

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT MESOTHELIOMA LUMP SUM PAYMENTS
(CONDITIONS AND AMOUNTS) (AMENDMENT)
REGULATIONS 2017

DRAFT PNEUMOCONIOSIS ETC. (WORKERS'
COMPENSATION) (PAYMENT OF CLAIMS)
(AMENDMENT) REGULATIONS 2017

Tuesday 28 February 2017

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Saturday 4 March 2017

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The Committee consisted of the following Members:

Chair: SIR ALAN MEALE

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| † Berry, Jake (<i>Rossendale and Darwen</i>) (Con) | † Smith, Mr Andrew (<i>Oxford East</i>) (Lab) |
| † Brine, Steve (<i>Winchester</i>) (Con) | Smith, Angela (<i>Penistone and Stocksbridge</i>) (Lab) |
| † Costa, Alberto (<i>South Leicestershire</i>) (Con) | † Stephens, Chris (<i>Glasgow South West</i>) (SNP) |
| † De Piero, Gloria (<i>Ashfield</i>) (Lab) | † Tomlinson, Michael (<i>Mid Dorset and North Poole</i>) (Con) |
| † Double, Steve (<i>St Austell and Newquay</i>) (Con) | † Turner, Karl (<i>Kingston upon Hull East</i>) (Lab) |
| Dowd, Jim (<i>Lewisham West and Penge</i>) (Lab) | † Wragg, William (<i>Hazel Grove</i>) (Con) |
| † Hammond, Stephen (<i>Wimbledon</i>) (Con) | † Zahawi, Nadhim (<i>Stratford-on-Avon</i>) (Con) |
| † Heaton-Jones, Peter (<i>North Devon</i>) (Con) | |
| † Mordaunt, Penny (<i>Minister for Disabled People, Health and Work</i>) | Clementine Brown, Joseph Watt <i>Committee Clerks</i> |
| † Rimmer, Marie (<i>St Helens South and Whiston</i>) (Lab) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 28 February 2017

[SIR ALAN MEALE *in the Chair*]

Draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2017

8.55 am

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

That the Committee has considered the draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2017.

The Chair: With this it will be convenient to consider the draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2017.

Penny Mordaunt: These two statutory instruments will increase the value of lump sum amounts payable under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 and the diffuse mesothelioma scheme set up by the Child Maintenance and Other Payments Act 2008. The two schemes stand apart from the main social security benefits uprating procedure, and there is no legislative requirement to review the level of payments each year. However, we wish to increase the amounts payable for 2017 by the consumer prices index, which is 1%—the same rate as is being applied to some other social security disability benefits and industrial injuries disablement benefit. The new amounts will be paid to those who first satisfy all the conditions of entitlement on or after 1 April 2017.

The Government recognise that people suffering from diseases caused by exposure to asbestos or a number of other listed agents may be unable to bring a successful civil damages claim in relation to their disease. That is mainly owing to the long latency period, often stretching back decades, between exposure and the onset of the disease. By providing lump sum payments through the two schemes, we fulfil an important role to sufferers of certain dust-related diseases, including asbestos-related diseases. The schemes also aim to ensure that sufferers receive compensation in their lifetime while they themselves can still benefit from it, without first having to await the outcome of civil litigation.

I will briefly summarise the specific purpose of the lump sum compensation schemes. The Pneumoconiosis etc. (Workers' Compensation) Act 1979 scheme, which I will refer to as the '79 Act scheme, provides a lump sum compensation payment to those who suffer from one of five dust-related respiratory diseases covered by the scheme, who are unable to claim damages because the relevant employer has gone out of business or who have not brought any action against others for damages. The five diseases covered by the '79 Act scheme are diffuse mesothelioma, bilateral diffuse pleural thickening, pneumoconiosis, byssinosis and primary carcinoma of the lung, if accompanied by asbestosis or bilateral diffuse pleural thickening.

The 2008 mesothelioma lump sum payments scheme provides compensation to people who contract diffuse mesothelioma, but are unable to claim compensation for that disease under the '79 Act scheme—for example, because their exposure to asbestos was not due to their work. The 2008 scheme allows payments to be made quickly to sufferers at their time of greatest need. Under both schemes, a claim can be made by a dependant if the sufferer has died before being able to make a claim.

Payments under the '79 Act scheme are based on the level of the disablement assessment and the age of the sufferer at the time the disease is diagnosed. The highest amounts are paid to those diagnosed at an early age and with the highest level of disablement. All payments for diffuse mesothelioma under the '79 Act scheme are made at the 100% disablement rate: the highest rate of payment. Similarly, all payments under the 2008 scheme are made at the 100% disablement rate and are based on age, with the highest payments going to the youngest sufferers. In the last full year, April 2015 to March 2016, 3,920 people received payments under both schemes, totalling just shy of £54 million. For the current year, 2016-17, we estimate that just over 4,000 payments will be made under those schemes, totalling just over £54 million.

Chris Stephens (Glasgow South West) (SNP): As I understand it, the last uprating of compensation was in 2015. Is there any reason why there was no uprating in 2016?

Penny Mordaunt: I will come to that. There are a number of issues around putting this on a statutory footing, but what we are trying to do today is to ensure that the benefits are uprated—that is the main purpose of the statutory instruments before us. It is not to change the way in which we do this.

I am aware that the incidence of diffuse mesothelioma is a particular concern of Members, with the number of deaths in Great Britain at historically high levels. Diffuse mesothelioma has a strong association with exposure to asbestos and current evidence suggests that about 85% of all male mesotheliomas are attributable to asbestos exposures that occurred through work. Those diagnosed with diffuse mesothelioma have a life expectancy of less than 12 months from diagnosis, with the sufferer becoming severely disabled soon after diagnosis.

The number of cases reflects the long latency period of the disease. Our latest available information suggests that there will continue to be about 2,500 diffuse mesothelioma deaths per year for the rest of this decade, before annual cases begin to fall, reflecting a reduction in asbestos exposure following its widespread use before 1980.

The regulations increase the levels of support through the statutory compensation schemes. I am sure we all agree that although no amount of money can ever compensate individuals and families for the suffering and loss caused by these terrible diseases, those who are suffering rightly deserve and need some form of monetary compensation. The statutory schemes provide an essential element of that support.

I am required to confirm to the House that these provisions are compatible with the European convention on human rights, and I am happy to do that.

9.2 am

Marie Rimmer (St Helens South and Whiston) (Lab): It is a pleasure to serve under your chairmanship, Sir Alan. As we have heard, the Child Maintenance and Other Payments Act 2008 made provision for lump sum compensation payments to be made to people suffering from diffuse mesothelioma, or their dependants. This instrument provides for a 1% uprating of the lump sum payments made to sufferers or their dependants. We recognise that under the 2008 Act there is no obligation on the Government to increase the rates of payment to keep up with inflation, so we welcome these moves.

Mesothelioma is a cancer of the lining of the lungs or abdomen, and is associated almost exclusively with asbestos. The 2008 scheme makes a one-off lump sum payment to mesothelioma sufferers where there is no occupational link to the disease. For example, it could be that the person affected lived near a workplace where asbestos was regularly being used. Alternatively, they may have been exposed to asbestos while self-employed.

The one-time payment depends on the age of the claimant when their disease was diagnosed. It can range from £13,295 for those aged 77 or over at the time of diagnosis to £85,580 for those aged 37 and under. Meanwhile, payments for surviving dependants range from £7,374 to £44,537, depending on the age at which the disabled person died. Claims must be made within 12 months of diagnosis. Sufferers are eligible only if they have not received compensation from an employer or a Ministry of Defence scheme. In a report of November last year, the Institute for Fiscal Studies estimated that expenditure on these payments in 2015-16 was more than £8 million, with 400 claimants that year.

I would like to ask about the disparity between payments made to sufferers and dependants. In every debate on this issue since 2010 when the Minister, now the noble Lord McKenzie, committed to closing the difference in awards offered, Members of both Houses have called on the Government to honour that commitment. Do the Government still intend to reduce the differential between dependant and sufferer lump sum payments? What percentage of payments are made to dependants rather than sufferers? What would be the additional cost of achieving parity of payments between the two?

There is also the matter of prevention of future injury relating to asbestos. In debates in the other place on this issue, the Government suggested that they expect claims for mesothelioma to peak in 2018. Can the Government confirm that that is still the expectation? Whether or not there is a peak in those tragically affected by the illness, it is vital that all those who are able continue to raise awareness of the risks of working with asbestos.

What plans do the Government have in place to continue raising awareness of this dangerous substance? Responsibility for asbestos has largely fallen to the Health and Safety Executive. Will the Minister outline the range of activities and campaigns that the HSE is currently undertaking to raise awareness and encourage prevention? Will she also confirm whether additional funding has been provided to the HSE specifically for the purpose of preventing the harm caused by asbestos?

We also welcome the moves to increase the level of payment to those suffering from pneumoconiosis. We recognise that the Government are not under any statutory obligation to increase these payments and are pleased to see that they have done so in line with inflation.

The pneumoconiosis regulations relate to the Pneumoconiosis etc. (Workers' Compensation) Act 1979, which provides lump sum compensation payments to sufferers of certain dust-related diseases. As with the regulations relating to mesothelioma, provision is made for payments to dependants, as defined by the 1979 Act, where the sufferer did not receive a compensation payment under the 1979 Act before their death.

We, of course, support the increase in payment levels to sufferers of this illness and their dependants. I again raise the question: with regard to pneumoconiosis, are the Government still committed to ensuring that sufferers and dependants achieve parity of award? The Minister set out the Government's timetable for that outcome to be achieved. In this instance, will she set out exactly how the awards are split between each group?

That issue aside, I am also intrigued as to the logic behind the lack of impact analysis. The Government assert that it was not necessary to produce an impact assessment for either of these instruments. Given the cross-party interest in ensuring that both sufferers and dependants are properly provided for, I ask the Minister to consider again whether an impact assessment might be appropriate. After all, it is absolutely necessary to continue to monitor cases closely, to ensure that both sufferers and dependants have sufficient support available and that we properly invest in information and prevention.

Despite the issues I have raised, we welcome these measures to improve the levels of payment available in the tragic instances of these illnesses.

9.9 am

Chris Stephens: It is a pleasure to see you in the Chair, Sir Alan. I first want to declare my membership of the Glasgow City branch of Unison. That is pertinent because in 2005 I lost a friend to mesothelioma. It is a dreadful disease. My friend was a health and safety officer in the Glasgow City branch. The then Labour Government rightly introduced compensation payments in 2008, but my friend Tom's family were unable to get compensation because the company he had been working for, which is where they think he contracted the awful disease, was no longer trading. That has been a problem for those who have been suffering from this disease: many of the companies where people were exposed to asbestos are no longer trading. It is very difficult for families in those circumstances to make claims.

I have a number of questions for the Minister. I associate myself with the remarks and many of the questions of the hon. Member for St Helens South and Whiston, but I want to add to them. I do not think we really got an answer as to why, if the Government are going to uprate on a yearly basis—that is what they state in the explanatory memorandum—the last uprating was in 2015. If they are going to do that, they should consider a higher increase than 1%, particularly given that the consumer prices index is currently 1.8%. Also, I would argue that CPI does not represent the real rate of inflation, which is the retail prices index; I will always argue that position, and it has always been the trade union view. We are going by a figure from September 2016 of 1%, but inflation is increasing and we need to be mindful of that. Given that there has not been an increase in two years, the Government need to reflect on whether 1% is good enough.

[Chris Stephens]

The hon. Member for St Helens South and Whiston mentioned equality impact assessments, and I have been asking Government Departments a number of questions on that theme. Each Department has given different answers on the number of equality impact assessments they are carrying out and on whether they should be carrying them out at all.

The Minister said that there is no need to consult; the Government should reconsider that. Many organisations, including the trade unions, should be consulted on this issue and on whether the compensation scheme can be improved, as the hon. Member for St Helens South and Whiston outlined in her remarks. I look forward to the Minister's response to those questions.

9.12 am

Penny Mordaunt: I thank Members for their comments and questions. Starting with the equalisation of awards, the 1979 Act scheme and the 2008 Act scheme allow dependants of deceased sufferers to claim lump sum compensation. Dependents may claim because the sufferer did not know about the schemes in life or because they passed on before being able to pursue a claim.

The value of the awards paid to sufferers and dependants has always differed, historically. The rationale is that limited resources should be targeted on those who would most benefit from the awards: the sufferers themselves. The issue is complex. To amend the 1979 Act to equalise those awards without creating losers in the scheme would require comprehensive changes to the payment and claims legislation under the 1979 Act. We estimate that were the 2017-18 uprating exercise to equalise sufferer and dependant awards, it would require an additional £2 million a year from the departmental expenditure limit budget.

The hon. Member for St Helens South and Whiston asked specifically about the breakdown between sufferer payments and dependant payments. In 2015-16, sufferer payments totalled £51.3 million, and dependant payments were £2.6 million. The bulk clearly goes to those who are still alive.

I turn to the hon. Lady's questions about the Health and Safety Executive. Like every other organisation, the Health and Safety Executive is having to tighten its belt and do more with its budget, but I am pleased to say that it is being successful. The hon. Lady may be aware of its ambition to do more on health—historically, it has been focused on the safety part of its remit. It has launched some major campaigns and its own consultation exercises, alongside our work and health Green Paper.

Specifically, following its major campaign on asbestos awareness, which kicked off in October 2014 and ran until March 2015, the Health and Safety Executive continues to make a wide range of information freely available through its website. The "Beware Asbestos" app, a legacy of that major campaign, has also been highlighted in trade magazines and by trade associations. Further specific awareness-raising activities may also be considered in the future.

I now turn to the point that the hon. Lady and the hon. Member for Glasgow South West both made. We have considered the merits of aligning the uprating of these schemes with the annual uprating of other social

security benefits. However, there was considered to be a risk that such an approach would marginalise the discussions around these particular disease areas. By presenting this measure today, the Government recognise the continued importance of uprating those lump sum payments by inflation, but of course we keep this matter under review.

On the specific point about 2015, the consumer prices index at that time was minus 0.2%, so there would not have been an uprating on that. We use the consumer prices index because of what we do in respect of other benefits, although I take the hon. Gentleman's point that he might want a different measure to be used across all benefits.

I now turn to the other scheme and the issue of impact assessment. We have not prepared an impact analysis for these instruments as they do not have an impact on the private sector or civil society organisations. In relation to the incidence of mesothelioma more generally, the Health and Safety Executive already publishes comprehensive information regarding asbestos-related diseases, including mortality and occupational data for mesothelioma. I understand that updated data are planned for publication later this year. However, if Opposition Members feel that that is not thorough enough or that information is missing, they can write to me and tell me what the Health and Safety Executive is not specifically providing. I will certainly look at that.

Chris Stephens: I thank the Minister for giving way. On the non-alignment with social security benefits, does she not agree that there is a sensible argument for looking at consulting with trade unions and other organisations—asbestosis campaigners and the rest?

Penny Mordaunt: I thank the hon. Gentleman for his comments. As the Minister who looks after these and other benefits, and health and work, my door is always open to people who wish to make representations and suggestions about how we can improve things. As the hon. Gentleman will know, we are doing a huge amount of work in the Department at the moment on our health and work Green Paper, which has recently closed. A huge amount of activity during that consultation was specifically with the trade unions, which have a massive role to play in this agenda going forward. We absolutely want to improve things where we can, and I am always happy to receive any representation that any organisation wishes to make.

I thank hon. Members for their comments. I am happy to follow up on the issue of the specific information that the Health and Safety Executive supplies.

Question put and agreed to.

**DRAFT PNEUMOCONIOSIS ETC.
(WORKERS' COMPENSATION) (PAYMENT
OF CLAIMS) (AMENDMENT)
REGULATIONS 2017**

Resolved,

That the Committee has considered the draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2017.—(*Penny Mordaunt.*)

9.21 am

Committee rose.