

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

DIFFUSE MESOTHELIOMA PAYMENT SCHEME

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Diffuse Mesothelioma Payment Scheme', dated 2nd April, 2020, they are of the opinion:

1. To approve the introduction of a Diffuse Mesothelioma Payment Scheme as set out in that Policy Letter.
2. To direct the preparation of such legislation as is necessary to give effect to their decision.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

DIFFUSE MESOTHELIOMA PAYMENT SCHEME

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

2nd April, 2020

Dear Sir

1. Executive summary

- 1.1. On 8th November, 2019, having debated the Committee for Employment & Social Security's ("the Committee's") annual Policy Letter on non-contributory benefit rates for 2020¹, and an amendment proposed by Deputy Fallaize having been carried, the States resolved:

"13. To agree that with effect from the 1st of January 2021 there shall be a statutory scheme of compensation for persons resident in the Bailiwick who have been diagnosed with diffuse mesothelioma following exposure to asbestos in the Bailiwick; and to direct the Committee for Employment & Social Security to develop any legislation and policies necessary to establish such a scheme, which shall be along the lines of the mesothelioma compensation scheme recently introduced in Jersey; and to direct that from 2021 onwards the Policy & Resources Committee shall make provision for the estimated cost of the scheme when proposing the Cash Limit of the Committee for Employment & Social Security as part of the annual Budget process."

- 1.2. This Policy Letter addresses the above Resolution of the States and describes how a mesothelioma payment scheme could be implemented from 1st

¹ [Billet d'État XXI of 2019, Article II](#) – Non-contributory benefit rates for 2020

January, 2021, on an extra-statutory basis initially. It will then be written into the Income Support (Guernsey) Law, 1971, at the earliest opportunity.

- 1.3. The proposed scheme is a close copy of similar schemes now in place in the UK and in Jersey. The scheme will enable lump sum compensation payments to be made to sufferers of mesothelioma, or to their surviving family.
- 1.4. Based on medical information, the Committee estimates that approximately three payments will be made per year on average, at a total cost of around £100,000 annually.

2. Background

- 2.1. Asbestos is the name of a group of naturally occurring fibrous minerals and metallic silicates. Its characteristics of heat and chemical resistance made it an important material used in many industrial, manufacturing and building processes. It is still mined in a number of countries, in particular, Canada, South Africa and Russia.
- 2.2. The connection between asbestos exposure and a range of debilitating diseases became more widely recognised and accepted in the 1970s and its use subsequently began to decline. By 2003, there were full or partial bans on the use of asbestos in 17 countries and in 2005 it was banned throughout the European Community. Asbestos is classified as a Group 1 carcinogen.
- 2.3. Asbestos fibres are generally present in the environment in Great Britain, so many people are exposed to low level fibres. The risk of developing an asbestos-related disease relates to the number of fibres that are inhaled and penetrate deep into the lungs. People working in industries where asbestos was used extensively in the past, such as plumbing, electrical fitting and energy plant work were at high risk of developing asbestos-related diseases. Today the risk of asbestos exposure through employment is much reduced due to bans on its use and controls on how asbestos containing materials are handled. However, exposure to asbestos is not just work-related. Individuals can be exposed through contact with someone who has been exposed to asbestos at work or more generally from the environment in which they live.
- 2.4. In Guernsey, significant quantities of asbestos containing materials were imported in the last century for use in the construction of buildings and other structures. Considerable amounts remain. So long as the material is in good condition and is not disturbed, it does not present a significant risk to health. If the material is damaged, asbestos fibres may be released into the air resulting in a risk to human health when people breathe them in. If asbestos-containing materials are in poor condition, simply working near to them may result in them being disturbed.

- 2.5. An Approved Code of Practice, 2013 (revised 2017)² was issued by the States of Guernsey Health and Safety Executive to provide practical advice on how to meet the legal requirements set out in The Health and Safety at Work (General) (Guernsey) Ordinance, 1987. It revised the Approved Code of Practice titled “Management of exposure to asbestos in workplace buildings and structures”, dated May 2010.

Asbestos related diseases

- 2.6. Although asbestos can affect other parts of the body, lung diseases are by far the most common. The four main asbestos-related diseases are:
- Non-malignant pleural disease – diffuse pleural thickening and pleural plaques
 - Asbestosis – a non-malignant scarring of the lung tissue
 - Asbestos-related lung cancer – although responsible for only a small number of lung cancer diagnoses, it is one of the most fatal asbestos-related malignancies
 - Mesothelioma – asbestos exposure is the primary cause of this disease. The life expectancy of most mesothelioma sufferers is approximately twelve months after diagnosis, but can be as short as a few weeks.

Deaths associated with exposure to asbestos in Guernsey

- 2.7. In March 2018, the Medical Officer of Health provided statistical information on asbestos related disease in Guernsey. The statistics were compiled from death data over a ten year period and information from the Island’s Respiratory Physician.
- 2.8. Mesothelioma, pneumoconiosis due to asbestos and other mineral fibres and pleural plaques with presence of asbestos were identified. Asbestos-related conditions which were detailed on the death certificate as having contributed to the death were also identified. These included mesothelioma, asbestosis and asbestos exposure.
- 2.9. The results showed that, between 2005 and 2015, exposure to asbestos was the underlying cause of death in nineteen cases and contributed to the death in a further four cases. Over the ten year period, the average number of deaths per year was two. Quantifying the number of deaths due to asbestos exposure is difficult as asbestos-related lung cancer is not always identifiable. However, of the 23 deaths associated with asbestos exposure, mesothelioma was the underlying cause of death in 70% of cases. The Health and Safety

² Available at: <https://gov.gg/asbestos>

Executive estimates that there are currently as many lung cancer deaths due to asbestos exposure as there are mesothelioma deaths and the Medical Officer of Health advises that the figures presented underestimate the true number of deaths.

- 2.10. Guernsey benefits data in April 2018 showed one person with mesothelioma, one person with asbestosis and one person with asbestos-related lung cancer. In 2019, benefits data showed one person with mesothelioma. In November 2019, the Respiratory Physician confirmed three mesothelioma cases were diagnosed per year.

3. Asbestos-related compensation/payment schemes

- 3.1. As explained, exposure to asbestos fibres can lead to a number of serious diseases. People suffering from some of these diseases can pursue compensation from their employers or bodies responsible for the use of asbestos. They may also be entitled to compensation payments from schemes administered by their government, although arrangements for compensation payments vary from country to country. In some jurisdictions, civil litigation is the main course of action while in others government schemes are the only source of financial recompense and may only provide payments for disease contracted through employment. Some countries provide no compensation.
- 3.2. Compensation for asbestos-related diseases contracted through employment is the most common type of claim, but there is an increasing number of claims for asbestos-related diseases contracted through contact with asbestos in the environment. Pursuing a compensation claim through court action can be complex and problematic. The long latency period for asbestos-related diseases means that, by the time a diagnosis is given, 30 or 40 years may have passed. In this time, employment records or other documentation may have been destroyed and former employers or businesses using, or processing asbestos, may no longer be trading or traceable.

Compensation payments in other jurisdictions

- 3.3. In the Netherlands, there are two compensation schemes for people who have contracted mesothelioma or other asbestos-related diseases. Both schemes provide a single payment of €20,730 (2019 rate). This is seen as an advance payment and will be recovered from any future civil award.
- 3.4. In France, there are social security-provided compensation payments for loss of earnings for employees who contracted asbestos-related diseases through their employment. However, in 2002, the Fonds d'Indemnisation de Victimes de l'Aimant (FIVA) was established. This scheme provides compensation for all asbestos-related diseases and covers employment and environmentally

contracted diseases. The level of compensation is based on a number of criteria with standardised compensation awards which are far higher than the amounts traditionally received from social security. Average payments in 2018 range from €48,460 to €152,145 and are recovered by the Government if a civil action results in a higher award.

3.5. In the United Kingdom, while people who have contracted asbestos-related diseases can take a civil claim for compensation there are also three schemes administered by the Department for Work and Pensions.

- Pneumoconiosis etc. (Workers' Compensation) Act 1979 (PWCA): This scheme provides a lump sum payment to people suffering from certain dust-related diseases, including those caused by asbestos, or their dependants, if the person has died. To receive this payment a person must be, or have been, entitled to Industrial Injuries Disablement Benefit (IIDB), be unable to claim compensation from their employer, and not have brought an action for damages. Payments are made according to the assessed level of disability and age when first diagnosed. They vary from £14,578 to £93,827, at 2020 rates. All payments for mesothelioma are made at the 100% disablement rate.
- The 2008 Diffuse Mesothelioma Scheme³: This scheme provides lump sum payments for people suffering from diffuse mesothelioma who have been exposed to asbestos in the UK and face difficulties claiming compensation. It covers people who have been exposed to asbestos in the environment and the self-employed who are not entitled to IIDB and so are unable to claim under the PWCA. Awards cover dependants in the event the sufferer has died. The amount of the lump sum depends on the person's age when they were diagnosed with the disease. Payments (from April 2020) vary from £14,578 to £93,827, with rates payable to dependants at approximately half the amount.
- The 2014 Diffuse Mesothelioma Payment Scheme (DMPS)⁴: This new scheme was intended to address a particular problem of "market failure", whereby individuals diagnosed with diffuse mesothelioma after July 2012 because of exposure to asbestos in the workplace are unable to access compensation. The scheme is funded through a levy on insurance companies with payments similar to the level of awards in civil damages cases. Awards are based on the age at which a person is first diagnosed with the condition and range from £87,061 for someone over 90 years of age, to £271,120 for someone aged 40 years or under.

³ This was introduced under the Child Maintenance and Other Payments Act, 2008

⁴ This was introduced under the Mesothelioma Act, 2014

- 3.6. In Jersey, following public concern, a scheme was introduced in October 2019 to provide payments to individuals with diffuse mesothelioma. If the person has died without making a claim for payment, a close relative is entitled to make a claim under the scheme.
- 3.7. The payment takes the form of an interest-free loan, based on the age of the person at the time of their diagnosis. Loans are made under the Income Support (Jersey) Law, 2007, which allows the Minister to make loans to Jersey residents in exceptional circumstances. Recipients are not means-tested and the loan is only repayable if the recipient receives a further payment as a result of diffuse mesothelioma, such as from a civil claim against an employer. It has been estimated that, after the first year when there are likely to be additional costs, there will be up to five payments per year, which Jersey has anticipated will cost the States of Jersey approximately £150,000 per annum.
- 3.8. Applications for loan payments could be made from 1st October, 2019. The amounts payable have been set at the rates paid in 2019 by the UK 2008 Diffuse Mesothelioma Scheme. The amount payable to an eligible relative is half of the amount paid to a person with the condition. Payments will be increased in line with the Jersey RPI, or unchanged if there is a negative change in inflation.
- 3.9. A more detailed description of the UK and Jersey schemes appears at Appendix 1. The amounts of the lump-sum payments, described as loans because of the possibility of repayment following a civil action, appear at Appendix 2, showing the 2019 rates for Jersey and the UK. Similar payment rates will be adopted for the proposed Guernsey and Alderney scheme, uprated by relevant inflation figures to 2021 rates.
- 3.10. Compensation and benefits for asbestos related diseases and mesothelioma currently available in the UK, Jersey and Guernsey is summarised in Table 1 on the following page.

Table 1 – Comparison of current benefits for asbestos related diseases

Diseases	Benefits available for asbestos related diseases (in addition to incapacity/disability benefits)		
	UK	Jersey	Guernsey
<p>Asbestos related diseases:</p> <ul style="list-style-type: none"> • Diffuse mesothelioma • Pneumoconiosis (including silicosis, asbestosis, kaolinosis) • Diffuse pleural thickening • Primary carcinoma of the lung (only if accompanies by asbestosis or pleural thickening) • Byssinosis 	<ul style="list-style-type: none"> • Industrial injuries benefits - £35.80 to £179.00 per week, dependent on percentage of disability • Pneumoconiosis etc. (Workers' Compensation) Act 1979 - £14,578 to £93,837, dependent on age at diagnosis and percentage of disability <p>(rates correct at 1st April 2020)</p>	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • Industrial Disablement Benefits £35.87 to £179.37 per week, dependent on percentage of disability <p>(rates correct at 1st January 2020)</p>
<p>Diffuse mesothelioma</p>	<ul style="list-style-type: none"> • Industrial injuries benefits £35.80 - £179.00 per week dependent on % disability • (From April 2020) Pneumoconiosis etc. (Workers' Compensation) Act 1979 - £14,578 to £93,837, dependent on age at diagnosis and percentage of disability • The 2008 Diffuse Mesothelioma Scheme • £14,578 to £93,837, dependent on age at diagnosis and percentage of disability • The 2014 Diffuse Mesothelioma Payment Scheme - £87,061 to £271,120, dependent on age at diagnosis <p>(rates correct at 1st April 2020)</p>	<ul style="list-style-type: none"> • Diffuse Mesothelioma Special Payments £14,334 to £92,259 dependent on age first diagnosed. <p>(rates correct at 1st October, 2019)</p>	<ul style="list-style-type: none"> • No

4. A Diffuse Mesothelioma Scheme for Guernsey and Alderney

4.1. The Committee has undertaken to address the lack of support for individuals who have contracted asbestos-related diseases through exposure to asbestos. Due to its rapid and fatal progression, there is particular concern for those who have developed diffuse mesothelioma. The Committee proposes the introduction of a payment for individuals who have contracted diffuse mesothelioma through exposure to asbestos in Guernsey and Alderney. While the Fallaize amendment implied a Bailiwick wide scheme, Social Security schemes do not ordinarily apply to Sark. The payment would be available to anyone who had contracted the disease through exposure in the workplace or any other environmental source. The payment and arrangement would be the same as in the recently introduced Jersey scheme.

4.2. The essential requirements for the proposed scheme include:

- Residency criteria
- Exposure to asbestos in Guernsey and Alderney from any source
- A formal diagnosis of mesothelioma or alternative specialist opinion for someone unable to undergo definitive investigation procedures
- A single payment for mesothelioma sufferers, or their dependent relative, where they have been unable to claim compensation from the party responsible for the source of the asbestos contamination.

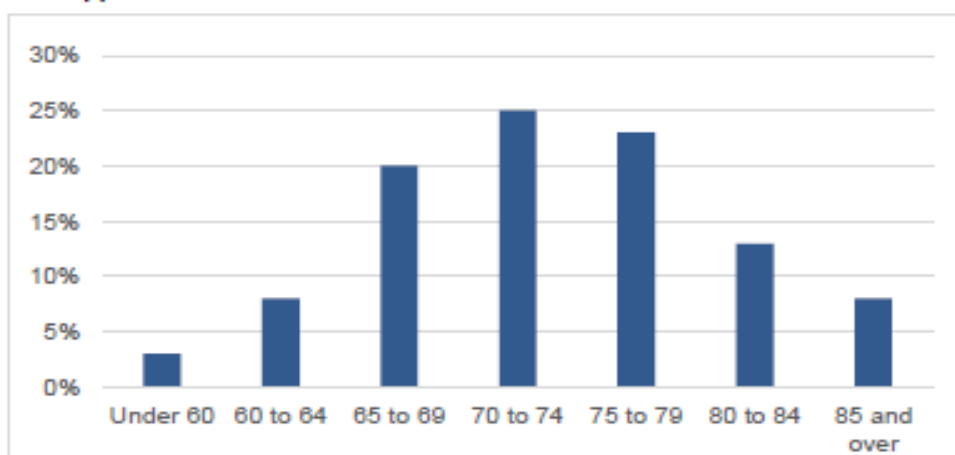
4.3. The UK 2014 Diffuse Mesothelioma Payment Scheme was initially designed to make payments equivalent to 70% of the average civil compensation award. Since its introduction, the payment has been increased to 100% of a civil award. The 2019 payments range from 387, 061 for someone over the age of 90, to £271,120 for someone aged 40 years or under. These payments only apply to mesothelioma arising from contact with asbestos through employment and are funded through a levy on insurance companies.

4.4. Jersey's recently introduced mesothelioma compensation scheme has adopted the UK's 2008 Diffuse Mesothelioma Scheme 2019 payment rates as the starting point for their awards. These payments are considerably less than the UK's 2014 scheme, but are payable regardless of the source of the asbestos contamination. Payments range from £14,334 for people aged 77 and over, to £92,259 for people aged 37 and under, with awards of around half this amount paid to dependants in the event of claiming after the sufferer has died. It is anticipated there will be five claims a year, except in the first year. The scheme is to be funded in the first year by underspends within Social Security budgets, with the States of Jersey being asked to fund it from General Revenue as part of the Policy Plan from 2020 onwards. See Appendix 3 for a comparison between the UK and Jersey schemes.

- 4.5. The 2019 DWP Diffuse Mesothelioma Payment Scheme Official Statistics indicate that over two thirds of successful applicants (68%) were aged between 65 and 79 years (Appendix 4)⁵.

Table 2 – DWP Diffuse Mesothelioma Payment Scheme age statistics

Successful applicant's age at diagnosis
% of applications



- 4.6. The UK Health and Safety Executive reports that, in Great Britain, the number of mesothelioma deaths in 2017 was 2,523 and would remain at around this number for the rest of this decade before annual numbers begin to decline. It also reports that more than half of annual deaths now occur in those over 75 years of age. Annual deaths in this age group continue to increase while deaths below 70 years are now decreasing.
- 4.7. Guernsey statistics suggest there are likely to be two cases of mesothelioma on average each year. If a Guernsey scheme were to be based on the Jersey Diffuse Mesothelioma Payments Scheme, with an average of two claims per year, two cost scenarios would be:
- age 37 and under (worst case scenario) $2 \times £92,250 = £184,500$
 - age 65 (reasonable assumption - 68% of claimants are this age or above) $2 \times £25,440 = £50,880$.

Funding and Administration

- 4.8. The compensation scheme in Jersey has been introduced under Section 8 of the Income Support (Jersey) Law, 2007, which allows exceptional needs payments to be provided for under Regulations. The beneficiary does not need to be entitled to income support to qualify. The compensation payments

⁵ [UK Department for Work and Pensions \(2019\) Diffuse Mesothelioma Payment Scheme: annual review 2018 to 2019.](#)

are issued in the form of an interest free loan, repayable only if the person receives civil compensation. The UK has funded their 2014 Diffuse Mesothelioma Payment Scheme through a levy on insurance companies, while the 2008 Diffuse Mesothelioma Scheme was intended to be cost neutral over the long-term, with the scheme being financed from amounts recovered from later awards of civil compensation.

- 4.9. The Committee has considered how a mesothelioma payment scheme might be introduced by January 2021. Introducing the scheme under Section 10 of the Income Support (Guernsey) Law, 1971, would be preferable. This section of the Law allows the Committee to make arrangements deemed necessary or expedient to promote the welfare of disabled persons. A person does not need to be in receipt of income support to benefit under this section of the Law. The arrangements can include special payments in the form of a grant or a loan. Funding would be formula-led General Revenue. However, Section 10, as it stands, would not allow for a payment to be made to a dependent after the sufferer's death. It is therefore proposed that the mesothelioma payment scheme is introduced on a non-statutory basis⁶ until such time as a Law change can be made to enable the payments to be made on a statutory basis.
- 4.10. It should be noted that the resolution of the States on 8th November, 2019, directed that, from 2021 onwards, the Policy & Resources Committee shall make provision for the estimated cost of the scheme when proposing the Cash Limit of the Committee *for* Employment & Social Security as part of the annual Budget process.

Proposed Diffuse Mesothelioma Payment Scheme for Guernsey and Alderney

- 4.11. Having reviewed asbestos-related compensation schemes in other jurisdictions, the Committee has decided that the UK 2008 Diffuse Mesothelioma Scheme and the Jersey Diffuse Mesothelioma Special Payments Scheme offer models that can accommodate the requirements essential for a Guernsey and Alderney scheme. The main features would be a payment for individuals with mesothelioma which has developed through contact with asbestos in Guernsey and Alderney, either through their employment, or from the general environment. In the event of the sufferer's death, their dependent relative would be entitled to a payment. The claim process would be simple, with timely decisions and payments. Evidence of exposure would be based on whether someone is likely to have been exposed to asbestos in the Islands, supported by their history and employment, or other records, where available. The scheme would be administered on an extra-statutory basis, until an amendment can be made to Section 10 of the Income Support (Guernsey) Law, 1971, which provides for the welfare of

⁶ The Medical Expenses Assistance Scheme was initially introduced on this basis

persons with disabilities. Awards would be single payments based on the person's age at diagnosis, with rates equal to the 2021 Jersey payments, uprated by Guernsey RPIX each year and repayable only if any other mesothelioma-related compensation award is received.

- 4.12. In accordance with the Resolution of the States on 8th November, 2019, the Diffuse Mesothelioma Payment Scheme for Guernsey and Alderney could commence on 1st January, 2021. Applications for compensation would be required within twelve months of diagnosis, subject to transitional provisions.
- 4.13. Jersey's Diffuse Mesothelioma Special Payment scheme was introduced from 1st October, 2019. Applications for a payment must be made within twelve months of being diagnosed with mesothelioma. However, a transitional arrangement was put in place that allowed individuals who had been diagnosed with mesothelioma before 1st January, 2019 to make an application up to 31st December, 2019. Similarly, in order to avoid a cliff edge for eligibility, the proposed Diffuse Mesothelioma Payment Scheme for Guernsey and Alderney will accept applications from mesothelioma sufferers diagnosed before 1st January, 2020 up to 31st March, 2021.

5. Resource requirements

- 5.1. The estimated cost of mesothelioma payments, based on there being up to three new cases per year, and assuming that the age of those people is in the range 60 to 65, is £100,000 per year. The source of funding will be General Revenue, formula-led expenditure under the Income Support budget. The States have already resolved that the Policy & Resources Committee shall make provision in the Committee's cash limit for the implementation of the Scheme from 2021 onwards. As the expected number of cases is so small, the administrative overhead is negligible.

6. Conclusions

- 6.1. In accordance with the Resolution of the States on 8th November 2019, the Committee has investigated the legislative and administrative requirements for implementing a compensation scheme for sufferers of mesothelioma. Mesothelioma is almost exclusively caused by contact with asbestos. The disease is invariably fatal, usually within twelve months of diagnosis. Other asbestos-related diseases, though debilitating, are not always fatal, and may respond to treatment. Although there are now strict controls in place for the management of asbestos, the long-term nature of the disease means that there is a delay before symptoms are presented. Pursuing a civil claim for compensation from an employer, or the body responsible for the source of asbestos, can be problematic. A compensation payment is therefore considered appropriate for mesothelioma sufferers.

- 6.2. Should the States agree, the Committee will be able to introduce a Diffuse Mesothelioma Payment Scheme on an extra-statutory basis on 1st January 2021, funded by the States-approved increase in the Committee's cash limit, from the same date. The Scheme will operate on that extra-statutory basis until such a time that the Income Support (Guernsey) Law, 1971, can be amended to enable the payment to be made under Section 10 of that Law.

7. Compliance with Rule 4

- 7.1. In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 7.2. The Committee has set out its proposal for a Diffuse Mesothelioma Special Payment Scheme and seeks the States support for the propositions, which relate to the Committee's purpose:

"To foster a compassionate, cohesive and aspirational society in which responsibility is encouraged and individuals and families are supported through schemes of social protection relating to pensions, other contributory and non-contributory benefits, social housing, employment, re-employment and labour market legislation."

- 7.3. In accordance with Rule 4(5), the Committee consulted the Committee *for* Health & Social Care, the Medical Specialist Group and the Health and Safety Executive in the early stages of the development of the Policy Letter. In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.

Yours faithfully

M K Le Clerc
President

S L Langlois
Vice-President

J A B Gollop
E A McSwiggan
P J Roffey

M J Brown
Non-States Member

A R Le Lièvre
Non-States Member

8. Description of UK Mesothelioma Payment Schemes

- 8.1. A mesothelioma sufferer in the UK may be able to get compensation from a civil claim for damages against one or more companies responsible for exposing them to asbestos negligently and/or in breach of a statutory duty. They may also be entitled to a weekly payment from the Industrial Injuries Disablement Benefit Scheme (IIDB). In addition there are three main schemes administered by the Department for Work and Pensions:

Pneumoconiosis etc (Workers' Compensation) Act 1979 (PWCA):

- 8.2. Under this scheme there is provision of a lump sum compensation payment to people suffering from certain dust related diseases, or their dependants if the person has died, where the disease was the result of dust exposure to dust in the course of their employment but are unable to claim damages because the employers have ceased business. The diseases covered are:
- Diffuse mesothelioma
 - Pneumoconiosis (including silicosis, asbestosis, kaolinosis)
 - Diffuse pleural thickening
 - Primary carcinoma of the lung (only if accompanied by asbestosis or diffuse pleural thickening)
 - Byssinosis
- 8.3. To receive this payment a person must be, or have been, entitled to IIDB, the relevant employer or employers have ceased trading and the sufferer or their dependants must not have taken any court action or received any compensation.
- 8.4. The amounts that can be paid under the scheme are now uprated annually by regulations made under the Act. The payments are dependent on the sufferer's assessed level of disability and their age when diagnosed with an asbestos related condition. From 1st April 2020, payments for a person of 37 years or less who is assessed as having less than 10% disability would be £38,258, while another person of the same age, assessed as having a disability of between 91% and 100%, would receive £93,827. A person aged 77, or over, would receive £3,305 for a disability of less than 10% and £14,578 if their disability had been assessed at 91-100%.

The 2008 Diffuse Mesothelioma Scheme

- 8.5. This scheme provides lump sum payments for people suffering from diffuse mesothelioma who have been exposed to asbestos in the UK but are unable to claim compensation from other sources and includes people who have been exposed to asbestos in the environment, such as from being in contact with or washing contaminated clothing, living near a factory using asbestos or self-employed people unable to claim under the PWCA.
- 8.6. This scheme is for people who are suffering from diffuse mesothelioma or the dependants of deceased sufferers who have been unable to make a claim under the PWCA, have not received a payment in respect of the disease from an employer or from a Ministry of Defence scheme or from a civil claim. Claims are for a lump sum and must be made within one year of diagnosis or, in the case of a dependant, within one year of the date of death. The person was required to submit medical evidence with their claim showing they suffered from mesothelioma caused by exposure to asbestos but no medical examination was required.
- 8.7. The amount of the lump sum depends on the person's age when they were diagnosed with the disease. For those first diagnosed with mesothelioma on or after 31st March 2014 the amounts in 2019 vary from £92,259 for people aged 37 and under to £14,334 for people aged 77 and over. The rates for dependants ranges from £48,013 to £7,949.
- 8.8. The Diffuse Mesothelioma Scheme was intended to be cost neutral over the long-term by recovering from later awards of civil compensation from people who had received awards from the scheme or the PWCA. Rules on compensation recovery were amended to enable the Government to claw back the sums paid.

The 2014 Diffuse Mesothelioma Payment Scheme (DMPS)

- 8.9. This new scheme was intended to address a particular problem of "market failure" whereby individuals diagnosed with diffuse mesothelioma because of exposure to asbestos in the workplace are unable to access compensation, because of the passage of time and a lack of effective record-keeping identifying the insurer responsible for covering the risk.
- 8.10. In proposing this scheme the UK Government explained there was a "unique case" for helping people with mesothelioma because it was almost exclusively caused through exposure to asbestos, which distinguished it from other asbestos-related diseases. As exposure to asbestos in the UK was largely due to negligent business practices, a levy on insurance companies was considered the most practical option for funding the scheme. The payment to sufferers

would be based on a percentage of civil damages. The compensation rate was initially set at 70% of civil compensation levels but this was increased to 80% following negotiations with the insurance industry (100%) in 2015. The scheme was UK-wide and commenced in April 2014 but was able to make payments to people first diagnosed on or after 25th July, 2012.

- 8.11. The scheme makes payments to eligible persons with diffuse mesothelioma and to eligible dependants of people who have died with the disease. The criteria for eligibility are:
- The person must have been first diagnosed with diffuse mesothelioma on, or after, 25 July 2012 (the date on which the Government announced its intention to legislate to set up a scheme, following the public consultation);
 - The person must have been employed at the time of exposure to asbestos and that exposure was due to negligence or breach of statutory duty on the part of a relevant employer;
 - The person has not brought a claim for civil damages against an employer, or the employer's insurer, at the time of their exposure and they are unable to do so; and
 - The person has not received damages or a "specified payment" in respect of the disease and is not eligible to receive a specified payment.
- 8.12. Claims for this payment must be made within three years of being diagnosed with mesothelioma. An applicant would need to provide evidence of negligence, the employer's identity and their medical diagnosis. Payments under the scheme are considerably more than the two previous mesothelioma schemes and are based on the age at which a person is first diagnosed with the condition. A person diagnosed with mesothelioma from 10th February 2015 aged 40 or under when diagnosed will receive £271,120 while someone who is 90 years or over will receive £87,061. The payment includes a £7,000 contribution to legal fees.
- 8.13. Where a payment has been made under this scheme but an employer is later identified, the recipient can be required to co-operate in a claim against the employer. If successful, the DMPS payment will be recovered from the final compensation award.

Lump-sum payments and the effect on universal credit

- 8.14. The same rules will apply to universal credit as under current working-age income-related benefits. For someone with a disease who receives a lump-sum payment under either of these schemes and also receives an income-related benefit, the payment is treated as capital, not income, and is

disregarded for a 52-week period. After that time, if the money has been placed in a trust fund, the capital will be disregarded, as will any income from the fund. If the payment is made to a working-age dependant, the normal capital rules apply, meaning that if the dependant's total capital is more than £6,000, their income-related benefit may be reduced. If they have capital of £16,000 or more, their benefit entitlement will end.

- 8.15. Payments made under both schemes are paid by a lump sum and regarded as compensation. Therefore, they are not included as income for the purpose of income tax or tax credits. However, interest arising from the lump sum is subject to income tax and included in the income calculation for tax credits. For universal credit, payments are treated as personal injury compensation and, as previously said, disregarded for one year. If they are then placed in a trust, they are disregarded indefinitely.

9. Description of Jersey Mesothelioma Special Payment Scheme

- 9.1. Following public concern a scheme has been recently introduced to provide payments to individuals with diffuse mesothelioma or, if the person had died without receiving a payment, to a close relative.
- 9.2. The payment takes the form of an interest free loan based on the age of the person at the time of their diagnosis. The loans will be made under the Income Support (Jersey) Law 2007, which allows the Minister to make loans to Jersey residents in exceptional circumstances. The loan is only repayable if the recipient receives a further payment as a result of diffuse mesothelioma such as from a civil claim against an employer. They will not be means-tested and funding will be from the Customer and Local Services Department tax-funded cash limit. It was estimated that after the first year, when there were likely to be additional costs, there would be up to 5 payments per year at a cost of £150,000 per annum.
- 9.3. The loan payments became available from 1st October, 2019 and the amounts to be paid have been set at the rates paid in 2019 by the UK 2008 Diffuse Mesothelioma Scheme and range from £92,259 for an individual diagnosed at age 37 and under to £14,334 for an individual being diagnosed at the age of 77 years or over. The amount payable to an eligible relative ranges from £48,013 to £7,949. There will be an annual review of the payment values and the payments will be increased in line with the Jersey RPI or unchanged if there is a negative change.
- 9.4. Eligibility conditions to receive a payment are that the person:
- is aged 18 years or older;
 - has been ordinarily resident in Jersey for the last 5 years;

- has a diagnosis of diffuse mesothelioma from a consultant in Jersey; and
 - has at any time been exposed to asbestos-containing materials (“ACMs”) in Jersey.
- 9.5. The eligibility conditions for a relative are that they:
- have been ordinarily resident in Jersey for the last 5 years
 - are a close relative of the deceased person
 - make an application in respect of the dead person who would have been eligible to receive payment on the date of their death.
- 9.6. If a payment is made to a child, the payment will be placed in a trust fund for the child’s benefit.
- 9.7. Claims have been designed to be as simple as possible and can be made from 1st October, 2019. Where a diagnosis has been made prior to 1st January, 2019 the claim must have been made by 31st December, 2019. Where a diagnosis has been given after 1st January, 2019 the application must be made within twelve months of the diagnosis.
- 9.8. The question of whether a person has been exposed to ACMs in Jersey is based on whether someone was engaged in an activity in Jersey that is likely to have exposed them to ACMs. As far as possible, this will be verified with employment and other records. A decision as to whether it is more likely that the exposure took place in Jersey or somewhere else is not required and there is no set amount of time a person must have been exposed to ACMs.
- 9.9. A diagnosis of diffuse mesothelioma will usually take place in the UK in a specialist centre but where a person is unable to travel to the UK, a local specialist consultant can provide a letter confirming that a diagnosis of diffuse mesothelioma is very likely. The Health and Community Services Department will provide the necessary details direct to the Customer and Local Services Department, with the permission of the person claiming.

10. Minimum value of loan payments in UK and Jersey

- 10.1. The figures shown in Tables 3 and 4 below are the UK rates, which were valid until 31st March 2020, and were introduced in Jersey on 1st October 2019.

Table 3 – Amount of lump sum payment to eligible persons

Age of eligible person at date of diagnosis	Payment (£)
37 and under	92,259
38	90,465
39	88,675
40	86,885
41	85,091
42	83,300
43	82,407
44	81,506
45	80,614
46	79,717
47	78,821
48	76,318
49	73,810
50	71,298
51	68,793
52	66,278
53	64,489
54	62,700
55	60,912
56	59,112
57	57,322
58	52,666
59	48,006
60	43,355
61	38,695
62	34,038
63	31,170
64	28,301
65	25,440
66	22,572
67	19,707
68	19,123
69	18,537
70	17,961
71	17,378
72	16,798
73	16,302
74	15,797
75	15,314
76	14,828
77 and over	14,334

Table 4 – Maximum amount of lump sum payment to eligible relative

Age of eligible person at date of diagnosis	Payment (£)
37 and under	48,013
38	46,980
39	45,950
40	44,921
41	43,891
42	42,861
43	41,875
44	40,881
45	39,902
46	38,917
47	37,934
48	36,725
49	35,512
50	34,306
51	33,100
52	31,892
53	30,901
54	29,919
55	28,934
56	27,942
57	26,960
58	24,233
59	21,497
60	18,768
61	16,034
62	13,299
63	12,518
64	11,743
65	10,949
66	10,167
67 and over	7,949

11. Comparison between the UK and Jersey Schemes

- 11.1. Table 5 below shows a comparison between the UK and Jersey schemes, alongside the proposed scheme for Guernsey and Alderney. Please note that the UK rates changed on 1st April, 2020, while the Jersey rates remain the same as they were, when implemented on 1st October 2019. The Guernsey and Alderney rates will be based on the latest available figures for the UK and Jersey at the time of implementation.

Table 5 – comparison between the UK, Jersey and proposed Guernsey and Alderney Schemes.

Criteria	UK scheme (rates at 1 st April 2020)	Jersey scheme (rates at 1 st October 2019)	Proposed Guernsey and Alderney scheme
Diagnosis	Formal diagnosis	Formal confirmation of mesothelioma or there is a high probability	Confirmation of diagnosis or high probability of the disease by a respiratory consultant
Place of exposure	In the UK	In Jersey	In Guernsey and Alderney
Evidence of exposure		Based on whether someone has been engaged in an activity in Jersey that is likely to have exposed them to asbestos – verification where possible	Based on evidence of exposure or probability of exposure to asbestos in Guernsey and Alderney – verification where possible
Age limit	No set age limit	18 or above	18 or above
Residency	Satisfied connection with the UK	5 years	5 years
Payment based on	Age at diagnosis	Age at diagnosis	Age at diagnosis
Payment rate	From £14,578 to £93,827	From £14,334 to £92,259	From £14,334 to £92,259
Payment to dependant	Yes – £8,084 to £48,829	Yes – £7,949 to £48,013	Yes – £7,949 to £48,013

Criteria	UK scheme (rates at 1st April 2020)	Jersey scheme (rates at 1st October 2019)	Proposed Guernsey and Alderney scheme
Person must pursue civil claim		May need to co-operate	No
Recoverable	From any civil claim award	From any civil claim award	From any civil claim award
Impact on other benefits / tax	Treated as capital but ignored for 52 weeks	May be disregarded under a Ministerial Decision	Disregarded under an income support claim (include in Regulations)
Time limit for claim	One year from diagnosis or one year from death if claimed by a dependant	One year from diagnosis or one year from death if claimed by a dependant	One year from diagnosis or one year from death if claimed by a dependant. Transitional arrangement for claims pre introduction
Up-rating policy	Yearly	Yearly by RPI	Yearly RPIX
Funding source	Aims to be self-funding through recovery of civil award payments	Customer and Local Services Department but for review	General Revenue through Income Support Section 10
Legal framework	Child Maintenance and Other Payments Act 2008 and Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008	Article 8(2) and (5) of the Income Support (Jersey) Law 2007. Paid under special payment in exceptional circumstances provision	The Income Support (Guernsey) Law, 1971 Section 10 – welfare arrangements for disabled persons
Name of the scheme	The Diffuse Mesothelioma Scheme	Diffuse Mesothelioma Special Payment	Diffuse Mesothelioma Special Payment
Administered by		C&LSD	ESS – Income Support

12. 2019 DWP Diffuse Mesothelioma Payment Scheme Official Statistics

12.1. Table 6 below shows the number and percentage of applications received for the DWP Diffuse Mesothelioma Payment Scheme, by the age of the sufferer at the time of diagnosis.

Table 6 – Applications received by age of sufferer at time of diagnosis

	2014/15		2015/16		2016/17		2017/18		2018/19	
	Total	%	Total	%	Total	%	Total	%	Total	%
< 60	10	2%	15	4%	20	6%	15	4%	15	5%
60 - 64	45	11%	40	11%	35	10%	30	9%	25	7%
65 - 69	90	23%	80	21%	75	21%	65	18%	60	17%
70 - 74	90	22%	85	23%	60	17%	95	26%	95	26%
75 - 79	95	23%	80	21%	70	21%	75	21%	75	20%
80 - 84	50	12%	55	15%	50	15%	45	13%	50	14%
85 +	30	7%	25	7%	35	10%	40	10%	40	11%
Applications received	410		375		345		370		370	