, Sch.

### *Recovery of mesothelioma and other lump sum payments*

#### 54 **Amendment of Social Security (Recovery of Benefits) Act 1997** **E+W+S**

After section 1 of the Social Security (Recovery of Benefits) Act 1997 (c. 27) insert—

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### **“1A Lump sum payments: regulation-making power**

- (1) The Secretary of State may by regulations make provision about the recovery of the amount of a payment to which subsection (2) applies (a “lump sum payment”) where—
  - (a) a compensation payment in consequence of a disease is made to or in respect of a person (“P”) to whom, or in respect of whom, a lump sum payment has been, or is likely to be, made, and
  - (b) the compensation payment is made in consequence of the same disease as the lump sum payment.
- (2) This subsection applies to—
  - (a) a payment made in accordance with the Pneumoconiosis etc. (Workers' Compensation) Act 1979 (“the 1979 Act”),
  - (b) a payment made in accordance with Part 4 of the Child Maintenance and Other Payments Act 2008, and
  - (c) an extra-statutory payment (within the meaning given by subsection (5) (d) below).
- (3) Regulations under this section may, in particular—
  - (a) make provision about the recovery of the amount of a lump sum payment made to or in respect of a dependant of P;
  - (b) make provision enabling the recovery of the amount of a lump sum payment from a compensation payment (including provision enabling the recovery of an amount which reduces the compensation payment to nil);
  - (c) enable the amount of a lump sum payment made before commencement to be recovered from a compensation payment made after commencement;
  - (d) make provision about certificates in respect of lump sum payments;
  - (e) apply any provision of this Act, with or without modifications.
- (4) References in subsection (1) to a payment made in consequence of a disease—
  - (a) 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, but
  - (b) do not include references to a payment mentioned in Part 1 of Schedule 1.
- (5) In this section—
  - (a) “commencement” means the date on which this section comes into force,
  - (b) “compensation payment” means a payment within section 1(1)(a) above,
  - (c) “dependant” has the meaning given by section 3 of the 1979 Act, and
  - (d) “extra-statutory payment” means a payment made by the Secretary of State to or in respect of a person following the rejection by the Secretary of State of a claim under the 1979 Act.”

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*Changes to legislation: There are currently no known outstanding effects for the Child Maintenance and Other Payments Act 2008, Part 4. (See end of Document for details)*

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#### **Commencement Information**

- I5** S. 54 wholly in force; s. 54 not in force at Royal Assent see s. 62; s. 54 in force for certain purposes at 10.6.2008 and otherwise at 1.10.2008 by S.I. 2008/1476, art. 3(1)(b){(2)(a)}



**Status:**

Point in time view as at 29/04/2013.

**Changes to legislation:**

There are currently no known outstanding effects for the Child Maintenance and Other Payments Act 2008, Part 4.