

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (RECOVERY OF BENEFITS) AMENDMENT
REGULATIONS 2007

2007 No. 357

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. The regulations amend the Social Security (Recovery of Benefits) Regulations 1997.
- 2.2. The amendment exempts two specific Trusts set up by the administrators of Federal Mogul to meet liabilities arising from asbestos related diseases from the Social Security (Recovery of Benefits) Act 1997.
- 2.3. Exempting these Trusts from the normal compensation recovery rules means that more money will be available to pay former employees of Federal Mogul's UK subsidiaries suffering from asbestos related diseases.

3. Matters of Special Interest To The Joint Committee On Statutory Instruments

- 3.1. None.

4. Legislative Background

- 4.1. None of the amendments are consequent on specific undertakings given to Parliament. Nor are they consequent on EU obligations. They are all generated by departmental policy considerations.

5. Extent

- 5.1. This instrument extends to Great Britain.

6. The European Convention on Human Rights

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

7. Policy background

7.1. Amendments to the Social Security Claims and Payments Regulations 1987

7.2. Regulation 2(1)

7.2.1. The Social Security (Recovery of Benefits) Act 1997 allows the Secretary of State to recover, within limitations, benefit expenditure from someone making a compensation payment.

7.2.2. The basic limitations are;

The benefit expenditure must have been paid in consequence of the same accident, injury or disease for which the compensation is being paid;

Only listed benefits (listed at Schedule 2 to the Act) can be recovered;

Only benefits paid for periods within the relevant period can be recovered. The relevant period runs for a maximum period of five years.

7.2.3. The policy rationale behind the scheme is twofold -

The compensator responsible for the accident, injury or disease should meet the cost of Departmental benefit expenditure incurred as a result of their actions; the Department should not subsidise the compensator.

The injured party should not be compensated twice for the same need – once via the benefit system and again via a compensation payment.

7.2.4. To meet the second policy intention there is an offset mechanism which allows a compensator to reduce the compensation payment, in prescribed circumstances, by the amount of benefit that they have to repay the Secretary of State.

7.2.5. Federal Mogul is a US company, which bought a number of UK companies including Turner & Newall and related subsidiaries.

7.2.6. Following realisation of the extent of the company's asbestos claim liabilities the company went into administration.

7.2.7. The terms of US administration allow the company to continue trading but to freeze and clear their outstanding liabilities. As a result the asbestos liabilities arising from Turner & Newall and other UK subsidiaries will not be met in full.

- 7.2.8. Two Trust Funds [The UK Asbestos Trust and The EL Scheme Trust] have been set up to meet the asbestos claims of former employees and any compensation recovery costs.
- 7.2.9. The two schemes are very similar and meet similar needs; the difference is in the funding stream for the Trusts. The EL Scheme Trust is funded from the proceeds of insurance cover, however this only covered part of the period and therefore there are still insufficient funds to meet claims in full.
- 7.2.10. It is envisaged that injured parties will receive substantially less than their full compensation, the settlement probably only being in the region of 20p in the £.
- 7.2.11. The amending regulations will exempt payments made from these Trusts from the Social Security (Recovery of Benefits) Act 1997.
- 7.2.12. This will mean that no payments will need to be made from these Trusts to the Secretary of State.
- 7.2.13. Exemption of these Trusts does not undermine the key principles of the compensation recovery scheme because:
- The amount being paid out by the compensator (namely Federal Mogul) is predefined by the amount in the Trust Funds. Therefore exemption will not result in subsidy of the compensator.
- Injured persons will not receive double compensation as due to the low value of the dividend they will receive significantly less than the full amount of their compensation.
- 7.2.14. Exemption of the Trusts will result in more money from the Trust Funds being available to pay to the poor unfortunate individuals suffering from asbestos related diseases.
- 7.3. The regulations are subject to statutory consultation with the Social security Advisory Committee. They have indicated they are content with the draft regulations.
- 7.4. None of the amendments were the subject of consultation with outside bodies. This was not necessary as they are of a technical nature designed to reflect the policy intention. They are also beneficial in intent.

- 7.5. Once the regulations have been laid guidance will be issued to staff advising them of the exemptions. The administrators of the Trusts will also be informed.
- 7.6. The public will be able to read a consolidated version of the affected Regulations in The Law Relating to Social Security (“The Blue Volumes”) on the DWP website.

8. Impact

- 8.1. A Regulatory Impact Assessment has not been prepared for this instrument, as there is no impact on business. Although they involve Federal Mogul, its UK subsidiaries and the administrators the changes do not place any additional financial or administrative burdens on the companies involved.
- 8.2. The changes will result in a loss of compensation recovery by the Department estimated to be £8M in the first year and £1M per year in subsequent years (this is based on actuarial figures supplied by the administrators of the Trusts). There are no other impacts on the public sector.

9. Contact

- 9.1. Alan Clark at the Department for Work and Pensions can answer any queries regarding this instrument. He can be contacted on tel: 0113 2324162 or by e-mail to: alan.clark1@dwp.gsi.gov.uk