



Mesothelioma Act 2014

2014 CHAPTER 1

Diffuse Mesothelioma Payment Scheme

1 Power to establish the scheme

- (1) The Secretary of State may by regulations establish a scheme called the Diffuse Mesothelioma Payment Scheme for making payments to—
 - (a) eligible people with diffuse mesothelioma, and
 - (b) eligible dependants of those who have died with diffuse mesothelioma.
- (2) Later sections of this Act set out things that must be included in the scheme and some of the things that may be included.

Eligibility

2 Eligible people with diffuse mesothelioma

- (1) A person diagnosed with diffuse mesothelioma is eligible for a payment under the scheme if—
 - (a) a relevant employer has negligently or in breach of statutory duty caused or permitted the person to be exposed to asbestos,
 - (b) the person was first diagnosed with the disease on or after 25 July 2012,
 - (c) the person has not brought an action for damages in respect of the disease against the relevant employer or any insurer with whom the employer maintained employers' liability insurance at the time of the person's exposure to asbestos,
 - (d) the person is unable to bring an action for damages in respect of the disease against any employer of the person or any insurer with whom such an employer maintained employers' liability insurance (because they cannot be found or no longer exist or for any other reason), and
 - (e) the person has not received damages or a specified payment in respect of the disease and is not eligible to receive a specified payment.

(2) In this section—

“first diagnosed” has the meaning to be given to it by the scheme;

“relevant employer” means an employer who, at the time of the person’s exposure to asbestos—

(a) was required by the compulsory insurance legislation to maintain insurance covering any liability arising because of the exposure to asbestos, or

(b) would have been required by the compulsory insurance legislation to maintain insurance covering any liability arising because of the exposure to asbestos if the legislation had been in force at that time;

“specified payment” has the meaning to be given to it by the scheme.

3 Eligible dependants

(1) A dependant of a person who has died with diffuse mesothelioma is eligible for a payment under the scheme if —

(a) the person with the disease was eligible for a payment under the scheme (see section 2) but did not make an application in accordance with the scheme,

(b) no one has brought an action for damages in respect of the disease under the fatal accidents legislation, or on behalf of the estate of the person with the disease, against the relevant employer or any insurer with whom the employer maintained employers’ liability insurance at the time of that person’s exposure to asbestos,

(c) no one is able to bring an action for damages in respect of the disease under the fatal accidents legislation, or on behalf of the estate of the person with the disease, against any employer of that person or any insurer with whom such an employer maintained employers’ liability insurance (because they cannot be found or no longer exist or for any other reason), and

(d) no one has received damages or a specified payment in respect of the disease or is eligible to receive a specified payment.

(2) Where a person who has died with diffuse mesothelioma is first diagnosed with the disease following his or her death and would have been eligible for a payment under the scheme if the diagnosis had been made immediately before the death, assume for the purposes of subsection (1)(a) that the person was eligible for a payment under the scheme.

(3) A person ceases to be an eligible dependant if the person gives notice in accordance with the scheme that he or she does not want a payment (and this may increase a payment for other dependants - see section 4(2)(b)).

(4) Where a person with diffuse mesothelioma died on or after 25 July 2012 but before this Act came into force, assume for the purposes of subsections (1)(a) and (2) that this Act has been in force since immediately before the death.

(5) In this section—

“first diagnosed” has the meaning to be given to it by the scheme;

“specified payment” has the meaning to be given to it by the scheme.

Payments and procedure

4 Payments

- (1) The amount of a payment under the scheme is to be determined in accordance with the scheme.
- (2) The scheme—
 - (a) may provide for the amount of the payment to depend on the age of the person with diffuse mesothelioma, and
 - (b) must ensure that where there are two or more eligible dependants, the amount for each of them is the amount for a single eligible dependant divided by the number of eligible dependants in the case in question.
- (3) The scheme may—
 - (a) make provision for payments to be made subject to conditions (including conditions as to how a payment may be used), and
 - (b) in particular, give the scheme administrator power to decide when to impose conditions or what conditions to impose.
- (4) The scheme may make provision for payments to be repaid (in whole or in part) in specified circumstances.
- (5) An amount that falls to be repaid under subsection (4) is recoverable by the scheme administrator as a debt.
- (6) The scheme must provide that where an eligible person has made an application in accordance with the scheme and has died before the payment is made, the payment must be made to his or her personal representatives.

5 Applications and procedure

- (1) The scheme may deal with the procedure for the making and deciding of applications and, in particular, may—
 - (a) impose time limits for making an application or taking other steps;
 - (b) enable the scheme administrator to require a person to produce documents;
 - (c) make other provision about evidence.
- (2) The scheme may enable a court to order a person to comply with a requirement to produce documents.

6 Reviews and appeals

- (1) The scheme—
 - (a) must give an applicant the right to request a review of a decision taken under the scheme, and
 - (b) may require or allow reviews in other circumstances.
- (2) The scheme may contain provision about initiating and deciding reviews (including provision imposing time limits).
- (3) The scheme must confer a right of appeal to the First-tier Tribunal against a decision taken on a review.

- (4) In a case where a person makes an application and then dies, the reference in subsection (1)(a) to an applicant is to be read as a reference to his or her personal representatives.

Scheme administration

7 Scheme administration

- (1) The Secretary of State may—
- (a) administer the scheme, or
 - (b) make arrangements for a body to administer the scheme.
- (2) Arrangements under subsection (1)(b)—
- (a) may include provision for payments by the Secretary of State;
 - (b) may allow the body to arrange for someone else to administer the scheme or any part of the scheme on behalf of the body;
 - (c) may include provision about bringing the arrangements to an end.
- (3) Arrangements under subsection (1)(b) may be made with—
- (a) a company formed by the Secretary of State under the Companies Act 2006 for that purpose,
 - (b) a body corporate established by the Secretary of State by regulations under this paragraph for that purpose, or
 - (c) any other body.
- (4) A body administering the scheme in accordance with arrangements under subsection (1)(b) is not to be regarded as exercising functions of the Secretary of State or as acting on behalf of the Secretary of State.
- (5) The Secretary of State may by regulations make transitional provision for when there is a change in the scheme administrator (including provision modifying the application of any enactment).
- (6) For the purposes of this Act, a reference to administering the scheme includes carrying out any functions conferred by or under any enactment on the scheme administrator.

8 Unauthorised disclosure of information: offence

- (1) A person involved in the administration of the scheme must not, without lawful authority, disclose information which—
- (a) was acquired in connection with the administration of the scheme, and
 - (b) relates to a particular person who is identified in the information or whose identity could be deduced from it.
- (2) A disclosure is made with “lawful authority” only if—
- (a) it is made for the purposes of the administration of the scheme,
 - (b) it is made for the purpose of preventing or detecting crime,
 - (c) it is made in accordance with any enactment or an order of a court or tribunal,
 - (d) it is made for the purposes of proceedings before a court or tribunal, or
 - (e) it is made with consent given by or on behalf of the person to whom the information relates or the person’s personal representatives.

- (3) A person who breaches subsection (1) commits an offence (for penalties, see section 9).
- (4) It is a defence for a person charged with the offence under subsection (3) to prove that he or she reasonably believed—
 - (a) that the disclosure was made with lawful authority, or
 - (b) that someone had, with lawful authority, previously disclosed the information to the public.
- (5) In this section “person involved in the administration of the scheme” means a person who is or has been—
 - (a) the scheme administrator,
 - (b) a person providing services to the scheme administrator, or
 - (c) an officer or employee of a person within paragraph (a) or (b).

9 Unauthorised disclosure of information: penalties etc

- (1) A person guilty of an offence under section 8 is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.
- (2) A person guilty of an offence under section 8 is liable—
 - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine;
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.
- (3) The court by or before which a person is convicted of an offence under section 8 may order the destruction of a document containing the information disclosed in breach of that section or, if the information disclosed is held in some other form, may order its erasure.
- (4) Where an offence under section 8 committed by a body corporate—
 - (a) is committed with the consent or connivance of an officer, or
 - (b) is attributable to neglect on the part of an officer,the officer as well as the body corporate is guilty of the offence.
- (5) Where an offence under section 8 committed by a Scottish partnership—
 - (a) is committed with the consent or connivance of a partner, or
 - (b) is attributable to neglect on the part of a partner,the partner as well as the Scottish partnership is guilty of the offence.
- (6) In this section—
 - “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;
 - “officer”, in relation to a body corporate, means—
 - (a) a director, manager, secretary or other similar officer of the body corporate, or
 - (b) a person purporting to act in any such a capacity;

“partner”, in relation to a Scottish partnership, includes any person who was purporting to act as a partner in the partnership.

- (7) In relation to an offence committed in England and Wales before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (2)(a) above to “12 months” is to be read as a reference to “6 months”.
- (8) In relation to an offence committed in England and Wales before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (2)(a) above to a fine is to be read as a reference to a fine not exceeding the statutory maximum.

Recovery of payments etc

10 Power of scheme administrator to help people bring proceedings

- (1) Where a payment is made under the scheme, the scheme administrator may help a person to bring relevant proceedings (for example by conducting proceedings or by giving advice or financial help).
- (2) “Relevant proceedings” means—
- (a) proceedings by the person with diffuse mesothelioma against—
 - (i) an employer for the negligence or breach of statutory duty mentioned in section 2(1)(a), or
 - (ii) an insurer with whom the employer maintained insurance covering that liability,
 - (b) proceedings by any other person against the employer or insurer for damages under the fatal accidents legislation in respect of the death of the person with diffuse mesothelioma, or
 - (c) any appeal arising out of proceedings within paragraph (a) or (b).
- (3) In subsection (2) a reference to a person includes a reference to his or her personal representatives.
- (4) The scheme may include provision about the scheme administrator’s functions under this section, including provision as to the circumstances in which the scheme administrator may help a person to bring proceedings.
- (5) The Secretary of State may by regulations amend subsection (2) to include other proceedings (which may be proceedings against someone other than an employer or insurer).

11 Recovery of benefits etc from payments and recovery of payments

Schedule 1 contains amendments to other legislation. Broadly—

- Part 1 allows benefits and other sums to be recovered from scheme payments,
- Part 2 allows scheme payments to be recovered from compensation, and
- Part 3 contains related amendments to do with information sharing.

Relationship with other legislation

12 Exclusion of payments under other legislation

Schedule 2 contains amendments to other legislation to ensure that where an application is made under the scheme a person does not receive certain other payments.

Levy on insurers

13 The levy

- (1) The Secretary of State must make regulations requiring active insurers to pay a levy with a view to meeting the costs of the Diffuse Mesothelioma Payment Scheme during any given period.
- (2) In deciding the total amount of the levy for a period the Secretary of State—
 - (a) may take account of estimated as well as actual costs;
 - (b) may deduct the amount of any sums recovered or expected to be recovered under the recovery of benefits legislation during the period in respect of scheme payments made during the period or before it.
- (3) In deciding the total amount of the first levy the Secretary of State may reduce it to reflect any amount of costs to be met by the Secretary of State.
- (4) In deciding the total amount of the levy for each of the first 4 periods, the Secretary of State must have regard to the desirability of the total amount of the levy for each of those periods being the same (or if those periods are not equal, the same pro rata) even if that means the amount for a period does not match the costs for that particular period.
- (5) The regulations may require different active insurers to pay different amounts based on criteria relating to their relative market share in the reference period (and may provide for their relative market share to be determined in whatever way the Secretary of State thinks appropriate).
- (6) The regulations may make provision about—
 - (a) information to be published or given to active insurers by the Secretary of State;
 - (b) payment of the levy, including the timing of payments;
 - (c) recovery of the levy.
- (7) In this section—

“active insurer” means a person who, at any time during the reference period, was an authorised insurer within the meaning of the compulsory insurance legislation;

“the costs of the Diffuse Mesothelioma Payment Scheme” means—

 - (a) the cost of payments under the scheme,
 - (b) the costs of administering the scheme, and
 - (c) any costs incurred by the Secretary of State to establish a body with whom to make arrangements under section 7(1)(b);

“the recovery of benefits legislation” means—

 - (a) the Social Security (Recovery of Benefits) Act 1997, or

Status: This is the original version (as it was originally enacted).

(b) the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (S.I. 1997/1183 (N.I. 12));

“reference period” means a 12-month period determined in accordance with the regulations, and a reference period may be a period before this Act was passed.

14 Collecting information for purposes of levy

- (1) The Secretary of State may require an active insurer to provide information for the purposes of working out how much to require different insurers to pay towards the levy under section 13.
- (2) If the active insurer fails without reasonable excuse to comply with the requirement the relevant court may, on an application made by the Secretary of State, order the active insurer to comply with the requirement.
- (3) The relevant court may also order the active insurer to give the Secretary of State other information that the insurer could be required to provide under subsection (1).
- (4) In this section “the relevant court” means—
 - (a) the High Court in England and Wales or Northern Ireland, or
 - (b) the Court of Session in Scotland.

Insurance disputes

15 Technical Committee to decide certain insurance disputes

- (1) The Secretary of State may make arrangements with a body to establish a committee called the Technical Committee which, if established in accordance with the arrangements, has the functions given by this section.
- (2) If a question arises between a potential insurance claimant and an insurer about whether an employer maintained employers’ liability insurance with the insurer at a particular time, the Technical Committee has jurisdiction to decide that question.
- (3) The Technical Committee’s decision is binding on the insurer and any potential insurance claimant who was given an opportunity to make representations, unless the matter is referred to arbitration under section 16.
- (4) The Technical Committee does not have jurisdiction to decide a question that has already been decided by a court.
- (5) A certificate by the Secretary of State that a specified committee has been established in accordance with arrangements under subsection (1) is conclusive evidence of that fact in relation to the period for which the certificate is in force.
- (6) Arrangements under subsection (1) may, in particular, include requirements about—
 - (a) the composition of the Technical Committee or the appointment of its members;
 - (b) the Technical Committee’s procedure or how its procedure is to be determined (including requirements for its procedures to be approved by the Secretary of State);
 - (c) review by the Technical Committee of its own decisions.

- (7) The Technical Committee’s procedure may, in particular, include provision imposing time limits for making an application for a decision or the taking of other steps.
- (8) In this section “potential insurance claimant” means—
 - (a) a person with diffuse mesothelioma who alleges that the employer is liable for damages in respect of the disease,
 - (b) a person who alleges that the employer is liable for damages under the fatal accidents legislation in respect of the death of a person with diffuse mesothelioma, or
 - (c) an employer alleged by a person within paragraph (a) or (b) to be liable for damages in respect of the disease or death.
- (9) In subsection (8) a reference to a person includes a reference to his or her personal representatives.

16 Challenging decisions of the Technical Committee

- (1) If the Technical Committee has decided a question under section 15(2), any person on whom the decision is binding may, if dissatisfied with the decision, refer the question to arbitration.
- (2) But a person may not refer a question to arbitration until any review process has been exhausted.
- (3) For statutory arbitrations, see—
 - (a) sections 94 to 98 of the Arbitration Act 1996;
 - (b) sections 16 and 17 of the Arbitration (Scotland) Act 2010.
- (4) Until the Arbitration (Scotland) Act 2010 is in force in relation to arbitrations under this section, that Act applies as if it were in force in relation to arbitrations under this section.
- (5) The Secretary of State may by regulations adapt or exclude any provision of the Arbitration (Scotland) Act 2010 in relation to arbitrations under this section (and this power may be used in relation to the 2010 Act during the period when it applies because of subsection (4) of this section or otherwise).

General

17 Regulations under this Act

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) A statutory instrument containing—
 - (a) the first regulations under section 1 (the scheme), or
 - (b) regulations under section 7(3)(b) or 10,may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (3) Any other statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament, unless it contains regulations under section 7(5) only.

- (4) Regulations under this Act may include incidental, supplementary, consequential, transitional, transitory or saving provision.

18 Defined terms used in more than one section of this Act

(1) In this Act—

“application” means an application for a payment under the scheme;

“active insurer” has the meaning given by section 13;

“the compulsory insurance legislation” means—

- (a) the Employers’ Liability (Compulsory Insurance) Act 1969, or
- (b) the Employer’s Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 (S.I. 1972/963 (N.I. 6));

“damages” includes a payment in settlement of a claim for damages;

“dependant”, in relation to a person who has died with diffuse mesothelioma, has the meaning given by section 3(1) of the Pneumoconiosis etc (Workers’ Compensation) Act 1979 (reading the reference to the Secretary of State as a reference to the scheme administrator);

“employers’ liability insurance”, in relation to an employer and a particular time, means insurance that the employer—

- (a) was required by the compulsory insurance legislation to maintain at that time, or
- (b) would have been required by the compulsory insurance legislation to maintain if that legislation had been in force at that time;

“the fatal accidents legislation” means—

- (a) the Fatal Accidents Act 1976,
- (b) the Fatal Accidents (Northern Ireland) Order 1977 (S.I. 1977/1251 (N.I. 18)), or
- (c) section 4 of the Damages (Scotland) Act 2011;

“levy” means a levy under section 13;

“relevant employer” has the meaning given by section 2;

“the scheme” means the Diffuse Mesothelioma Payment Scheme;

“scheme administrator” means the person for the time being administering the scheme (see section 7);

“the Technical Committee” means a committee established in accordance with arrangements under section 15.

- (2) In determining for the purposes of this Act whether an employer would have been required to maintain insurance if the compulsory insurance legislation had been in force at any given time, assume that any exemption that has at any time applied under the following provisions applied at the time in question—

- (a) section 3(1)(a) to (c) of the Employers’ Liability (Compulsory Insurance) Act 1969, and
- (b) Article 7(a) to (c) of the Employer’s Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972.

- (3) The scheme may specify circumstances in which a person is, or is not, to be treated as able to bring an action for the purposes of section 2(1)(d) or 3(1)(c).

19 Commencement

- (1) This Act comes into force on such day or days as the Secretary of State may by order appoint, subject as follows.
- (2) This section and sections 20 and 21 come into force on the day on which this Act is passed.
- (3) The Secretary of State may by order make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.
- (4) An order under subsection (1) may appoint different days for different purposes.
- (5) An order under this section is to be made by statutory instrument.

20 Extent

- (1) This Act extends to—
 - (a) England and Wales,
 - (b) Scotland, and
 - (c) Northern Ireland.
- (2) Any amendment or repeal made by this Act has the same extent as the enactment to which it relates.

21 Short title

This Act may be cited as the Mesothelioma Act 2014.