

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (RECOVERY OF BENEFITS)(LUMP SUM
PAYMENTS) REGULATIONS 2008

2008 No. 1596

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument provides for the application and modification of the Social Security (Recovery of Benefit) Act 1997 and other provisions, enabling the recovery of lump sum payments from civil compensation paid in respect of the same disease.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 These Regulations are being made under the powers in the new section 1A of the Social Security (Recovery of Benefits) Act 1997 which is inserted into that Act by section 54 of the Child Maintenance and Other Payments Act 2008. These regulations are linked to the Mesothelioma Lump Sum Payment (Conditions and Amounts) Regulations 2008 and the Mesothelioma Lump Sum Payments (Claims and Reconsiderations) Regulations 2008.

4.2 The Social Security (Recovery of Benefits) Act 1997 provides for certain social security benefits to be recovered from compensators (usually insurance companies), where the compensator pays civil compensation to a person in respect of an accident, injury or disease and that person has also received a listed benefit, paid as a consequence of the same accident, injury or disease. These Regulations provide for a similar scheme, where lump sum payments made under the DWP's new mesothelioma scheme or the existing lump sum scheme for lung diseases paid either under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 or as an extra-statutory payment in cases where the Secretary of State has rejected a claim made under the 1979 Act, can be recovered from subsequent awards of civil compensation. The lump sum compensation recovery scheme is being introduced to fund the mesothelioma lump sum payment scheme.

4.3 This instrument also exercises powers to make consequential amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure, no statement is required.

7. Policy background

Policy

7.1 On 16 May 2006 the Secretary of State for Work and Pensions announced that DWP and external stakeholders had agreed to work together to identify ways to speed up claims for those with mesothelioma.

7.2 On 20 July 2006 SoS announced a number of interim measures to ensure faster compensation for those with mesothelioma, as well as his intention to put in place a long term solution to ensure that those with mesothelioma can receive compensation in life.

7.3 On 13 March 2007 SoS announced proposals to provide faster compensation to all people with mesothelioma by setting up a cost-neutral scheme that would be funded through the introduction of compensation recovery, both in this scheme and in the existing lump-sum payment scheme for dust-related diseases under the Pneumoconiosis etc (Workers' Compensation) Act 1979, (including an extra-statutory payment made following the rejection by the Secretary of State of a claim made under the 1979 Act).

Consultation

7.4 A consultation period ran from 4 September to 26 November 2006 and a number of meetings with interested stakeholders were arranged in London, Leeds and Glasgow. A summary of responses was published on 1 March 2007. see;

<http://www.dwp.gov.uk/publications/dwp/2007/iidb/mesothelioma-cases-consultation-report.pdf>

A mesothelioma event was held in London on 13 March 2007 at which a wide range of stakeholders discussed the proposed change.

7.5 The mesothelioma scheme 2008 will help up to 600 people a year, who do not currently receive help from the Government with a payment

estimated at £10,000 during the first two years of the operation of the new scheme.

Guidance

7.6 The start of the new compensation recovery scheme will be publicised by way of a press release. In addition the Department's leaflet, GL27 "Compensation and Social Security Benefits", and Guidance Z1 "Recovery of Benefits and NHS Charges" will be updated in October 2008 to contain references to, and guidance for, compliance with the new compensation recovery scheme.

8. Impact

8.1 An assessment of the impact of these regulations on business and the voluntary sector is included in the impact assessment that accompanied the Child Maintenance and Other Payments Bill. The relevant extract is attached. The figures remain up to date.

8.2 These proposals may have a small impact on those government departments that hold asbestos-related liabilities (such as BERR) in their role as employers or managers of liabilities arising from nationalisation or privatisation, who could be subject to compensation recovery in these areas. The impact would be minor when compared to their overall asbestos-related liabilities. BERR estimate their costs to be £0.6m per year. The proposals would add approximately £170,000 (2008/09) and £13,000 (2009/10 onwards) to DWP's administration costs.

9. Contact

Bobby Towers at the Department for Work and Pensions Tel: 0191 2252567 or e-mail: robert.towers@dwp.gsi.gov.uk can answer any queries regarding the instrument.

Extract from Child Maintenance and Other Payments Bill 2007: Regulatory Impact Assessment (Revised) December 2007

Impact on business

146. These proposals would mean that employers and their insurers would not be able to deduct the 1979 Act payments from their settlements of civil compensation; this includes other government departments who have liability for 1979 Act diseases, and the total cost is about £12m per year. The present value of the cost of the proposal over 10 years at 2005 prices is around £100m. This cost can be taken in the context of the Employers' Liability Compulsory Insurance (ELCI) market of about £1 billion per year. The Association of British Insurers is aware of these proposals and has indicated that the legislative timetable should provide its members with the time to make any necessary adjustments to pricing. Although 1979 Act payments would not normally apply where there is an extant employer, there may also be a few cases where an employer comes to light later where, again, they would now be asked to meet their full legal liability. Some large businesses are likely to self-insure and compensation recovery would have the same impact on them as it would have on the insurance industry, but they should not have been benefiting from these payments. There are no records kept of how many firms self-insure. There are no additional information requirements as businesses are already required to notify DWP of any claims and settlements for industrial accidents/diseases for the purposes of Industrial Injuries Disablement Benefit compensation recovery.

Impact on the third sector

147. There is no impact on the third sector. Welfare rights groups and charities were involved in the consultation exercise. Several were represented at the mesothelioma summit and welcomed the proposals on behalf of their customers.