

House of Lords Select Committee on Delegated Powers and Regulatory Reform

Mesothelioma Bill

Memorandum from the Department for Work and Pensions

Introduction

1. This memorandum identifies the provisions for delegated legislation in the Mesothelioma Bill (the “Bill”) to be introduced on 9 May 2013. It explains the purpose of the powers, the reason why they are left to delegated legislation and the procedure selected for the powers and why such procedures have been chosen.
2. The Bill seeks to implement many of the proposals set out in the consultation response ‘Government response – Accessing Compensation – Supporting people who need to trace Employers’ Liability Insurance’ published by the Department for Work and Pensions (the “DWP”) on 25 July 2012 (this document is available at <http://www.dwp.gov.uk/docs/elci-compensation-consultation-response.pdf>).
3. Specific details of the powers included in the Bill (as introduced) are set out below. If the powers are amended as the Bill completes stages in the Parliamentary process, then the relevant sections of this memorandum will be revised to reflect the changes.
4. The Bill is organised as follows:
 - Clauses 1-10 – Diffuse Mesothelioma Payment Scheme (the “Scheme”) and related matters;
 - Clause 11 (and Schedule 1) – recovery of benefits (and lump sum payments) from Scheme payments and recovery of Scheme payments from later paid compensation;
 - Clause 12 (and Schedule 2) – relationship with other legislation;
 - Clauses 13-14 – the levy;
 - Clauses 15-16 – the Technical Committee;
 - Clauses 17-21 – general; and
 - Schedules 1 and 2.
5. The main provisions of the Bill establish the Scheme and the Technical Committee, and impose a levy to meet the costs of the Scheme on any person who was an authorised insurer within the meaning of the Employers’ Liability (Compulsory Insurance) Act 1969 and the Employer’s Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order

1972 during a reference period, which will be specified by the Secretary of State. Recovery of benefits and other amounts from Scheme payments, and of Scheme payments from compensation, are provided for by amendments made by the Bill to the Social Security (Recovery of Benefits) Act 1997.

6. Regulation- and order-making powers in the Bill deal with:
 - specifying certain matters, that will determine whether or not a person is eligible to make an application to the Scheme;
 - the amount of a payment under the Scheme;
 - establishing a body corporate to administer the Scheme;
 - transitional provisions in the event of a change in the Scheme administrator;
 - the power of the Scheme administrator to help the person with mesothelioma and his or her relatives bring a claim for damages in respect of the disease against persons other than an employer or employer's liability insurer who may be liable for such damages,
 - requiring active insurers to pay a levy with a view to meeting the costs of the Diffuse Mesothelioma Payment Scheme during any given period.
 - amending the definition of "potential insurance claimant" (the persons who may refer the question of whether an employer maintained employer's liability insurance with an insurer at a particular time to the Technical Committee);
 - adapting or excluding provisions of the Arbitration (Scotland) Act 2010 in relation to statutory arbitrations that the Bill allows for if a relevant claimant is dissatisfied with a decision of the Technical Committee;
 - amending regulation-making powers in the Social Security (Recovery of Benefits) Act 1997 and the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (SI 1997/1183) (N.I. 12) to permit the recovery of lump sum payments (made pursuant to separate statutory schemes) from Scheme payments and of Scheme payments from later compensation paid in respect of the mesothelioma sufferer's disease; and
 - commencement.

7. The following areas of the Bill are not covered by this memorandum because they do not contain any regulation-making powers: measures relating to the unauthorised disclosure of information; collecting information for the purposes of the levy; and the relationship between payments made under the Scheme and lump sum payments made in respect for mesothelioma which are made in accordance with other legislation.

8. The amendments made in Schedule 1 to the Bill to the regulation making powers in section 1A of the Social Security (Recovery of Benefits) Act 1997 and article 3A of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (SI 1997/1183) (N.I. 12) will enable regulations to be made providing for the recovery of lump sum payments from Scheme payments and of Scheme payments from later paid compensation.
9. These powers provide the Secretary of State with the flexibility to make and amend the detailed rules easily and within appropriate timescales. Further they will allow for any future changes in the light of operational experience and other developments whilst ensuring Parliamentary scrutiny is maintained. The power to make regulations in connection with any change in the Scheme administrator over time will allow the Secretary of State to make the appropriate transitional arrangements.

Territorial coverage

10. The Bill extends to England and Wales, Scotland and Northern Ireland.
11. Any amendment of existing legislation has the same extent as the enactment to which such amendment relates.

Parliamentary Scrutiny

12. The DWP has considered in each case the appropriate procedure to be followed in making regulations.
13. Most of the provisions deal with technical or procedural detail. On this basis, it is proposed that the delegated powers to make regulations should be subject to the negative resolution procedure except as otherwise stated in this memorandum.
14. The commentary below on each power sets out which parliamentary procedure has been proposed and why that procedure is considered appropriate.
15. The Committee may wish to note that changes to the Social Security (Recovery of Benefits) Act 1997 to allow for the recovery of benefits from Scheme payments will be submitted to the Social Security Advisory Committee for scrutiny and comment.

General

16. All of the delegated powers, other than the power to establish the Scheme (see clause 1), are exercisable by statutory instrument by the Secretary of State. The annex to this memorandum lists all the clauses containing

delegated powers. Provisions which illustrate how a delegated power must or may be used are not listed, but have been explained where appropriate in this memorandum. The commentary on clauses also includes an explanation of the things that may be dealt with in the Scheme made by the Secretary of State under clause 1.

Analysis of delegated powers by clause

Diffuse Mesothelioma Payment Scheme

Clause 1 Power to establish the scheme

Powers conferred on: Secretary of State

Powers exercised by: Scheme rules

Parliamentary procedure: None

17. Clause 1 gives the Secretary of State the power to establish the Scheme. Subsection (2) makes it clear that the Secretary of State may amend, replace or abolish the Scheme, and subsection (3) requires the Secretary of State to publish it as amended from time to time. Subsection (4) provides that later clauses set out things which must be included in the Scheme and some of the things which may be included. These things are set out in the table below:

Clause number	What the Scheme will do
Clauses 2(2) and 3(5)	must provide meaning of "first diagnosed"
Clause 3(3)	must provide a notice mechanism so that a person who would otherwise be an eligible dependant can confirm to the Scheme administrator that they do not wish to receive a Scheme payment
Clause 4(3), (4) and (6)	may make provision for payments to be made subject to conditions (including conditions as to how a payment may be used) and may give the Scheme administrator power to decide when to impose conditions or what conditions to impose, may make conditions requiring repayment in certain circumstances must provide that where an eligible person with diffuse mesothelioma has made an application in accordance with the Scheme and dies before the payment is made, the payment must be made to his or her personal representatives
Clause 5	may deal with the procedure for the making and deciding of applications, and in particular may impose time limits for making an application or taking other steps, may enable the

	scheme administrator to require a person to produce documents, including providing for the scheme administrator to make an application to the court in this regard, and make provision about evidence
Clause 6(1), (2) and (3)	must give a person or his personal representatives the right to request a review of a decision taken under the Scheme and may require or allow reviews in other circumstances; may contain provision about initiating and deciding reviews including provision imposing time limits; must confer a right of appeal to the First-tier Tribunal against a decision taken on a review
Clause 10(4)	may include provision about Scheme administrator's functions under clause 10 including provisions as to the circumstances in which the Scheme administrator may help a person to bring proceedings.

18. The purpose of this power is to enable the Secretary of State to establish the Scheme and to set out the application process: how applications may be made and how the Scheme administrator will deal with and decide them, how the Scheme administrator will make Scheme payments and carry out associated administrative tasks and the circumstances in which the Scheme administrator will exercise the power in clause 10 about proceedings against later traced employers or their employers' liability insurers.
19. The power given to the Secretary of State to establish the Scheme comes with an obligation to publish the Scheme. The DWP intends to publish the Scheme rules on the websites of both the DWP and the Scheme. The provisions contained in the Scheme will be complex and subject to periodic change and in these circumstances are properly a matter to be left to be dealt with by the Scheme.
20. The Scheme will make a relatively low volume of high value payments each year as the forecast peak of mesothelioma-related deaths is reached in the next few years. This peak reflects the historic use of asbestos and the long latency period of diffuse mesothelioma. The number of payments is expected to decrease over time as the combined effects of reduced asbestos usage and better regulation are reflected.
21. The DWP has considered the balance between putting requirements on the face of the Bill and setting them out in regulations or in the detailed Scheme rules. Any action taken by the Scheme administrator will be constrained by the requirements set out in and made under the Bill on eligibility for Scheme payments and the amount of payments. Once the Scheme is in operation, the negative regulation procedure for the regulations dealing with variable elements, such as payment levels and details of eligibility (described below under clauses 2, 3 and 4), will provide a proportionate level of oversight by

Parliament. Alongside those constraints, dealing with the detail in the Scheme will allow the flexibility to adapt to challenges that may arise in setting up the new Scheme once it starts operating.

Eligibility

Clause 2 Eligible people with diffuse mesothelioma, Clause 3 Eligible dependants and Clause 18 Defined terms

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

22. Clause 2 sets out the conditions which must be satisfied by a person with diffuse mesothelioma in order to be eligible for a payment under the Scheme. Clause 3 sets out the conditions which must be satisfied by the dependant of a person who has died with diffuse mesothelioma in order to be eligible for a payment under the Scheme
23. Regulations made under Clause 18(3) may specify the circumstances in which a person is or is not to be treated as able to bring an action for the purposes of the conditions at clause 2(1)(c) or clause 3(1)(b).
24. Regulations made under Clauses 2(2) and 3(5) will specify the payments, receipt of which disqualify a person from being eligible for a Scheme payment under subsection (1)(d).
25. The purpose of these powers is to ensure that detailed issues concerning eligibility for payments under the Scheme can be set out and kept under review.
26. The power at clause 18(3) has been taken in relation to the conditions at clause 2(1)(c) and 3(1)(b). Those conditions are set out in general terms because there are a number of different reasons why a person may be unable to bring proceedings against a former employer or that employers' Employers' Liability Insurance ("EL") insurer for example where the employer has gone bankrupt or been wound up or otherwise ceased trading, or where the identity of his EL insurer is unknown or the policy document cannot be traced, but it is very difficult to predict in advance what all those reasons may be and it would be very complex to try to do so. This power has been taken in case it is needed in order for the Secretary of State to be able to set out when the Scheme administrator should treat an applicant as able or not able to bring an

action for the purposes of the conditions, should unforeseen difficulties arise at the margins because of the generality of the main test.

27. The purpose of the power at clauses 2(2) and 3(5) is to provide a flexible means of setting out and keeping up to date a list of payments which, if received, disqualify a person from receiving a payment under the Scheme, as contemplated in clauses 2(1)(d) and 3(1)(c). There currently exist a range of compensation schemes, such as the 'Turner and Newall' scheme that was set up to make payments to employees of a company which went into administration. These schemes have been set up to compensate victims of asbestos-related conditions including mesothelioma. Over time new compensation schemes may come into existence, and may need to be added to this list of disqualifying payments. Given such potential changes it would not be appropriate to put a list in the Bill.
28. The negative procedure provides Parliament an appropriate level of oversight over both powers, both initially and in the event that further changes are required.

Payments and procedure

Clause 4 Payments

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative on first use

29. Clause 4(1) makes provision for the amount of a payment to be determined in accordance with regulations. Subsection (2)(a) sets out that the regulations may provide for the amount of payment to depend on the age of the person with diffuse mesothelioma.
30. Under subsection (2)(b), the regulations must provide that where there is more than one eligible dependant, between them they will receive the amount for a single eligible dependant divided by the number in the group. In this regard, clause 3(3) requires the Scheme to put in place a notice mechanism to enable someone who would otherwise be an eligible dependant to confirm to the Scheme administrator that he or she does not wish to receive a Scheme payment, which would in turn increase the amount paid to other eligible dependants in the same group.
31. Clause 4 also provides (at subsections (3) and (4)) that conditions may be attached to payments, including conditions relating to repayment. This is discussed under clause 1 above.

32. The purpose of the regulation-making power is to enable the Secretary of State to set out the tariff payments and to review these amounts on a regular basis.
33. The level of payments made under the Scheme is expected to change on an annual basis through uprating and to be more comprehensively reviewed on a periodic basis, currently proposed to be every five years, to ensure it maintains a differential with average damages paid through civil courts. The proposed annual increase to Scheme payment levels risks eroding the differential between Scheme payments and civil damages if levels of civil damages do not increase correspondingly. A periodic review is necessary to ensure that an incentive is maintained for people with mesothelioma to pursue a civil case wherever possible, even after receipt of a Scheme payment and for the Scheme to be an option of last resort.
34. The first exercise of this power will be subject to the affirmative procedure so that Parliament is able to debate both the mechanisms used to support the uprating decisions as well as the amounts themselves. For subsequent exercises of the power, the negative procedure provides Parliament an appropriate level of oversight as the mechanisms will have been established by Parliament and only the new amounts will require consideration.

Scheme administration

Clause 7 Scheme administration

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: (3)(b) – Affirmative and (5) - None

35. Clause 7 sets out the possible alternative arrangements for administering the Scheme. Under subsection (3), the Secretary of State may by regulations establish a body corporate to administer the Scheme. Regulations made under subsection (5) may make transitional provision in connection with any change in the Scheme administrator.
36. The purpose of the power under subsection (3)(b) is to enable the Secretary of State to set up a new body corporate to administer the Scheme if there is no suitable alternative body in existence and it is decided that this is necessary. There is no immediate intention to use this power, it has been taken to deal with a possible situation which might arise if it became necessary to transfer the functions of the Scheme administrator from an existing provider and no suitable alternative body can be identified to carry

37. The purpose of the power under subsection (5) is to allow the Secretary of State to ensure that there is a smooth transition should the Scheme administrator change at any time. It may be necessary, for example, to transfer obligations incurred by the old Scheme administrator under the Social Security (Recovery of Benefits) Act 1997 to a new administrator.
38. The service delivered by the Scheme administrator will be kept under review by the DWP and stakeholders to ensure it is meeting the intention of the legislation. Should a situation arise in which the DWP considers transferring the functions of the Scheme administrator to another body or assuming the administration functions itself, it is appropriate that the Secretary of State is able to make the regulations bringing about such a change rapidly if necessary. No parliamentary procedure is proposed for regulations made under subsection (5) as any use of these powers would only be for transitional purposes and the effect would be transitory while the administration of the Scheme is transferred between Scheme administrators.

Clause 10 Power of scheme administrator to help people bring proceedings

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

39. Where a payment is made under the Scheme, clause 10 allows the Scheme administrator to help a person to bring civil proceedings against an employer or employers' liability insurance insurer for damages in respect of the disease or death. ("Relevant proceedings" are defined at subsection (2)). The people who may be helped are the person with diffuse mesothelioma; dependants of his who may bring proceedings under the "fatal accidents legislation" which is defined in clause 18 as the Fatal Accidents Act 1976, the Fatal Accidents (Northern Ireland) Order 1977 (S.I. 1977/1251 (N.I. 18)), or section 4 of the Damages (Scotland) Act 2011; and personal representatives: subsection (3).
40. Subsection (4) provides for the Scheme rules to 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.

41. Subsection (5) provides the Secretary of State with a power to make regulations to add other civil proceedings to the list of "relevant proceedings" in subsection (2) so that the Secretary of State may, in the future, extend the assistance to be provided by the Scheme administrator to claims for damages in respect of the mesothelioma made against persons other than the employer and EL insurer.
42. The Secretary of State will consider exercising this power only once the Scheme is operational, and a need can be shown and the necessary safeguards and controls on expenditure are in place. The regulations will be made under the affirmative Parliamentary procedure (see clause 17(2)(b)).

Clause 11 Recovery of benefits and lump sum payments from scheme payments and recovery of scheme payments

43. Clause 11 gives effect to Schedule 1 to the Bill, Parts 1 and 2 of which contain amendments to the Social Security (Recovery of Benefits) Act 1997 ("the 1997 Act") and the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (SI 1997/1183) (N.I. 12) ("the 1997 Order") allowing benefits to be recovered from Scheme payments, and amending regulation-making powers in the 1997 Act and the 1997 Order to enable regulations to be made to provide for lump sum payments to be recovered from Scheme payments and for Scheme payments to be recovered from later compensation.
44. Part 3 of Schedule 1 makes amendments to the 1997 Act and the 1997 Order and the Social Security Act 1998 in connection with information sharing, but no delegated powers are amended.
45. Although Clause 11 does not of itself contain delegated powers, as discussed at paragraph 44 above, the associated Schedule 1 does contain an amendment to existing regulation making powers. This is discussed below.

Levy on insurers

Clause 13 The levy

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

46. Subsection (1) requires the Secretary of State to make regulations to impose a levy on "active insurers" with a view to meeting the cost of the Scheme in

any given period. “Active insurers” are defined in subsection (7) as “a person who, at any time during the reference period, was an authorised insurer within the meaning of the compulsory insurance legislation.” Clause 18 defines “the compulsory insurance legislation” as the Employers’ Liability (Compulsory Insurance) Act 1969 or the Employer’s Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 (SI 1972/963 (N.I.6)) and subsection (7) provides that the reference period is a 12 month period to be determined in accordance with the regulations.

47. Subsections (2) to (4) set out what the Secretary of State must have regard to, what he may take account of and what he may deduct in deciding the total amount of the levy in a given period.
48. Subsection (5) provides that 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 that relative market share is to be determined by the Secretary of State in whatever way he thinks appropriate). Under subsection (6), the regulations may make provision about information to be published or given to active insurers by the Secretary of State; payment of the levy, including the timing of payments; and recovery of the levy. Subsection (7) provides meanings of terms used, including “the costs of the Diffuse Mesothelioma Payment Scheme” which are defined as:
 - (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).
49. The purpose of the power is to require the Secretary of State to impose a levy on active insurers with a view to meeting the costs of a Scheme established under clause 1 during any given period. Regulations, which will be made annually under the negative procedure (see clause 17(3)), will set the total amount of the levy for the period. It is expected that the levy will be apportioned between active insurers based on their relative market share in a reference period: subsection (5). This means the amount paid by insurers may vary on an annual basis to reflect their actual activity in the employers’ liability insurance market in the related reference period. The regulations will also make provision about the information to be published by the Secretary of State (detailing how the total levy has been calculated and what the reference period is) and given to active insurers by the Secretary of State (about the amount they must pay towards the levy and when payment is due): subsection (6). The regulations will also include provision about the recovery of unpaid amounts of levy. The intention is that amounts due will be recoverable by the Secretary of State as a debt.
50. The amount of the levy will vary on an annual basis, reflecting the likely fluctuation in the forecast volume of Scheme payments and associated

51. This power is exercisable by regulations to meet the requirements of Managing Public Money in relation to the collection of a tax. The regulations will be subject to the negative procedure. The first regulations will set the total amount of the levy for the first period and also set out how apportionment is to be carried out and associated provision clarifying for active insurers how the levy will be raised and recovered. Thereafter annual regulations will set the total amount of the levy. This process meets government accounting requirements. The negative procedure provides Parliament with appropriate oversight of the exercise of this power, as it is a very narrow power the parameters of which are clearly set out in the clause.

Clause 15 Technical Committee to decide certain insurance disputes

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

52. The Technical Committee is to be established to decide questions arising between a potential insurance claimant and an insurer about whether an employer maintained employers' liability insurance with an insurer at a particular time. The Technical Committee will operate entirely independently of the Scheme. Its process will benefit anyone seeking to trace employers' liability insurance providers in mesothelioma cases, not only people who might be eligible for a payment under the Scheme. In relevant cases, where there is a dispute about cover, it will make its decision before an application is made for a Scheme payment. The definition of "potential insurance claimant" limits the cases in which such questions may arise to cases where a person with diffuse mesothelioma, or a relative, or personal representative of such a person where that person has died, alleges that the employer is liable for damages in respect of the disease. Under subsection (10), the Secretary of

53. The purpose of the power is to allow the Technical Committee to make binding rulings on employers' liability insurance cover, for conditions or injuries other than diffuse mesothelioma. There are no current plans to exercise the power but it is taken to ensure that matters of cover for other conditions could be addressed by the Technical Committee in the future once the efficacy of the Technical Committee has been established.
54. Currently in mesothelioma cases the question of cover can be contested by insurers. The intention is that Technical Committee will be a forum for obtaining decisions efficiently and on a consistent basis, so that an individual will be able to establish relatively quickly whether he or she can bring civil proceedings against that insurer. Where no insurer is identified and an individual is unable to bring a civil claim for damages, he or she will be able to apply for a payment under the Scheme.
55. However, claims for damages in respect of mesothelioma are not the only type of claim disputed by employers' liability insurers and in time it may be appropriate to extend the jurisdiction of the Technical Committee to deal with disputes between such insurers and individuals with other work-related conditions or injuries. However, no such extension will be considered until it has been demonstrated that decisions are being made on a consistent and effective basis. The affirmative resolution procedure will give Parliament appropriate oversight of any such changes.

Clause 16 Challenging decisions of the Technical Committee

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

56. Clause 16 provides for disputed decisions of the Technical Committee to be referred to statutory arbitration and for the arbitration to be subject to the provisions of the Arbitration Act 1996, the relevant provisions of which extend to England and Wales and Northern Ireland, and the Arbitration (Scotland) Act 2010. Subsection (5) enables the Secretary of State to adapt or exclude, by regulations, any provision of Arbitration (Scotland) Act 2010 in relation to arbitrations under the clause. This is to ensure that there is an effective means of challenging decisions of the Technical Committee in Scotland.

57. The power at (5) will be exercised at the same time as regulations are also made under section 98 of the Arbitration Act 1996, which allows the Secretary of State to adapt or exclude any provision of Part I of that Act in relation to statutory arbitrations. For example, the regulations will adapt section 34 of the 1996 Act and rule 28 of Part 4 Schedule 1 of the Arbitration (Scotland) Act 2010 (to ensure that the arbitral proceedings are always held in public).
58. Regulations made under section 98 of the Arbitration Act 1996 are subject to the negative procedure. It is appropriate that the regulations to be made under subsection (5) follow the same procedure as they will be made in the same instrument.

General

Clause 17 Regulations under this Act

59. This clause is drawn to the Committee's attention as it sets out how the regulation making powers are to be exercised and the relevant Parliamentary procedures.
60. Subsection (4) provides that regulations under the Act may include incidental, supplementary, consequential, transitional, transitory or saving provision. The purpose of this is to allow such provision as may be necessary when regulations are made. For example, in making the annual uprating regulations under clause 4, it may be necessary to include transitional provision dealing with the annual changes to the rate of payments.

Clause 18 Defined terms

61. The regulation-making power at subsection (3) is considered above with Clauses 2 and 3 to which it relates.

Clause 19 Commencement

Powers conferred on: Secretary of State

Powers exercised by: Order (Statutory Instrument)

Parliamentary procedure: None

62. Clause 19 provides for most provisions in the Bill to come into force by commencement order made by the Secretary of State. The exceptions are the provisions listed in clause 19(2).

63. Clause 19 also provides that the Secretary of State may, by order, make transitional, transitory or saving provision in connection with the coming into force of any provision of the Act and that different days can be appointed for different purposes.
64. As is usual, the exercise of this power is not subject to any parliamentary procedure.

Schedule 1 Recovery of benefits etc from payments and recovery of payments

Part 2 Recovery of scheme payments from compensation

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

65. These provisions amend an existing delegated power. The effect of paragraphs 2 and 17(2) and (3) of Schedule 1 is to include a reference to a payment under the Scheme to section 1 of the Social Security (Recovery of Benefits) Act 1997 and to the list of payments covered by the regulation making power at section 1A of the 1997 Act. This power enables the Secretary of State to make provision for the recovery of a lump sum payment to which the section applies from compensation payments. Such provision is currently contained in the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008 (SI 2008/1596).
66. Schedule 1 contains similar provisions in respect of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (SI 1997/1183) (N.I. 12), at paragraphs 10 to 12 and 18.
67. The intention is that this power as amended will be used in two ways:
 - a) To recover lump sum payments (i.e. payments made in accordance with the Pneumoconiosis etc. (Worker's Compensation) Act 1979 or Part 4 of the Child Maintenance and Other Payments Act 2008, or an extra-statutory payment or, in the case of Northern Ireland, payments made in accordance with the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979, the Mesothelioma, etc., Act (Northern Ireland) 2008 or an extra-statutory payment) from payments made under the Scheme, in the same way as it is already used to recover lump sum payments from compensation.
 - b) To recover payments made under the Scheme from any later paid compensation.

68. Amending regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power currently subject to the negative procedure.

Annex

Delegated powers in the Mesothelioma Bill

Provision	Heading	Parliamentary Procedure
Clause 1	Diffuse Mesothelioma Payment Scheme	None
Clause 2	Eligible people with diffuse mesothelioma	Negative
Clause 3	Eligible dependants	Negative
Clause 4	Payments	Affirmative on first use then negative
Clause 7	Scheme administration	Affirmative and None
Clause 10	Proceeding by or on behalf of person with diffuse mesothelioma	Affirmative
Clause 13	The levy	Negative
Clause 15	Technical Committee to decide certain insurance disputes	Affirmative
Clause 16	Challenging decisions of the Technical Committee	Negative
Clause 18	Defined terms used in more than one section of the Act	Negative
Clause 19	Commencement	None
Schedule Part 2	1, Recovery of benefits etc from scheme payments and recovery of scheme payments from compensation (This provision amends existing delegated powers in other legislation)	Negative (existing Parliamentary procedure applies)