

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (RECOVERY OF BENEFITS) (LUMP SUM PAYMENTS)
(AMENDMENT) REGULATIONS 2014**

2014 No. 1456

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. **Purpose of the instrument**
 - 2.1 This instrument amends the existing social security lump sum payments regulations (S.I. 2008/1596¹) so that existing lump sum payments, such as those made under the Child Maintenance and Other Payments Act 2008², can be recovered from compensation payments made by the Diffuse Mesothelioma Payment Scheme (DMPS). The instrument also enables DMPS lump sum payments to be recovered in the same way as the existing lump sum payments from civil compensation payments.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 These regulations are consequential on amendments made to the Social Security (Recovery of Benefits) Act 1997³ (the 1997 Act) by the Mesothelioma Act 2014⁴.
 - 4.2 The 1997 Act provides for certain social security benefits and lump sum payments to be recovered from compensators 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 or lump sum as a consequence of that accident, injury or disease.
 - 4.3 The Mesothelioma Act 2014 established a scheme of last resort to pay eligible applicants who are unable to find their employer or trace their employer's EL insurer. Amendments made to section 1A of the 1997 Act mean that payments made under the scheme are lump sum payments for the purposes of the 1997 Act. These regulations therefore provide for the recovery of the DMPS lump sum from a civil damages payment, in the event that a compensator is found after a scheme payment has been made.
 - 4.4 Amendments made to section 1 of the 1997 Act also mean that a payment under the DMPS is a compensation payment for the purposes of the 1997 Act. These regulations therefore amend the Social Security (Recovery of Benefits) (Lump Sum

¹ For the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008 see www.dwp.gov.uk/docs/a1-6721.pdf

² For the Child Maintenance and Other Payments Act 2008 see www.legislation.gov.uk/ukpga/2008/6/part/4

³ For the Social Security (Recovery of Benefits) Act 1997 see www.dwp.gov.uk/docs/a1-2701.pdf

⁴ For the Mesothelioma Act 2014 see www.legislation.gov.uk/ukpga/2014/1/pdfs/ukpga_20140001_en.pdf

Payments) Regulations 2008 to allow for listed lump sum payments to be recovered from the Diffuse Mesothelioma Payment Scheme (DMPS) compensation payment.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

5.2 Arrangements have been made to provide for appropriate changes to be made to the equivalent Northern Ireland Statutory rules.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

- 7.1 The 1997 Act provides for listed social security benefits to be recovered from compensators (usually insurance companies) where the compensator pays civil compensation to a person in respect of an injury or disease and that person also received social security benefits, paid as a consequence of the same injury or disease. This ensures that the recipient is not doubly compensated.
- 7.2 Following the introduction of a DWP scheme in 2008 to provide faster compensation to mesothelioma sufferers to ensure that those with mesothelioma can receive compensation in life, Section 54 of the Child Maintenance and Other Payments Act 2008 amended the 1997 Act to include recovery of specified lump sum payments where a civil compensation payment is subsequently obtained.
- 7.3 The DMPS is expected to make payments averaging £123,000 to around 300 eligible sufferers (or their dependants) each year. The payments will be significantly higher than the existing lump sum payment schemes and the amount paid by the scheme could exceed the amount of compensation paid in certain civil compensation cases. To ensure that double compensation is avoided these regulations are made to allow for the recovery of certain listed lump sum payments from that DMPS payment. This ensures that those receiving a compensation payment from the DMPS are treated the same as those pursuing a civil claim.
- 7.4 As mesothelioma sufferers who have received a compensation payment become ineligible for other lump sum payments, recovery of the lump sum payment ensures equitable treatment for all those pursuing compensation.
- 7.5 In addition to the DMPS payment being a compensation payment, these regulations also provide for the recovery of the DMPS payment as a lump sum payment if a liable compensator is subsequently traced and a claim for civil damages made. This ensures that claimants cannot be doubly compensated and also ensures that claimants are treated equitably, as mesothelioma sufferers who have successfully claimed civil damages would be ineligible to receive a DMPS payment.

- Consolidation

7.6 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website legislation.gov.uk . An explanation as to which instruments are maintained on each site is available [here](#).

8. Consultation outcome

- 8.1 As these regulations will be made within six months of the relevant enactment coming into force, they have not been referred to the Social Security Advisory Committee and no specific consultation has been undertaken on this instrument. However there wasn’t any need to carry out a general consultation as the policy of recovering lump sum payments from compensation payments has already been established. The regulations clarify that a payment made by the Diffuse Mesothelioma Payment Scheme (DMPS) is a compensation payment and therefore existing recovery procedures apply. The regulations also set out how lump sums are to be recovered where the DMPS payment is a compensation payment and how the DMPS lump sum payment will be recovered from any subsequent compensation payment for the disease.
- 8.2 The Government’s response to the consultation published on 25 July 2012⁵ and subsequent impact assessments⁶ made clear the intention that lump sum recovery rules were intended to be applied to the scheme that was being announced.

9. Guidance

- 9.1 The Department’s guidance on compensation recovery, “Z1 – Recovery of Benefits and NHS Charges” will be updated in June 2014 to provide guidance on the recovery of lump sum payments from the DMPS compensation payment and for the recovery of the DMPS lump sum from other compensation payments.

10. Impact

- 10.1 There is no impact on business or on civil society organisations.
- 10.2 This measure results in savings to the public sector. The benefit to the public sector is included in the ‘Mesothelioma Payment Scheme and Mandatory Membership of Employer Liability Tracing Office (ELTO)’ Impact Assessments, which can be found at <https://www.gov.uk/government/publications/impact-assessment-mesothelioma-payment-scheme-and-mandatory-membership-of-employer-liability-tracing-office-elto>.

⁵ For Government response to consultation see: <http://webarchive.nationalarchives.gov.uk/+http://www.dwp.gov.uk/docs/elci-compensation-consultation-response.pdf>

⁶ For impact assessments relating to the DMPS see <https://www.gov.uk/government/publications/impact-assessment-mesothelioma-payment-scheme-and-mandatory-membership-of-employer-liability-tracing-office-elto>

10.3 An impact assessment has not been produced for the measure.

11. Regulating small business

11.1 The legislation should not affect small businesses as the amount of compensation paid is reduced by the amount of the lump sum recovery.

12. Monitoring & review

12.1 There are no plans to monitor the changes introduced by this instrument. As explained at paragraphs 7.1-7.5 above, recovery of listed social security benefits and lump sum payments is an established process.

12.2 Issues encountered with recovery of lump sum payments from the Diffuse Mesothelioma Payment Scheme (DMPS) payment or the recovery of the DMPS payment from subsequent civil damages would be highlighted by the independent Oversight Committee that will report to the Secretary of State.

13. Contact

13.1 Kevin Connolly at the Department for Work and Pensions (Tel: 0191 2247827 or email: Kevin.Connolly1@dwp.gsi.gov.uk) can answer any queries regarding the instrument.