

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT MESOTHELIOMA LUMP SUM PAYMENTS
(CONDITIONS AND AMOUNTS)
(AMENDMENT) REGULATIONS 2024

DRAFT PNEUMOCONIOSIS ETC. (WORKERS'
COMPENSATION) (SPECIFIED DISEASES
AND PRESCRIBED OCCUPATIONS)
(AMENDMENT) REGULATIONS 2024

DRAFT PNEUMOCONIOSIS ETC. (WORKERS'
COMPENSATION) (PAYMENT OF CLAIMS)
(AMENDMENT) REGULATIONS 2024

Monday 19 February 2024

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The Committee consisted of the following Members:

Chair: SIR EDWARD LEIGH

† Aiken, Nickie (*Cities of London and Westminster*)
(Con)
† Bell, Aaron (*Newcastle-under-Lyme*) (Con)
Blackman, Bob (*Harrow East*) (Con)
† Burgon, Richard (*Leeds East*) (Lab)
† Cruddas, Jon (*Dagenham and Rainham*) (Lab)
† Davies, Mims (*Minister for Disabled People, Health
and Work*)
† Firth, Anna (*Southend West*) (Con)
† Foxcroft, Vicky (*Lewisham, Deptford*) (Lab)
† Freeman, George (*Mid Norfolk*) (Con)
† Hammond, Stephen (*Wimbledon*) (Con)

† Hillier, Dame Meg (*Hackney South and Shoreditch*)
(Lab/Co-op)
† Kawczynski, Daniel (*Shrewsbury and Atcham*)
(Con)
† Leadbeater, Kim (*Batley and Spennings Dale*) (Lab)
Linden, David (*Glasgow East*) (SNP)
† Logan, Mark (*Bolton North East*) (Con)
† Sobel, Alex (*Leeds North West*) (Lab/Co-op)
† Tuckwell, Steve (*Uxbridge and South Ruislip*) (Con)

Huw Yardley, *Committee Clerk*

† **attended the Committee**

First Delegated Legislation Committee

Monday 19 February 2024

[SIR EDWARD LEIGH *in the Chair*]

Draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2024

6 pm

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

That the Committee has considered the draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2024.

The Chair: With this it will be convenient to consider the draft Pneumoconiosis etc. (Workers' Compensation) (Specified Diseases and Prescribed Occupations) (Amendment) Regulations 2024 and the draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2024.

Mims Davies: It is a pleasure, Sir Edward, to serve under your chairmanship.

The schemes that we are debating provide critical support for the sufferers of dust-related diseases—often caused by exposure to asbestos and other harmful dust at work—who have no recourse to compensation through their employers. I am sure that hon. Members agree that today's debate is a valuable opportunity to raise awareness of the schemes and the support for Department for Work and Pensions customers with those conditions more widely. The schemes form only part of a wider range of Government support available to sufferers of those diseases, including support with caring costs and for additional costs that arise due to their disability.

The Pneumoconiosis etc. (Workers' Compensation) Act 1979 scheme—for simplicity, I will refer to it as the 1979 Act scheme—provides for a single lump sum compensation payment to eligible sufferers of diseases covered by the scheme. That includes pneumoconiosis and diffuse mesothelioma. It was designed to cover people who are unable to claim damages from employers—because, for example, they have gone out of business—and who have not brought any action against any other party for damages.

To be eligible for a lump sum award, a claimant must be awarded industrial injuries disablement benefit, or IIDB, for a disease covered by the 1979 Act scheme. The diffuse mesothelioma scheme under the Child Maintenance and Other Payments Act 2008, which I will refer to differently as the 2008 Act scheme, was introduced to provide compensation to people diagnosed with diffuse mesothelioma who are unable to claim compensation under the 1979 Act. That might be because they were self-employed or because their exposure to asbestos was not due to their work. The 2008 Act scheme provides no-fault support to sufferers of diffuse mesothelioma quickly at their time of greatest need.

Both schemes aim to make compensation payments to sufferers of those illnesses within their lifetimes, wherever possible. Under both schemes, however, a claim can be made by a dependant, if the person with the disease sadly passes away before being able to make a claim. That is in recognition of the suffering that the diseases can bring to whole families.

The rates payable under the 1979 Act scheme are based on the sufferers' assessed level of disablement and their age when they were assessed as suffering with the disease for the purpose of IIDB entitlement. IIDB provides a weekly payment for those who have had an industrial accident or developed diseases known to be related to specific types of work. All payments for diffuse mesothelioma under the 1979 Act scheme are automatically made at the 100% disablement rate—the highest rate of payment, reflecting the extremely serious nature of the disease. Payments made to diffuse mesothelioma sufferers under the 2008 Act scheme are determined using the same payment scale used for diffuse mesothelioma sufferers under the 1979 Act scheme.

Between April '22 and March '23, the latest financial year for which data is available, 2,860 awards were made across both schemes. That includes 2,460 awards made under the 1979 Act scheme and 400 under the 2008 Act scheme. Expenditure on those lump sum awards totalled just over £42 million in '22-23. That demonstrates our continued commitment to supporting sufferers of these terrible diseases, and their families.

I will now provide more information on the purpose of the instruments that we are debating. The first two instruments seek to make the one-off awards paid under those lump sum schemes more generous. While there is no statutory requirement to increase the rates in line with prices each year, I am maintaining the position taken by my predecessors in increasing the value of lump sum awards by 6.7%, in line with the September '23 consumer prices index.

The new amounts will be paid to those who satisfy all the conditions of entitlement for the first time from 1 April 2024. The increase is in line with the proposed increases to industrial injuries disablement benefit and other disability benefits as part of the main social security uprating provisions for '24-25. Members will no doubt recognise the terrible impact that these diseases have on sufferers and their families. It is right that the value of the compensation payments should be retained, especially in these challenging times.

In addition to the uprating instruments, the Department has laid a third instrument for consideration today, which is a minor technical fix and will simply realign the diseases that may bring entitlement to a payment under the 1979 Act scheme with those that may bring entitlement to IIDB. That will ensure that the original policy intent of the 1979 Act is fully reflected in the legislation and, in doing so, widen the 1979 Act scheme entitlement to customers suffering from two additional dust-related conditions: asbestos-related primary carcinoma of the lung, where the sufferer does not also have asbestosis, and unilateral, or one-sided, diffuse pleural thickening. Crucially, no one will be made worse off as a result of this change.

As many hon. Members will be aware, the Department is advised by the Industrial Injuries Advisory Council, an independent scientific body, on changes to the list of prescribed diseases for which IIDB can be paid. When

they were added to the 1979 Act, all diseases exactly mirrored those listed in the relevant IIDB legislation. However, over time, IIAC has recommended several changes to IIDB prescribed diseases that were also specified in the 1979 Act. Those changes were accepted by my Department. The unintended impact of accepting the recommendations was that people who suffer from one-sided diffuse pleural thickening and asbestos-related primary carcinoma of the lung, but not asbestosis, are now potentially eligible for IIDB but are not eligible for an award under the 1979 Act scheme. The divergence was first identified in September 2023, when officials were asked to provide clarification on entitlement for an individual case. Officials have worked at pace since September to bring forward the legislation before us.

The amendments will address the divergence by realigning diseases specified in the 1979 Act and the IIDB legislation and will apply to new claims made under the 1979 Act scheme. However, payments have been made historically to sufferers of the two diseases despite the divergence identified in the legislation. The Department understands that customers who have made claims for those two diseases historically have not missed out as a result of the change in the legislation not being made sooner.

As of 16 February, the Department was holding 94 claims made since September for which it has not been possible to establish entitlement under the current legislation, but where the criteria would be met under the proposed legislation. If the legislation is approved today, we will pay those customers in full as soon as possible. We estimate that the change will extend legislative entitlement to a 1979 Act scheme award to about 300 people a year with one-sided diffuse pleural thickening and asbestos-related primary carcinoma of the lung. The changes are the right thing to do and demonstrate the Government's ongoing commitment to supporting sufferers of these terrible diseases. I am sure that all hon. Members here will join me in recognising the continued importance of the compensation offered by the two schemes.

Finally, I am required to confirm that each of the three provisions is compatible with the European convention on human rights; I am happy to confirm to the House that they are. I commend the measures to the Committee and ask for approval to implement them.

6.12 pm

Vicky Foxcroft (Lewisham, Deptford) (Lab): It is a pleasure to serve under your chairship, Sir Edward. I believe this is now the third time that I have spoken to the regulations on behalf of the shadow Department for Work and Pensions team. As always, I thank the Minister for introducing the regulations. As she explained, the mesothelioma regulations amend the Child Maintenance and Other Payments Act 2008, and the pneumoconiosis regulations amend the Pneumoconiosis etc. (Workers' Compensation) Act 1979.

The Acts make provision for lump sum compensation payments to be made to people suffering specific dust-related diseases or to their dependents, provided that they meet certain qualifying criteria. The 1979 Act was intended to compensate people who had contracted certain diseases as a result of their working environment. On the other hand, the 2008 Act compensates people regardless of whether they contracted the disease through work, thus covering those affected through indirect exposure. This

year, we also have a third SI in the set, which makes small changes to the wording on the specific diseases to which the 1979 Act applies. The regulations before us update the amounts payable by 6.7% from April 2024 based on the consumer prices index rate of inflation in September 2023, bringing them in line with other benefits.

I know that colleagues will be aware of the impacts that these awful diseases can have on victims and their families. I am sure they will want to join me in thanking the many organisations that do a fantastic job in providing support and information. If I may, I will also take a moment here to pay tribute to our late colleague, the former Member for Rochdale, Tony Lloyd, who was a great advocate for people suffering from asbestos-related diseases. He campaigned tirelessly for asbestos to be removed from workplaces, schools and homes.

Thousands of people are diagnosed with or die from one of these diseases every year. Let us remember that most of them will have contracted their illness in the course of their work. Sadly, in many cases that was avoidable. Mesothelioma UK, for example, estimates that 94% of cases of that disease could have been prevented. It is therefore only right that appropriate compensation is awarded by the state. As always, I recognise that there is no statutory requirement to increase these rates, and I am glad that the Government continue to do so.

It is well established that it can take many years for the diseases to develop, so it follows that the majority of people who are diagnosed have already retired. However, when reading the 2022 report from the Work and Pensions Committee into the Health and Safety Executive's approach to asbestos management, I was struck by a more extreme example given by the Asbestos Victims Support Groups' Forum. The organisation stated that it had been supporting a 27-year-old man whose exposure to asbestos would have either been at school or during his short working life. This same report also refers to a 44-year-old doctor who died after being exposed to asbestos while working in the NHS.

These rather alarming cases bring me to my next point. A 2019 Government survey found that 80.9% of participating schools reported that asbestos was still present on the estate. Concerns were raised last spring when, at the request of the hon. Member for Twickenham (Munira Wilson), the Office for National Statistics supplied data showing that almost 150 healthcare and education workers had died of asbestos-related cancer since 2017. With that in mind, I ask the Minister to provide an update on what work the Government are doing with the HSE to ensure that UK workplaces are asbestos free.

I turn to a question that the Opposition have asked several times in past debates: why does the uprating of these lump sum payments not happen automatically? The Government's response is always that that is unnecessary, as the commitment to uprate the payments in line with other benefits has been in place since 2004. Previous Ministers have quite rightly noted that these Committees provide an opportunity for the discussion of the schemes, as well as of support for people with respiratory diseases. Although I take both points, I still believe that it would be preferable to provide certainty through automatic uprating. In previous years, Ministers have told me that they will keep the issue under review; I hope that that will remain the case.

[Vicky Foxcroft]

I continue to have concerns about the discrepancy between the payments made to victims and those made to their dependants. Under the new figures, the 44-year-old doctor I mentioned would be awarded £100,889, but if their dependant were making the claim, they would receive only £50,608, which is 50% less. The Government committed way back in 2010 to looking at that disparity and equalising the situation. If memory serves, last year the Minister's predecessor did not respond directly to this point, but in 2022 the right hon. Member for Norwich North (Chloe Smith), whom I also had the pleasure of shadowing, stated that the Government believe that

"the funds available ought to be prioritised for those who are suffering most with the diseases—the person with the disease."—*[Official Report, Fifth Delegated Legislation Committee, 23 February 2022; c. 12.]*

I ask the Minister again to consider whether this disparity is proportionate and appropriate, given the devastating impact that these diseases can have on families. I also request that she update the Committee on the most recent estimated costs of providing equal payments to sufferers and dependants. The discrepancy is compounded by the fact that the diseases are much more likely to affect men, which means that, by default, dependants are more likely to be women. I would be grateful if the Minister provided an update on any recent equality impact assessments carried out in respect of the disparity between payments. It is somewhat frustrating that we raise these issues year after year and successive Ministers, although sympathetic, have yet to take any meaningful action.

Despite those concerns, the Opposition are happy to support the uprating of the lump sum payments in line with inflation. I urge the Minister to continue looking at what can be done across Government to improve health and safety, so that we do everything we can to prevent workplace-related deaths.

6.20 pm

Mims Davies: I thank the shadow Minister. I agree that the work of the charity and support sector is incredibly welcome. I thank her for being here to debate the draft regulations and for welcoming the uprating, and I thank hon. Members for being part of the debate. There is always much interest in the scheme. The work that the former hon. Member for Rochdale, Tony Lloyd, did on the issue before his sad passing is of great note, and I recognise what the shadow Minister has said.

The Government recognise the vital role that these schemes play in supporting those with dust-related diseases who have no recourse to compensation through their employers. That is why the draft regulations seek to maintain the value of the payments made under the 1979 Act and 2008 Act schemes for the upcoming financial year. The additional changes that we propose will ensure that the original intention of the 1979 Act scheme remains fully reflected in legislation and that the diseases covered by the scheme are based on a more up-to-date clinical understanding. As a result of the changes, legislative entitlement to lump sum awards under the 1979 Act will, as I mentioned, be extended to include sufferers of one-sided diffuse pleural thickening and asbestos-related primary carcinoma of the lung

without asbestosis. We remain committed to providing crucial financial support to sufferers of those industrial diseases.

The shadow Minister asked why the uprating is not considered as part of the main social security benefits uprating order. Unfortunately, the legislation that underpins the main social security benefits uprating does not include the lump sum payments under the 1979 Act and 2008 Act schemes. The uprating of the lump sum payments made under those schemes therefore requires separate regulation. Any change to this situation would require primary legislation, which is why we are back in this Committee Room this afternoon.

Like the hon. Lady, I have worked with the HSE over the last four years, and I know how seriously it takes its work on public buildings and asbestos. Of course, we all take public buildings and safety at work extremely seriously. The Government agree that addressing Great Britain's asbestos legacy, particularly in public buildings, remains a key issue and that continuing to build on the evidence base around safe management and disposal is fundamental. That is why the HSE has a mature, comprehensive and important regulatory framework to ensure that the legacy of asbestos risks in Great Britain is managed. It aligns with the best evidence currently available, and this is reflected throughout the approaches outlined in the Control of Asbestos Regulations 2012. That is the correct implementation of CAR. It includes managing the risks of exposure and will eventually lead—we heard the stories that the hon. Lady mentioned—to the elimination of asbestos from the built environment without the need for a target deadline. Most importantly, it will ensure that people working in any such environment, as she mentioned, are fully supported.

The hon. Lady raised the question of equalisation and asked whether the value of the awards made to dependants under the schemes could be increased to match those made to sufferers of these diseases. It is clear that whole families, and those covered by the lump sum schemes, can be devastated by such diseases, which is why dependants can claim compensation following the passing of their loved one. Although I have listened carefully to the hon. Lady's concerns and we have discussed these matters, the Government remain of the view that the available funding should continue to be prioritised for people who are currently living with the disease. That position remains in line with the main purpose of the schemes, which is to provide financial support for people living with certain diseases and help them to deal with the issues that their illness brings. We estimate that equalising awards for people diagnosed with the disease and their dependants in 2024-25 would require an additional £1 million to £4 million a year in the departmental expenditure limit budget. That is my answer to the hon. Lady, but if I have missed anything, my officials and I will write to her.

The wider point that the hon. Lady raised about asbestos in schools relates to an ongoing issue in which many hon. Members are interested. I would like to reassure everyone that the Department for Education rightly takes the safety of our children extremely seriously. All local authorities, governing bodies and academy trusts are expected to have robust plans in place to manage asbestos in school buildings effectively and in line with their legal duties. That follows expert advice from HSE that as long as asbestos-containing materials

are in good condition, well protected and unlikely to be damaged or disturbed, it is usually safer to manage them in place.

The hon. Lady mentioned the recommendations of the Work and Pensions Committee. The Government are not opposed to any steps that continue to support the asbestos safety regime and that enable risk to be managed effectively. In my time working with HSE and the Select Committee, they have certainly been keen to keep engaged. I do not hold that portfolio, but the hon. Lady's points were well made. I think I have probably answered all her questions, but I will ensure that if anything remains outstanding, my officials will pick it up.

The schemes form only a part of the wider range of Government support that is available to sufferers of these diseases. For example, the recipients of IIDB get the weekly payment I mentioned, based on their assessed level of disablement; as the hon. Lady said, they are entitled to state benefits to cover other needs, such as income replacement support with caring costs, and support for whatever additional costs may arise due to their disability.

While financial support is vital, we must ensure that we do our utmost to improve health outcomes for sufferers of these terrible diseases and, as the hon. Lady said, those who may be coming through with new learned experiences, which I am sorry to hear about. I am pleased to say that respiratory disease is a clinical priority within the NHS long-term plan, which aims to improve outcomes for sufferers through early diagnosis and increased access to treatment. Respiratory disease is also one of the six conditions covered by the Government's major conditions strategy, which aims to improve care and

health outcomes for those living with multiple conditions and an increasing set of needs, which can be more and more complex.

I am delighted to conclude this debate, which has once again shown that this House is committed to ensuring that the necessary support is available for the individuals and their families living with the consequences of these terrible diseases. I commend the draft regulations and schemes to the Committee and ask its approval for implementing them.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2024.

DRAFT PNEUMOCONIOSIS ETC. (WORKERS' COMPENSATION) (SPECIFIED DISEASES AND PRESCRIBED OCCUPATIONS) (AMENDMENT) REGULATIONS 2024

Resolved,

That the Committee has considered the draft Pneumoconiosis etc. (Workers' Compensation) (Specified Diseases and Prescribed Occupations) (Amendment) Regulations 2024.—(*Mims Davies.*)

DRAFT PNEUMOCONIOSIS ETC. (WORKERS' COMPENSATION) (PAYMENT OF CLAIMS) (AMENDMENT) REGULATIONS 2024

Resolved,

That the Committee has considered the draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2024.—(*Mims Davies.*)

6.31 pm

Committee rose.

