EXPLANATORY MEMORANDUM TO

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

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 Pursuant to the Pneumoconiosis etc. (Workers' Compensation) Act 1979[1] ("the 1979 Act"), sufferers of specified dust-related diseases or their dependants, who meet the eligibility criteria, may be awarded a one-off, lump-sum compensation payment. Historically, the diseases specified by the 1979 Act legislation mirrored five diseases that had been prescribed for the purpose of obtaining entitlement to Industrial Injuries Disablement Benefit (IIDB)[2]. The disease definitions set out in IIDB legislation have been updated over time following recommendations made by the Industrial Injuries Advisory Council (IIAC)[3].

2.2 This instrument will make the changes required to re-align the definitions of certain specified diseases under the 1979 Act legislation with the definitions of their corresponding diseases set out in IIDB legislation. To achieve this, the list of specified diseases for the purpose of the 1979 Act scheme will be amended to include "Unilateral Diffuse Pleural Thickening"[4] and "Asbestos-Related Primary Carcinoma of the Lung"[5], thereby widening the scheme to include customers with these diseases who meet the eligibility criteria. This instrument ensures that the original policy intent of the 1979 Act is reflected in the legislation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

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[1] https://www.legislation.gov.uk/ukpga/1979/41/contents
[2] https://www.legislation.gov.uk/uksi/1985/967/schedule/1
[3] https://www.gov.uk/government/organisations/industrial-injuries-advisory-council
[4] Diffuse Pleural Thickening (DPT) is a respiratory disease that affects the membrane surrounding the lungs, potentially restricting lung capacity with accompanying breathlessness. It is often caused by occupational exposure to asbestos. The unilateral qualifier means the disease affects a single lung, whereas bilateral means that the disease affects both lungs.
[5] Primary carcinoma of the lung is the medical term for lung cancer that starts in the lung.

4.3 The Department for Communities in Northern Ireland will be making corresponding provisions for Northern Ireland.

5. European Convention on Human Rights

5.1 The Secretary of State for Work and Pensions, Mel Stride MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Pneumoconiosis etc. (Workers' Compensation) (Specified Diseases and Prescribed Occupations) (Amendment) Regulations 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 The diseases covered by the 1979 Act are: Pneumoconiosis, Byssinosis and Diffuse Mesothelioma, and such other diseases as are specified by the Secretary of State. The Pneumoconiosis etc. (Workers' Compensation) (Specified Diseases) Order 1985 ("the 1985 Order")[6] specifies additional diseases to which the Act applies.

6.2 The purpose of this instrument is to amend the diseases specified in the 1985 Order so that "Primary Carcinoma of the Lung (where there is accompanying evidence of Asbestosis[7] and/or Bilateral Diffuse Pleural Thickening)" is replaced with "Asbestos-related Primary Carcinoma of the Lung"; and "Bilateral Diffuse Pleural Thickening" is replaced with "Unilateral or Bilateral Diffuse Pleural Thickening".

6.3 Resulting amendments are made to the Pneumoconiosis etc. (Workers' Compensation) (Prescribed Occupations) Order 2007 ("the 2007 Order")[8] which lists the occupations prescribed for the purpose of each disease to which the Act applies. The prescribed occupations set out within the 2007 Order are pertinent in determining whether there is a 'relevant employer'[9]. It is a condition of entitlement under the 1979 Act that every 'relevant employer' has ceased business.

6.4 Consequential amendments are also made to the Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) Regulations 1988 ("the 1988 Regulations")[10] to amend the definition of disease and remove the definition of Primary Carcinoma of the Lung.

6.5 These changes re-align the definitions of certain specified diseases under the 1979 Act legislation with the definitions of their corresponding diseases set out in Industrial Injuries Disablement Benefit (IIDB) legislation, to reflect the original policy intent of the scheme.

7. Policy background

What is being done and why?

7.1 The changes proposed by this instrument will mean that all claimants with an award of IIDB for Prescribed Disease D8A "Primary Carcinoma of the Lung" (with occupational exposure to asbestos), and claimants with a Prescribed Disease D9 award

[6] https://www.legislation.gov.uk/uksi/1985/2034/contents/made
[7] Asbestosis is a chronic lung condition that is caused by prolonged exposure to high concentrations of asbestos fibres in the air.
[8] https://www.legislation.gov.uk/uksi/2007/2000/contents/made
[9] https://www.legislation.gov.uk/ukpga/1979/41/schedule
[10] https://www.legislation.gov.uk/uksi/1988/668/regulation/2

in respect of "Unilateral" Diffuse Pleural Thickening, will become entitled to a one-off, lump-sum compensation award under the 1979 Act scheme, subject to the claimant meeting the other eligibility criteria.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 The 1979 Act makes provision for a one-off, lump-sum compensation payment to be made to people suffering from specified dust-related diseases (or their dependants), where Industrial Injuries Disablement Benefit (IIDB) is payable in respect of the disease (or would be payable but for the disablement not amounting to the appropriate percentage), subject to other eligibility criteria being met. The original intention of the scheme was to provide compensation to people suffering from certain specified diseases who were unable to bring a civil claim for damages against a 'relevant employer'.

7.3 Historically, the definitions for each of the specified diseases exactly mirrored a Prescribed Disease (PD) set out in IIDB legislation i.e., within Schedule 1 of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985[11]. However, over time the prescriptions of diseases in IIDB legislation have been amended.

7.4 Since 1985, the Government has introduced changes to the IIDB legislation following recommendations made by the Industrial Injuries Advisory Council (IIAC) for two prescribed diseases that were also specified for the purpose of the 1979 Act scheme. These were the then Prescribed Diseases D9 – "bilateral diffuse pleural thickening" and D8 – "primary carcinoma of the lung where there is evidence of one or both of the following (i) asbestosis, (ii) bilateral diffuse pleural thickening."

7.5 In 1997, 'unilateral' diffuse pleural thickening was added to PD D9 following IIAC's advice that pleural thickening affecting one lung is sufficient to cause disablement[12]. In 2006 the reference to "Primary Carcinoma of the Lung with Bilateral Diffuse Pleural Thickening" was removed from the PD D8 prescription following IIAC advice that this was an unreliable marker of asbestos exposure[13]. PD D8A, "primary carcinoma of the lung" (with occupational exposure to asbestos), was added in its place.

7.6 These changes meant that people who suffer from "unilateral diffuse pleural thickening", and "Primary carcinoma of the lung" (where there is evidence of occupational exposure to asbestos) could now be eligible for IIDB. However, IIAC do not advise on entitlement under the 1979 Act, and these updated diseases were not added to the specified disease list in the 1979 Act legislation, despite them being updated definitions of existing diseases based on an improved clinical understanding.

Why is it being changed? What will it do now?

7.7 The proposed changes will ensure that claimants with an award of IIDB for "primary carcinoma of the lung" (with occupational exposure to asbestos), or "unilateral diffuse

[11] https://www.legislation.gov.uk/uksi/1985/967/schedule/1

[12] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/515546/diffuse-pleural-thickening-iiac-report.pdf

[13] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/328181/asbestos-related-diseases-cm6553.pdf

pleural thickening" may be considered for a lump-sum award under the 1979 Act scheme. These changes are necessary to ensure that the original policy intent of the 1979 Act is reflected in the legislation, and that these claimants are not denied access to support under the 1979 Act scheme.

Numbers affected?

7.8 The number of claimants likely to gain entitlement to a lump-sum award under the 1979 Act following this change are expected to be in the low hundreds per year. This estimate is based on internal modelling using the number of 1979 Act lump-sum awards the department has made for the relevant specified diseases in previous years.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not give rise to any need for consolidation measures.

10. Consultation outcome

10.1 There is no duty to consult over this instrument, therefore a consultation has not been carried out.

11. Guidance

11.1 Prior to implementation relevant guidance used by the claim processors responsible for claims under the 1979 Act will be reviewed and updated as required. The updated disease list will be published on GOV.UK[14].

12. Impact

12.1 There is no significant impact on business, charities, or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because these changes are not expected to significantly impact on business, charities, voluntary bodies, or the public sector. Volumes of claimants likely to be affected by this change is small and are set out in paragraph 7.8.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 No specific monitoring or review of new claims volumes will be undertaken, beyond that which is already undertaken as part of the department's routine data collection.

14.2 This instrument does not include a statutory review clause.

[14] https://www.gov.uk/industrial-injuries-disablement-benefit/further-information

15. Contact

15.1 Lewis Dixon at the Department for Work and Pensions can be contacted with any queries regarding the instrument. Telephone: 0300 086 5458 or Email: lewis.dixon1@dwp.gov.uk.

15.2 Sam Hainsworth, Deputy Director for ESA, WCA, IIS and DMA Policy & Performance, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mel Stride MP, the Secretary of State for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.