

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT MESOTHELIOMA LUMP SUM
PAYMENTS (CONDITIONS AND AMOUNTS)
(AMENDMENT) REGULATIONS 2018

DRAFT PNEUMOCONIOSIS ETC. (WORKERS'
COMPENSATION) (PAYMENT OF CLAIMS)
(AMENDMENT) REGULATIONS 2018

Tuesday 20 February 2018

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The Committee consisted of the following Members:

Chair: JOAN RYAN

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| † Amesbury, Mike (<i>Weaver Vale</i>) (Lab) | † McFadden, Mr Pat (<i>Wolverhampton South East</i>) (Lab) |
| † Berger, Luciana (<i>Liverpool, Wavertree</i>) (Lab/Co-op) | † Merriman, Huw (<i>Bexhill and Battle</i>) (Con) |
| Burden, Richard (<i>Birmingham, Northfield</i>) (Lab) | † Newton, Sarah (<i>Minister for Disabled People, Health and Work</i>) |
| † Campbell, Mr Alan (<i>Tynemouth</i>) (Lab) | † Sheerman, Mr Barry (<i>Huddersfield</i>) (Lab/Co-op) |
| † Caulfield, Maria (<i>Lewes</i>) (Con) | † Stephens, Chris (<i>Glasgow South West</i>) (SNP) |
| † De Cordova, Marsha (<i>Battersea</i>) (Lab) | † Whittaker, Craig (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Dunne, Mr Philip (<i>Ludlow</i>) (Con) | Yohanna Sallberg, Laura-Jane Tiley, <i>Committee Clerks</i> |
| † Harper, Mr Mark (<i>Forest of Dean</i>) (Con) | |
| † Hughes, Eddie (<i>Walsall North</i>) (Con) | |
| † Jayawardena, Mr Ranil (<i>North East Hampshire</i>) (Con) | |
| † Jones, Mr Marcus (<i>Nuneaton</i>) (Con) | † attended the Committee |

Second Delegated Legislation Committee

Tuesday 20 February 2018

[Ms JOAN RYAN *in the Chair*]

Draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2018

4.30 pm

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

That the Committee has considered the draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2018.

The Chair: With this it will be convenient to consider the draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2018.

Sarah Newton: It is a pleasure to serve under your chairmanship, Ms Ryan. The two draft measures will increase the value of lump sum awards payable under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 and the diffuse mesothelioma payment scheme, which was set up by the Child Maintenance and Other Payments Act 2008. The new amounts will be paid to those who satisfy all the conditions of entitlement on or after 1 April 2018.

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. None the less, I am happy to increase the amounts payable from April 2018 by the consumer prices index rate of 3%. The same rate is being applied to some other social security disability benefits and the industrial injuries disablement benefit.

The Government recognise the suffering of individuals and their families that is caused by the serious and often fatal diseases resulting from exposure to asbestos and other listed agents. Individuals affected may be unable to bring a successful claim for civil damages, mainly because of the long time lag between exposure and onset of the disease, which can often stretch for decades. Therefore, by providing lump sum compensation payments through these two schemes, we fulfil an important role to those who have these dust-related diseases. As well as compensating people who cannot make civil claims, the schemes aim to ensure that people with such diseases 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 specific purpose of these lump sum compensation schemes. The Pneumoconiosis etc. (Workers' Compensation) Act provides—for simplicity, I shall refer to this as the 1979 Act scheme—a lump sum compensation payment to those who have one of five dust-related respiratory diseases covered by the scheme, who are unable to claim damages from employers because they have gone out of business and who have not brought any action against others for damages. The five diseases covered by the 1979 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 payment scheme widens the criteria for compensation to those who have contracted diffuse mesothelioma but who are unable to claim compensation for that disease under the 1979 Act scheme—for example, the self-employed or people whose exposure to asbestos was not the result of work.

Mr Barry Sheerman (Huddersfield) (Lab/Co-op): This is a complicated area, and I have a particular interest in it because a brother of mine died after working for British Petroleum and using asbestos in the days when it was not seen as a danger. He died in great agony, and he had a terrible fight with British Petroleum for any compensation at all. Will the new regulation detract from the capacity for people to sue their employers for a decent sum?

Sarah Newton: I am very sorry to hear about the hon. Gentleman's sad loss. It is disappointing to hear of such a large and profitable organisation putting up such a case to resist providing compensation to an employee who was no doubt valued. The regulations were brought in specifically to address that; we know that the onset of these terrible diseases can come after many years, and often after people have left employment. However, once they are diagnosed people can, tragically, die very quickly, and we do not want them to spend their remaining time trying to pursue civil litigation, with a huge fight on their hands. That is why the lump sum payments are available.

Of course, the scheme and the Department will seek to claim back any payments that can be reclaimed through our own civil litigation; but the scheme was set up specifically to address the concern that the hon. Gentleman raised, so that no one else in that situation would have to go through what his brother went through. Today's regulations are just about increasing the payment by 3%. We are not changing the scheme in any way. I think that Members on both sides of the House welcomed the measures when we introduced them.

Mr Sheerman: When people who suffer from such a disease get involved in the system, they face some of the hardest, sharpest lawyers that can be found. My brother had an apprenticeship at BP and worked there all his life. The lawyers found out that when he was in the Army he smoked, and that was extremely damaging. I have never seen sharper, more unscrupulous people than those employed by reputable companies to make sure that they do not pay their workers their just deserts.

Sarah Newton: I thank the hon. Gentleman for that further intervention. It is clearly disappointing to hear of such practice, but I understand from the independent advisory board, the Industrial Injuries Advisory Council, that since the introduction of redress in the form set out in the schemes there have been improvements in corporations' behaviour, because they understand that the Government see the conditions in question as absolutely terrible. There is far greater understanding of those conditions and their causes than there was in the past, and it is expected that corporations will settle swiftly. I am glad if I have been of some reassurance about that.

I think it is important that under both schemes, a claim can be made by a dependant if the person with the disease has died before being able to make a claim. That can give some comfort to the remaining relatives. Payments under the 1979 Act scheme are based on the age of the person with the disease and their level of disablement at the time they are diagnosed. The highest amounts are paid to those who are diagnosed at an early age and with the highest level of disablement. All payments for diffuse mesothelioma under the 1979 Act scheme are made at the 100% disablement rate—the highest rate of payment—owing to the seriousness of the disease. Similarly, all payments under the 2008 scheme are made at the 100% disablement rate and based on age, with the highest payments going to the youngest people with the disease. In the last full year—April 2016 to March 2017—3,620 people received payments under both schemes, totalling just over £50 million.

I am aware that the incidence of diffuse mesothelioma is a particular concern of Members, given that the number of deaths from the disease in Great Britain is at historically high levels. The life expectancy of those who are diagnosed with diffuse mesothelioma is poor, with many people dying within 12 months of diagnosis. Diffuse mesothelioma has a strong association with exposure to asbestos, and current evidence suggests that around 85% of all male mesotheliomas are attributable to asbestos exposures that occurred through work.

The number of cases occurring 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 the reduction in asbestos exposure after its widespread use before 1980.

The draft regulations increase the levels of support through the statutory compensation schemes. I am sure we can all agree that although no amount of money can ever compensate individuals and families for the suffering and loss caused by diffuse mesothelioma and other dust-related diseases covered by the scheme under the 1979 Act, those who have the diseases rightly deserve some form of monetary compensation.

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

Before I finish, I put on record my appreciation of the excellent work of the outgoing chair of the Industrial Injuries Advisory Council, Professor Keith Palmer. Professor Palmer's outstanding work on the council over the past 16 years has included six years as a member and chair of the council's research working group and, latterly, 10 years as the council's chair, advising the Secretary of State for Work and Pensions and the Department for Communities in Northern Ireland on the industrial injuries benefit scheme.

During that time, under Professor Palmer's leadership, the council has written more than 80 reports explaining the often complex scientific evidence underlying its recommendations on work-related diseases. Those reports have included recommendations on work-related musculoskeletal diseases that have gone on to benefit farmers, carpet fitters, floor layers and miners, among others. More recently, prescription has been extended for cancers caused by exposure to ionising radiation. On my own behalf and that of my predecessors, I thank Professor Palmer for his contribution and leadership.

4.42 pm

Marsha De Cordova (Battersea) (Lab): It is a pleasure to serve under your chairmanship, Ms Ryan.

The draft regulations cover compensation payments for sufferers of listed dust-related diseases, or for sufferers' dependants. As we have heard, the Child Maintenance and Other Payments Act 2008 made provision for lump sum compensation payments to people suffering from diffuse mesothelioma or their dependants. The draft legislation provides for a 3% uprating of the lump sum payments made to sufferers or their dependants. We recognise that under the 2008 Act the Government have no obligation to increase payment rates to keep up with inflation, so we welcome the move.

Mesothelioma is a cancer of the lining of the lungs or abdomen and is predominantly associated with asbestos. The greater exposure, the greater the risk, and those who work directly with asbestos are at the highest risk. However, those with limited exposure—a significant number of people, such as those who wash the clothes of someone who works with asbestos—are also at considerable risk. There is usually a delay between exposure and the onset of the disease of about 40 years on average.

Mesothelioma is a very serious disease. Only 55% of those with the disease live longer than six months following diagnosis, while just over a third live longer than one year. According to Cancer Research UK, incidence rates in the UK have increased by 71% since the early 1990s. In the past 10 years, the number of deaths has risen by nearly a third. More than 2,500 people in the UK die of the disease every year.

As we have heard, the 2008 scheme provides a one-off lump sum payment to sufferers where there is no occupational link to the disease. That includes cases in which a person affected was exposed to asbestos while self-employed, or in which a person lived near a workplace where asbestos was used regularly. People suffering from diseases as a result of exposure to asbestos, or one of a number of other similar agents, may be unable to bring a successful claim for civil damages in relation to their disease, mainly because of the long delay between exposure and the onset of the disease. We recognise that providing lump sum compensation payments through the two schemes covered by the two sets of draft regulations is important for sufferers of those diseases.

Improved health and safety procedures have restricted the use of asbestos and provided a safer environment for its handling, but the legacy of the common use of asbestos is still with us, and it is still a very current issue. Predictions of a peak in cases have proved wrong time and again, and they have been revised time and again in debates in the other place. The Government suggested that they expected mesothelioma claims to peak in 2018—this year—but their previous estimates have proved inaccurate. Will they confirm whether they still expect a peak this year? If not, what is their revised date?

Regardless of whether there is a peak in the number of people affected, it is vital that we continue to raise awareness of the risk of working with asbestos. What measures are the Government taking to ensure that awareness is widespread? Responsibility for asbestos lies primarily with the Health and Safety Executive. Will the Minister provide details about the activities and campaigns that the HSE is undertaking to raise awareness and encourage prevention?

[*Marsha De Cordova*]

The HSE's funding is being slashed by almost half as a result of Government cuts. It will receive over £100 million less from central Government in 2019-20 than it did in 2009-10—a reduction of 46%. Between 2010 and 2016, the number of its inspectors was reduced by 25%. Such huge cuts will inevitably have an impact on all its areas of responsibility. Will the Minister secure appropriate public protection by ending the proposed future cuts to HSE funding? Will she confirm whether additional funding has been made available to the HSE in the last year to prevent harm from asbestos? Will she set out the funding plans for the next financial year for the same purpose?

I also ask the Minister about the considerable disparity between payments to sufferers and payments to their dependants. In 2010, a commitment was made by the then Minister Bill McKenzie—now Lord McKenzie—to close that gap. The issue was raised again last year, but the Government failed to provide any commitment and we have seen no further action since then. In every debate on the issue since 2010, Members of both Houses have called on the Government to honour that commitment. Why have the Government not done so? Do they still intend to reduce the differential between lump sum payments for dependants and sufferers? What would be the additional cost of achieving parity between the two?

We welcome the increase, in line with inflation, in payments to those who suffer from pneumoconiosis. Again, we recognise that the Government have no statutory obligation to increase those payments, but I am pleased that the Minister has done so. The draft regulations relate to the Pneumoconiosis etc. (Workers' Compensation) Act 1979, which provides lump sum compensation payments to sufferers of certain dust-related diseases, including those caused by coal dust and asbestos. As with mesothelioma, provision is made for payments to dependants, as defined by the 1979 Act, where the sufferer did not receive payments under that Act before their death.

The annual death rate from pneumoconiosis in the UK has remained relatively constant over the past 10 years, with an average of approximately 140 deaths per year. According to charities that support sufferers, the number of cases and the number of deaths attributed to the disease are both likely to be underestimates. Identification of the disease is difficult: it does not always present as acute, and its symptoms can be overlooked or misattributed because they are similar to those of several other diseases. Diagnosis could be improved with greater awareness. Will the Minister set out what action the Government are taking to raise awareness of the disease, its range of causes, the circumstances in which it is likely to occur and the support available? We support increasing payment levels to sufferers of the illness and their dependants. As with previous regulations, I want to ask again: are the Government still committed to ensuring that sufferers of pneumoconiosis and their dependants achieve parity of award?

We have no impact assessment for either of the statutory instruments. The Government assert that it was not necessary to produce those, but I am concerned about the reason for that. Why does the Minister believe that was not necessary? Will she tell us how many claims there were in relation to both sets of regulations last year, and how many of those claims were successful?

I look forward to the Minister's response to the points that have been raised today. If she cannot answer all the questions now, I would be grateful if she put her answers in writing. Despite the points raised, we welcome both the regulations and the uprating of payment levels in line with inflation for those affected by these devastating illnesses.

4.51 pm

Chris Stephens (Glasgow South West) (SNP): Just as I did when we discussed this matter last year in Committee, I want to put on record that today I am remembering my comrade and friend, the fine trade union activist Tom Begley, who passed away from asbestos-related cancer before the 2008 regulations were put in place.

This point is similar to that made by the hon. Member for Huddersfield. People have difficulty raising claims on these issues for no other reason than that employers of the time are no longer trading. Sometimes it is very difficult for individuals to raise cases, so it is important that we get the regulations right and that we compensate at an appropriate level.

With that in mind, may I ask the Minister two questions, one of which will be similar to what I asked last year? First, the Government are increasing the payments in line with the consumer prices index. Many of us believe that that does not represent the real rate of inflation; many of us believe that the real rate of inflation is given by the retail prices index. Why is the consumer prices index chosen over the retail prices index, given that the retail prices index is at 4%?

Secondly, the explanatory notes that accompany this statutory instrument refer to the Government having no statutory obligation to increase payments. Many of us who have seen friends pass away because of these diseases, or those of us who take an interest and have lost family and friends, would like that to change. Perhaps we can agree a formula in the future so that a statutory obligation is placed on the Government to increase the payments for these two awful diseases each year.

4.53 pm

Sarah Newton: I thank the hon. Members for Glasgow South West and for Battersea for welcoming and supporting this really important uprating. I am sure that the increase will be welcomed by the people who are affected.

The hon. Gentleman asked why we are uprating using this particular measure. It is commonly regarded as the best measure of inflation. It is the one that the Treasury uses, the Bank of England uses and the Government use for uprating. There is always this debate about which is the most effective measure, but that is the settled view of the Government. At 3%, it is a decent rise that people will experience.

Mr Mark Harper (Forest of Dean) (Con): On that point about RPI, not only is CPI thought to be better, but the Office for National Statistics—the independent statistics organisation—and the UK Statistics Authority have said that RPI is a flawed measure, and it is not counted as an official UK national statistic because it is so unreliable.

Sarah Newton: I thank my right hon. Friend for such a helpful intervention. He knows this matter well, having been the Minister in this place before. I am sure he has had to respond to that question in similar debates, and I thank him for that additional point.

The hon. Member for Battersea asked me a number of questions, and I will try my best to get through them all. If I have omitted to make a timely note, I will follow up any unanswered questions after reading *Hansard*. First, she asked why impact assessments have not been prepared for the statutory instruments. I remind hon. Members that the statutory instruments do not change any policy or existing scheme; they just uprate the amount that is paid. If there were new measures or policies, it would be absolutely right and proper to do an impact assessment in relation to businesses, charities and voluntary bodies; but as there would be no impact, because all of those assessments would have been done when the legislation was introduced, there is no need to do that.

Mike Amesbury (Weaver Vale) (Lab): Surely there is an impact regarding the disparity between payments to sufferers and dependants? It is important to address that.

Sarah Newton: The issue of what the person affected by the condition and their dependants receive was a matter of policy when the initial legislation was introduced.

The hon. Member for Battersea also asked about predictions and whether we still hold to the Health and Safety Executive's most recent predictions of the annual number of deaths. Predicting life expectancy and death from any condition is an art rather than a science. We must listen to the experts; we very much value the work of the HSE and it stands by that estimate. Let me reassure everyone that as long as people suffer from these conditions and need compensation, the scheme will be there. The estimates are to help us to plan the scheme, but they are in no way a limitation on who is eligible for support.

The hon. Lady made a good point about spouses who might have contracted mesothelioma from washing overalls or clothes, or from being exposed to asbestos other than because they were workers. People who contract mesothelioma through contact with their spouse's clothing are eligible for an award under the 2008 scheme, and the value of such payments are the same as those made under the 1979 Act.

The hon. Lady also asked about the action that the HSE takes to raise awareness of asbestos. The HSE ran a successful and high-profile campaign from October 2014 to October 2015, and it continues that work by making a lot of information available on its website and in its "Beware Asbestos" app. The matter is regularly highlighted through trade magazines and trade associations; as has been mentioned, people who are self-employed are perhaps not aware of the compensation scheme. Such campaigns are aimed at ensuring that people are

aware of the dangers and know about the available support, and that every effort is made to reduce exposure to asbestos. In my conversations with the HSE, which is an arm's length body, I have been assured that it has the resources it needs to do its work. Its funding does not come solely from the Government, and it assures me that it has the funds that it needs to do the important review. I meet the HSE regularly, and it always has the opportunity to raise the issue of resources with me.

The question of why the Government do not equalise dependants' payments with those made to people who have the disease has been debated in the past, and it was raised again today. We estimate that the cost of equalisation is about £5 million a year, and it is absolutely right that we prioritise the use of resources where they are needed most: for people who live with the disease. If we were to consider equalisation, in addition to the financial implications, legislative changes would be required. That would be a complex task, because awards to dependants under the 1979 Act include payments made in two parts: a payment for the effects of the illness before death, based on the assessed level of disability and the length of time the person had the illness, and a payment made in cases where the death was caused by the disease. At the moment, we see no legislative opportunity for equalisation, and no priority. We want to ensure that people who would benefit from the compensation in their lifetime come forward now and claim it. There are payments available for dependants.

I thank Members for their contributions, which have helped us all to understand how valuable the regulations are, in that they help some very poorly and very disabled people. We want to ensure that the schemes operate really well, because they can play an important part in people's lives at a very difficult time. I commend the regulations to the Committee and ask for approval to implement them.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2018.

DRAFT PNEUMOCONIOSIS ETC. (WORKERS' COMPENSATION) (PAYMENT OF CLAIMS) (AMENDMENT) REGULATIONS 2018

Resolved,

That the Committee has considered the draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2018.—(*Sarah Newton.*)

5.1 pm

Committee rose.

