

Child Maintenance and Other Payments Act 2008

CHAPTER 6

Note The material reproduced below is limited to what is relevant to this work:
Ss. 46 - 54, 57, 58 & 60 - 63
An abridged contents below list the sections relevant to this volume.

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CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008 (c. 6)

Ss. 46-47

An Act to establish the Child Maintenance and Enforcement Commission; to amend the law relating to child support; to make provision about lump sum payments to or in respect of persons with diffuse mesothelioma; and for connected purposes.
[5th June 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 4

LUMP SUM PAYMENTS: MESOTHELIOMA ETC. MESOTHELIOMA LUMP SUM PAYMENTS

Lump sum payments

46.—(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.

Condition of entitlement

47.—(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;
 - [¹(ba) a payment under the Diffuse Mesothelioma Payment Scheme (for the scheme, see the Mesothelioma Act 2014);]
 - (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).

48.—(1) A claim under section 46 must be made in the manner and within the period prescribed by regulations.

Determination of claims

(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.

49.—(1) Subject to subsection (2), the Secretary of State—

Reconsideration

- (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 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.

¹ S. 47(3)(ba) inserted (31.3.14) by para. 2 to Sch. 2 of the Mesothelioma Act 2014 (c. 1).

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Ss. 49-52

- (4) Subsection (5) applies if—
- (a) whether fraudulently or otherwise, any person misrepresents or fails to disclose any material fact, and
 - (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.

Appeal to [¹First-tier Tribunal]

50.—(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.

(2) Subject to regulations under subsection (4)(c), the Secretary of State must refer any appeal to [¹the 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) [¹...¹]
- (c) for the purpose of enabling an appeal under subsection (1)(a) to be treated as an application for reconsideration under section 49 of the determination made on the claim.

51. [¹...¹]

Minors and people who lack capacity

52.—(1) This section applies where a payment under this Part falls to be made to—

- (a) a person aged under 18, or
- (b) 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.

¹ Words in heading to s. 50 & 50(2) substituted s. 50(4)(b) & s. 51 omitted (3.11.08) by S.I. 2008/2833, art. 226.

(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.—(1) A reference in this Part to regulations is a reference to regulations made by the Secretary of State. Regulations: Part 4

- (2) The power to make regulations under this Part—
- (a) is exercisable by statutory instrument;
 - (b) includes power to make such incidental, supplementary or transitional provision as the Secretary of State thinks fit;
 - (c) may be exercised so as to provide for a person to exercise a discretion in dealing with any matter.

(3) No regulations may be made under section 46 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.

Recovery of mesothelioma and other lump sum payments

54. various amends, see Annex 1 - page 2.7607

PART 5 GENERAL

57.—(1) Schedule 7 (which makes minor and consequential amendments) has effect. Minor and consequential amendments

(2) The Secretary of State may by regulations make provision consequential on this Act amending, repealing or revoking any provision of—

- (a) an Act passed on or before the last day of the Session in which this Act is passed, or
- (b) an instrument made under an Act before the passing of this Act.

58.—The enactments specified in Schedule 8 are repealed to the extent specified. Repeals

60.—(1) There shall be paid out of money provided by Parliament— Financial provisions

- (a) any expenditure incurred by the Secretary of State or a government department in consequence of this Act, and
- (b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

(2) There shall be authorised the extinguishing in consequence of this Act of liabilities owed to the Crown under the Child Support Act 1991.

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Ss. 61-63

Extent

61.—(1) Subject to the following provisions, this Act extends to England and Wales and Scotland only.

(2) The following provisions also extend to Northern Ireland—

(a) this section and sections 55, 57(2), 62 and 63;

(b) paragraphs 4 to 6 of Schedule 6, and section 44 so far as relating to those paragraphs.

(3) Any amendment or repeal made by this Act has the same extent as the enactment to which it relates.

Commencement

62.—(1) This section and sections 55, 59(8), 61 and 63 shall come into force on the day on which this Act is passed.

(2) Section 35 shall come into force on the day after the day on which this Act is passed.

(3) The remaining provisions of this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different purposes.

(4) An order under subsection (3) may include such transitional provision or savings as the Secretary of State considers necessary or expedient in connection with bringing any provision of this Act into force.

(5) An order under subsection (3) appointing the day on which section 39 is to come into force in England and Wales may be made only with the consent of the Lord Chancellor.

Citation

63.—This Act may be cited as the Child Maintenance and Other Payments Act 2008.

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LIST OF OMISSIONS

The following provisions have been omitted from the text for the reasons stated:-

- Ss. 1-45 relates to Child Support outside the scope of these volumes.
- S. 54 makes consequential amendments to s.1. of the S. S. (Recovery of Benefits) Act 1997.
- Ss. 55 - Sch. 7 para. 1 relates to Child Support outside the scope of these volumes.
- Sch. 7 para. 2 makes consequential amendments to s. 108, 121 & 122 of the S S Admin Act 1992.
- Sch. 7 para. 3 makes consequential amendments to ss. 3 & 81 of the Social Security Act 1998.
- Sch. 7 para. 3(3) repealed (8.5.12) by the Welfare Reform Act 2012, Sch. 14, part 14.
- Sch. 8 makes repeals on various statutes.

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Annex 2

**CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008
ANNEX 2**

COMMENCEMENT DATES

(a) List of commencement orders

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
section 45	14th July 2008	2008/1476
section 46 (partially)	10th June 2008	2008/1476
section 46 (for all other purposes)	1st October 2008	2008/1476
section 47 (partially)	10th June 2008	2008/1476
section 47 (for all other purposes)	1st October 2008	2008/1476
section 48 (partially)	10th June 2008	2008/1476
section 48 (for all other purposes)	1st October 2008	2008/1476
section 49 (partially)	10th June 2008	2008/1476
section 49 (for all other purposes)	1st October 2008	2008/1476
section 50 (partially)	10th June 2008	2008/1476
section 50 (for all other purposes)	1st October 2008	2008/1476
section 51	1st October 2008	2008/1476
section 52	1st October 2008	2008/1476
section 53 (partially)	10th June 2008	2008/1476
section 53 (for all other purposes)	1st October 2008	2008/1476
section 54 (partially)	10th June 2008	2008/1476
section 54 (for all other purposes)	1st October 2008	2008/1476
section 57(2)	10th June 2008	2008/1476
section 60(1)	10th June 2008	2008/1476
section 61	5th August 2008	Royal Assent
section 62	5th August 2008	Royal Assent
section 63	5th August 2008	Royal Assent

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Annex 2

<i>S.I. no.</i>	<i>Title of Order</i>	<i>Page no. if reproduced in these volumes</i>
2008/1476 (c. 67)	The Child Maintenance and Other Payments Act 2008 (Commencement) Order 2008	
2008/2033 (c. 97)	The Child Maintenance and Other Payments Act 2008 (Commencement No. 2) Order 2008	

- (b) Date on which provision of the Child Maintenance and Other Payments Act 2008 came into force.

[Note: In the list below only those sections commenced and relevant to this volume will be included.]

