

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (INDUSTRIAL INJURIES) (PRESCRIBED DISEASES)
AMENDMENT (No.2) REGULATIONS 2012

2012 No. 1634

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

This instrument makes provision to enable a person who has lung cancer, and who worked as a coke oven worker for at least 5 years in top oven work, or at least 15 years in other oven work, to be eligible to apply for Industrial Injuries Disablement Benefit. Time spent in a combination of both oven work duties can be added together such that 1 year in top oven work equates to 3 years in other coke oven work.

3. Matters of special interest to the Select Committee on Statutory Instruments

None.

4. Legislative Context

4.1 This instrument amends the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985, which includes a full list of the diseases covered by the Industrial Injuries Disablement Benefit scheme. The changes follow the recommendations of the Industrial Injuries Advisory Council (IIAC), which gives advice to the Secretary of State on matters relating to Industrial Injuries Disablement Benefits.

4.2 The Secretary of State agreed to implement the IIAC's recommendation that lung cancer in coke oven workers be added to the list of prescribed diseases.

5. Territorial Extent and application

This instrument applies to Great Britain. Similar statutory rules are to be introduced in respect of Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

• *What is being done and why?*

7.1 The Industrial Injuries Advisory Council (IIAC) is an independent statutory body that advises the Secretary of State for Work and Pensions solely on matters relating to the Industrial Injuries Disablement Benefit scheme. In particular, the IIAC advises the Secretary of State on which diseases should be prescribed for the purpose of claims to Industrial Injuries Disablement Benefit, having studied the available evidence.

- 7.2 In order for a disease to be included within the Industrial Injuries Disablement Benefit scheme, the disease must be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of a person's occupation and not as a risk common to all persons. Additionally, it must be possible, in the absence of special circumstances, to establish or presume with reasonable certainty the attribution of particular cases to the nature of the employment.
- 7.3 These regulations implement the recommendations of the IAC as set out in its report Lung cancer in coke oven workers in September 2011 (Cm 8163).
http://iiac.independent.gov.uk/pdf/command_papers/Cm8163.pdf.
- 7.4 The IAC identified evidence of a greater than double the risk of lung cancer associated with work involving coke ovens. For top oven workers, the risk was more than doubled after 5 years of employment, and for other oven workers, the risk was more than doubled after 15 years of employment. The IAC recognised the possibility that workers may have moved between top oven work and other oven duties in the course of their employment, and in doing so may have failed to separately meet either of the 5 year or 15 year thresholds. In the light of the evidence before it, the IAC recommended both periods could be added together such that each year of top oven work equates to 3 years of other oven work.
- 7.5 The new provisions for lung cancer are expected to result in successful claims from around 65 people a year who have worked as coke oven workers for the specified number of years.

- ***Consolidation***

- 7.6 Informal consolidation of the instrument will be included in due course in the Department's "The law relating to Social Security" (the Blue Volumes), which are available at no cost to the public on the internet at
<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security>

8. Consultation outcome

This is a minor change to existing regulations to bring more people suffering work related diseases within the Industrial Injuries Disablement Benefit scheme. The draft regulations represent no policy shift. They follow recommendations in the report, referred to at paragraph 7.3 above, produced by the Industrial Injuries Advisory Council (IIAC), which consulted and took evidence from a number of interested parties listed in the report, including medical and scientific experts, employers and unions. The draft regulations have been approved by the IIAC. In light of the above, no further consultation was considered necessary.

9. Guidance

The list of diseases covered by the scheme will be updated immediately to include this additional disease. This list of diseases is available online at
<http://www.dwp.gov.uk/publications/specialist-guides/technical-guidance/db1-a-guide-to-industrial-injuries/appendix/appendix-1>.

The list of diseases can also be accessed via the directgov website. Guidance on the change will be available to administrative staff in the offices with responsibility for

processing Industrial Injuries Disablement Benefit claims. The guidance on the change will be in the Decision Makers Guide at <http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide>

10. Impact

10.1 This instrument has no impact on the private sector and civil society organisations

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been published for this instrument.

11. Regulating small business

This instrument does not apply to small business

12. Monitoring and review

This instrument simply implements the Industrial Injuries Advisory Council's recommendations. No specific monitoring and review of the claims process will be carried out above that which is currently in place as part of the Department's routine data collection.

13. Contact

Malcolm Connell at the Department for Work and Pensions Tel: 0113 23 24764 or e-mail: Malcolm.Connell@dwp.gsi.gov.uk can answer any queries on the instrument.