

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT MESOTHELIOMA LUMP SUM PAYMENTS
(CONDITIONS AND AMOUNTS) (AMENDMENT)
REGULATIONS 2020

DRAFT PNEUMOCONIOSIS ETC. (WORKERS'
COMPENSATION) (PAYMENT OF CLAIMS)
(AMENDMENT) REGULATIONS 2020

Tuesday 25 February 2020

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Saturday 29 February 2020

© Parliamentary Copyright House of Commons 2020

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: JAMES GRAY

- | | |
|--|--|
| † Afolami, Bim (<i>Hitchin and Harpenden</i>) (Con) | † Greenwood, Margaret (<i>Wirral West</i>) (Lab) |
| Callaghan, Amy (<i>East Dunbartonshire</i>) (SNP) | † Griffiths, Kate (<i>Burton</i>) (Con) |
| † Champion, Sarah (<i>Rotherham</i>) (Lab) | † Tomlinson, Justin (<i>Minister for Disabled People, Health and Work</i>) |
| † Docherty, Leo (<i>Aldershot</i>) (Con) | † Webbe, Claudia (<i>Leicester East</i>) (Lab) |
| † Drummond, Mrs Flick (<i>Meon Valley</i>) (Con) | † Western, Matt (<i>Warwick and Leamington</i>) (Lab) |
| † Evans, Dr Luke (<i>Bosworth</i>) (Con) | Whitley, Mick (<i>Birkenhead</i>) (Lab) |
| † Fell, Simon (<i>Barrow and Furness</i>) (Con) | Peter Stam, <i>Committee Clerk</i> |
| † Francois, Mr Mark (<i>Rayleigh and Wickford</i>) (Con) | † attended the Committee |
| † Gideon, Jo (<i>Stoke-on-Trent Central</i>) (Con) | |
| † Gray, Neil (<i>Airdrie and Shotts</i>) (SNP) | |
| † Green, Chris (<i>Bolton West</i>) (Con) | |

Fifth Delegated Legislation Committee

Tuesday 25 February 2020

[JAMES GRAY *in the Chair*]

Draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2020

8.55 am

The Minister for Disabled People, Health and Work (Justin Tomlinson): I beg to move,

That the Committee has considered the draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2020.

The Chair: With this it will be convenient to consider the draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2020.

Justin Tomlinson: It is a pleasure to serve under your chairmanship, Mr Gray. You are a dear Wiltshire neighbour, and I could not pick a better Chair. The two statutory instruments will increase the value of lump sum awards under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 and the diffuse mesothelioma scheme, which was set up by the Child Maintenance and Other Payments Act 2008. As many hon. Members will know, the schemes stand apart from the main social security benefits uprating procedure. Although there is no statutory requirement to increase rates, I am happy to maintain the position taken by my predecessors and increase the amounts payable from 1 April 2020 by September's consumer prices index of 1.7%. That is the same rate of increase that will be applied to many other social security benefits, including those payable under the industrial injuries scheme.

The Government recognise the very great suffering of individuals and their families caused by the serious and often fatal diseases resulting from exposure to asbestos or other listed agents. The individuals affected, and their families, may be unable to bring a successful claim for civil damages, often due to the long latency period of their condition. Some may not show signs of disease until many years after exposure, by which time their employer may have ceased trading. The lump sum schemes exist to compensate such people, as well as to ensure that people receive compensation in their lifetime, while they can still benefit from it, without having to await the outcome of civil litigation.

I will briefly summarise the purpose of the two schemes. The 1979 Act scheme provides a lump sum compensation payment to those who have contracted a dust-related respiratory disease covered by the scheme, are unable to claim damages from employers because they have gone out of business, and have not brought any action against others for damages. The scheme covers five dust-related respiratory diseases, all of which have serious impacts on day-to-day life. They range from diffuse mesothelioma to lung damage caused by

asbestos. The 2008 mesothelioma lump sum payments scheme widens the compensation criteria for those who have contracted diffuse mesothelioma but cannot claim compensation under the 1979 Act scheme—for example, those who were self-employed or whose exposure to asbestos was not due to work.

Payments made under the 1979 Act scheme are based on the age of the person with the disease and their level of disablement at the time of diagnosis, measured on a percentage scale. All payments for diffuse mesothelioma are made at the 100% rate. All payments under the 2008 scheme are also made at the 100% disablement rate, and based on the age of the sufferer, with the highest payments going to the youngest people with the disease. In the last full year, from April 2018 to March 2019, 3,920 people received payments under both schemes, totalling £52.8 million.

The prevalence of diffuse mesothelioma in Great Britain remains at historically high levels, which I know is a particular concern of Members. The disease has a strong association with exposure to asbestos. Current evidence suggests that about 85% of all mesotheliomas diagnosed in men are attributable to asbestos exposures that occurred through work. The life expectancy of those diagnosed is very poor: many people die within 12 months of diagnosis. Data published by the Health and Safety Executive shows that the number of mesothelioma deaths is projected to be about 2,500 by 2020, before beginning to decline in the coming years, reflecting a reduction in asbestos exposure after 1980.

I will briefly discuss lung health improvements more broadly. Although we expect the number of people being diagnosed with diffuse mesothelioma to start to fall in the coming years, we know that many people will continue to develop it, and the other respiratory diseases to which the regulations relate, for many years to come, so the Government are committed to working in partnership with our arm's length bodies and agencies to improve the lives of those with respiratory diseases. The NHS long-term plan reflects our priority of improving outcomes for people with respiratory diseases.

During last year's debate on the uprating of the schemes, my predecessor referred to the pioneering lung health checks trialled in Manchester and Liverpool. So far, the trial has shown an almost fivefold reduction in stage 4 disease in Greater Manchester, with 80% of cancers diagnosed at an earlier stage. We anticipate that the scheme will be rolled out across the country, and I am pleased to report that a mobile site in Hull was launched last month.

To return to these important regulations, I am sure we all agree that although no amount of money can ever adequately compensate individuals or their families for the suffering and loss caused by diffuse mesothelioma and the other dust-related diseases covered by the two schemes, people who have those diseases rightly deserve some form of monetary compensation. I am required to confirm to the Committee that the provisions are compatible with the European convention on human rights, and I am happy to do so.

9.1 am

Margaret Greenwood (Wirral West) (Lab): It is a pleasure to serve under your chairmanship, Mr Gray. The Mesothelioma Lump Sum Payments (Conditions

and Amounts) (Amendment) Regulations 2020 uprate the lump sum payments for sufferers and their dependants in line with September's consumer prices index of 1.7%. Labour welcomes the fact that the Government have reviewed the rates to maintain their value in line with the CPI. We recognise that they are under no obligation to do so.

The Child Maintenance and Other Payments Act 2008 made provisions to fast-track up-front lump sum payments for people diagnosed with diffuse mesothelioma and their dependants. The scheme provides that support in recognition of the difficulties that people often face in obtaining compensation from other sources, and of the fact that sufferers usually die within months of being diagnosed. It is a truly devastating diagnosis to receive.

That scheme operates alongside the scheme established under the Pneumoconiosis etc. (Workers' Compensation) Act 1979, and offers support to those unable to benefit from it. If a person has died as a result of mesothelioma, payments can be made to their dependants. It is funded by a compensation recovery mechanism, so that payments made are recovered from any subsequent successful civil compensation claim. The 2008 scheme provides a one-off payment to sufferers who have no occupational link to the disease or who are self-employed, including sufferers who live in close proximity to a workplace containing asbestos, those exposed to asbestos in the environment and family members exposed via workers' clothing.

Mesothelioma is a type of cancer that develops in the lining that covers the outer surface of some of the body's organs. It is usually linked to asbestos exposure. It mainly affects the lining of the lungs, although it can affect the lining of other organs as well. It takes many years to develop, but is usually rapidly fatal following the onset of symptoms. Unfortunately, it is rarely possible to cure, although treatment can help to control the symptoms.

According to the NHS website, more than 2,600 people are diagnosed with mesothelioma each year in the UK. Most cases are diagnosed in people aged 60 to 80, and men are more commonly affected than women. Last year, the Minister's predecessor said that deaths from mesothelioma were at a "historically high level" and the widespread use of asbestos in the decades after world war two means that, sadly, the issue may be with us for some time.

Some 86% of schools contain asbestos, according to a 2015 study. The material was typically used in buildings between the 1940s and 1970s. Experts say that it is a greater health risk as it gets older and starts to degrade. According to the National Education Union, at least 319 teachers have died from mesothelioma since 1980, 205 of whom have died since 2001.

As I have said, Labour welcomes the uprating of the lump sum payments for sufferers of mesothelioma and their dependants. We remain concerned, however, about the striking lack of parity between the lump sum payments made to sufferers and those made to dependants. Under the regulations, a mesothelioma sufferer who is diagnosed at the age of 67 will receive a payment of £20,042. By contrast, if someone suffering from mesothelioma dies aged 67 or over, their dependant will receive a payment of just £8,084. A mesothelioma sufferer who is diagnosed at the age of 37 will receive a payment of £93,827. However, if someone suffering from mesothelioma dies

at that age or under, their dependant will receive a payment of £48,829. Does the Minister think that is fair?

When last year's equivalent of these regulations was debated on the Floor of the House in February 2019, the then Minister said:

"Of course, I fully understand that families can be devastated and very badly affected, but there is still the recognition that they are able to get compensation, even if it is not at the same level."—[*Official Report*, 6 February 2019; Vol. 654, c. 360.]

She also said that the issue of disparity in payments to sufferers and dependants is raised each time this kind of debate is held. Is that not telling? Does it not make the Government realise that it is about time that payments were equalised? After all, it is 10 years since 2010, when the then Labour Minister, Lord McKenzie of Luton, pledged to equalise payments. Unfortunately, the signs are that the Government's position will not change soon, but I urge the Minister to reflect on it.

On 6 February, the current Minister said, in response to a written parliamentary question on equalisation from my hon. Friend the Member for Manchester, Gorton (Afzal Khan):

"It is right that available funding is prioritised where it is needed most, that is to people living with these diseases."

I ask the Minister to listen to the repeated calls for equalisation, to look again at the issue, and to consider the devastating impact that mesothelioma has on family members who lose a loved one. Given that the difference in payments often affects women whose husbands were directly exposed to asbestos at work, what assessment have the Government made of the impact on women of a lack of parity in payments? What is the most recent estimated cost of providing equal payments for sufferers and their dependants?

To reiterate, Labour welcomes the support available to sufferers and the uprating of provisions, but it is clear that a number of issues need to be addressed. Although we note that the Government are not under any obligation to uprate, Members said a lot about automatic uprating during last year's debate on the equivalent of these regulations. At that time, the then Minister said that she would

"absolutely think about what has been said about automatic uprating".—[*Official Report*, 6 February 2019; Vol. 654, c. 356.]

It was Labour's view then, and it remains our view now, that automatic uprating is the right thing to do. Can the Minister tell us what has come of his predecessor's pledge to "absolutely think about" what was said about automatic uprating in last year's debate? Will he think about what he has said today, and will he go one step further by committing to automatic uprating?

It is vital that we continue to raise awareness of the risk of working with, or in an environment with, asbestos. Can the Minister reassure Members that continuing to raise awareness is a priority for the Government, and can he tell us how the Government will do that?

Responsibility for asbestos lies primarily with the Health and Safety Executive. It is important to point out that the HSE's funding has been cut significantly since the Conservatives came to power. It will receive £100 million less from the Department for Work and Pensions in 2019-20 than it did in 2009-10—a reduction of 54% in real terms. Between 2010 and 2016, the number of inspectors was reduced by 25%. What impact

[Margaret Greenwood]

have the cuts had had on the ability of the HSE to regulate, monitor and take proactive action to prevent work-related death, injury and ill health, including that related to asbestos and mesothelioma? Will he take this opportunity to rule out further cuts to the HSE—

The Chair: Order. I am afraid the hon. Lady is drifting rather far away from the subject we are discussing—namely, that of the two statutory instruments that relate to the uprating of the benefits. Perhaps she could return to the main topic.

Margaret Greenwood: I felt it was relevant, but I will return to the topic.

Can the Minister confirm that, post Brexit, this country will not lower standards to match American regulations, which allow products containing up to 1% of asbestos?

Labour welcomes the regulations to increase lump sum payments to pneumoconiosis sufferers by 1.7%, in line with inflation. We have noted that the Government are under no statutory obligation to do so. The pneumoconiosis regulations refer to the 1979 Act, which provides lump sum payments to people suffering from certain asbestos-related conditions or their dependants where they are unable to claim damages because the employer has gone out of business. As well as mesothelioma, the scheme covers pneumoconiosis, bilateral diffuse pleural thickening, byssinosis, and primary carcinoma of the lung where there is accompanying evidence of asbestosis and/or bilateral diffuse pleural thickening. What action are the Government taking to raise awareness of all those conditions, their range of causes, the circumstances in which they are likely to occur, and the support available?

People suffering from pneumoconiosis often face a series of hurdles to receive payments from the DWP. The disease can be difficult to diagnose using two-dimensional X-rays, as they may not show enough detail and because it can take 10 years to manifest. That means that the last X-ray a miner received on leaving work may not have picked it up. Smokers or former smokers aged between 55 and 80 already receive invitations for screenings for lung diseases. Will the Minister talk to colleagues in the Department for Health about extending that to former miners?

As with the mesothelioma regulations, Labour welcomes the uprating but there is again a lack of parity between the amounts of compensation offered to sufferers and to their dependants. Will the Minister commit to establishing parity? What other support, as well as financial, do the Government make available to those who lose a loved one to a disease covered by the regulations? I say again that Labour welcomes the upratings, but I urge the Minister to reflect carefully on the many issues raised by the Committee.

9.10 am

Sarah Champion (Rotherham) (Lab): It is always a pleasure to serve under your chairmanship, Mr Gray. In the knowledge that I would sit on this Committee, I contacted the British Lung Foundation to get its opinion on the regulations, and it was broadly very positive about the changes.

It will come as no surprise, however, that improvements can be made, and the British Lung Foundation has come up with two that are quite modest and which I ask the Minister to consider. Could the uprating of payments be automatic and linked to an inflation index, for example, rather than being made at Parliament's discretion? Will the Minister also consider additional funding of research into the increasing number of treatment options available? As we all know, cures for these conditions are sadly lacking.

The Chair: I call the Minister, who need reply only to matters that fall within the scope of the regulations.

9.11 am

Justin Tomlinson: Thank you, Mr Gray. I very much welcome the clear cross-party support for the two sets of regulations. A number of valid points have been raised. I pay tribute to the British Lung Foundation, which is a really good, proactive charity that works with hon. Members across the House. We will take into consideration the points it has raised.

The shadow Minister asked a number of important questions, one of which was about equalising the payments made to those who have the disease and their dependants. The main intention of the schemes is to provide financial support to people living with certain diseases and to help them deal with the issues that the illness brings, so it is right that funding is targeted where it is most needed—to people living with the disease.

Equalising the awards made to people with the disease and their dependants would require changes to primary legislation. That would be a complex task, as awards to dependants under the 1979 Act include payments made in two parts: first, a payment for the effects of the illness before death, based on the assessed level of disability and on the length of time that a person had the illness; and secondly, a payment made in cases in which the death was actually caused by the relevant disease.

I was also asked why the Government do not automatically uprate payments. Although I sympathise with that view—in theory, automatic uprating would be more straightforward—there would be no monetary gain because we have actually uprated payments in line with CPI every year. These debates provide a valuable avenue for Members to discuss their thoughts on the lump sum schemes and, more broadly, on support for people with respiratory disease, and I know that many Members value that. We will, however, keep that under review.

Reference was rightly made to what more the HSE and the Government could do to raise awareness. The HSE does fantastic, proactive work to co-ordinate stakeholder activity on occupational lung diseases. As a Government, we regularly signpost people using the gov.uk website.

Neil Gray (Airdrie and Shotts) (SNP): Obviously, the biggest tragedy is that most people who suffer with mesothelioma are not aware that they have the condition until it is too late. The payments recognise and compensate for that. Can the Government do more to find former workers who may have been exposed to asbestos and other work-related hazards and who may find themselves suffering from such a condition further down the line?

Justin Tomlinson: That is a fair challenge. The Government are passionate about doing everything we can to raise awareness. Significant improvements have been made in Government, the HSE and the NHS to engage as many stakeholders as possible. One example is the British Lung Foundation, which can then raise awareness among its members, identify illness as soon as possible, and provide the appropriate level of support. That goes back to the point about why we have these annual debates: they are an opportunity to shine a light on the issue, and if people have proactive ideas, we are very receptive to them.

The Government recognise the important role of the schemes in providing financial support to people diagnosed with mesothelioma and other dust-related diseases. The

regulations will ensure that the value of the schemes is maintained. I commend the uprating of the payments scales and ask for the Committee's approval to implement them.

Question put and agreed to.

DRAFT PNEUMOCONIOSIS ETC. (WORKERS' COMPENSATION) (PAYMENT OF CLAIMS) (AMENDMENT) REGULATIONS 2020

Resolved,

That the Committee has considered the draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2020.—(*Justin Tomlinson.*)

9.15 am

Committee rose.

