

**COMPENSATION SOURCEBOOK (CONTRIBUTION FOR MESOTHELIOMA CLAIMS) INSTRUMENT 2006**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under
- (1) article 9A of the Financial Services and Markets Act 2000 (Transitional Provisions, Repeals and Savings) (Financial Services Compensation Scheme) Order 2001; and
  - (2) regulations 3 and 4 of the Compensation Act (2006) (Contribution for Mesothelioma Claims) Regulations 2006.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 22 December 2006.

**Amendments to the Handbook**

- D. The Glossary is amended in accordance with Annex A to this instrument.
- E. The Compensation sourcebook (COMP) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Compensation Sourcebook (Contribution for Mesothelioma Claims) Instrument 2006.

By order of the Board

21 December 2006

## Annex A

### Amendments to the Glossary of definitions

Add the following new definitions in the appropriate alphabetical position:

<u>authorised insurance company</u>	<u>(In COMP) (in accordance with the compensation transitionals order) a person who was, at any time before commencement, authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on insurance business of any class in the United Kingdom.</u>
<u>mesothelioma regulations</u>	<u>The Compensation Act 2006 (Contribution for Mesothelioma Claims) Regulations 2006 (SI 2006/3259).</u>
<u>mesothelioma victim</u>	<u>(in accordance with section 3 (1) of the Compensation Act 2006) a person who has contracted mesothelioma as a result of exposure to asbestos by a responsible person.</u>
<u>responsible person</u>	<u>(1) (except in COMP) ...</u>  <u>(2) (in COMP) (in accordance with section 3 (1) of the Compensation Act 2006) a person who has negligently or in breach of statutory duty caused or permitted another person to be exposed to asbestos (including an insurer of such a person).</u>

## Annex B

### Amendments to the Compensation sourcebook (COMP)

In the following Annex, underlining indicates new text and striking through indicates deleted text.

...

4.2.1 R Unless *COMP* 4.2.3 R applies, an *eligible claimant* is any person who at any material time:

...

(2) did come within *COMP* 4.2.2 R, but satisfied the relevant exception in *COMP* 4.3 or *COMP* 4.4.

...

4.4 Exceptions: Relevant general insurance contracts: mesothelioma claims

#### Application

4.4.1 R This section applies in respect of any claim for a contribution by a *responsible person* made on or after 25 July 2006 in relation to a *mesothelioma victim's* claim which is determined by agreement in writing, a court or an arbitrator on or after 3 May 2006.

#### Claims for contribution by responsible persons

4.4.2 R The *rules* in this sourcebook shall have effect as modified to the extent necessary to enable the *FSCS* to receive, assess, determine and make payments in respect of applications for compensation from *responsible persons* in accordance with article 9A of the *compensation transitionals order* and regulation 3 of the *mesothelioma regulations*.

4.4.3 R In particular:

- (1) a *responsible person* is eligible to claim in accordance with the provisions of this section;
- (2) the *FSCS* may pay compensation to a *responsible person* where it is satisfied that an *eligible claimant* has a claim under a *protected contract of insurance* issued by an *insurer in default*, which, but for satisfaction of that claim by the *responsible person*, the *FSCS* would have paid;
- (3) a *responsible person* in (2) may claim compensation only if, having satisfied a claim in relation to a *mesothelioma victim*, he could claim contribution from an *insurer in default*;
- (4) the *FSCS* may pay compensation in respect of any contribution for which an *insurer in default* is liable by agreement in writing, or by a determination of a court or arbitrator; and

(5) in this section, references to an insurer include an authorised insurance company, and references to in default include an article 9 default.

4.4.4      G    The provisions in this section establish a scheme for contribution claims by responsible persons. The requirement in COMP 12.2.7R to take into account payments to the claimant do not therefore require the FSCS, in paying compensation in respect of such a claim, to take into account any payments referred to in that rule made by a responsible person in calculating the claimant's overall net claim.

Limits to amounts payable for contribution claims

4.4.5      R    The amount payable by the FSCS in respect of a claim in accordance with the provisions of this section may not exceed the amount that it would have paid if the mesothelioma victim (or a responsible person other than an insurer of such a person) to whom the contribution claim relates had made that claim directly against FSCS.

1 Transitional Provisions Table

1	COMP 5	R	<i>Protected claims</i>	Indefinitely	<i>Commencement</i>
			...		
		(2)	A claim must be treated as a claim in relation to a protected contract of insurance under COMP 5.4.5 R if the conditions in article 9A or 10(1)(a)-(d) of the compensation transitionals order are satisfied.		<i>Commencement but on 6 December 2006 for article 9A of the compensation transitionals order</i>
			...		

In *COMP* Schedule 4, Powers Exercised, insert the following new paragraphs in the appropriate numerical positions. The inserted text is not underlined.

- (12A) Article 9A (Contributions in relation to mesothelioma claims) of the *compensation transitionals order*.
- (15) Article 3 (Modification of FSMA 2000 in relation to FSA rules for mesothelioma claims) of the *mesothelioma regulations*.