

**EXPLANATORY MEMORANDUM TO  
THE SOCIAL SECURITY (INDUSTRIAL INJURIES) (PRESCRIBED DISEASES)  
AMENDMENT REGULATIONS 2015**

**2015 No. 87**

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

**2. Purpose of the instrument**

2.1 These Regulations amend the [Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Regulations 1985](#) (the “1985 Regulations”). The 1985 Regulations set out the requirements governing entitlement to Industrial Injuries Disability Benefit. These changes are being made to ensure the 1985 Regulations reflect current scientific knowledge.

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

3.1 None

**4. Legislative Context**

4.1 The amendments to the 1985 Regulations, made by these Regulations are in response to recommendations made by the Industrial Injuries Advisory Council in several Command Papers laid before Parliament during 2013-14 – see paragraph 7.3.

**5. Territorial Extent and Application**

5.1 These Regulations apply to Great Britain. Equivalent provisions will be made for Northern Ireland by statutory rules.

**6. European Convention on Human Rights**

6.1 As these Regulations are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

**7. Policy background**

7.1 The Industrial Injuries Advisory Council (“the Council”) is an independent body constituted under section 62 of the [National Insurance \(Industrial Injuries\) Act 1965](#), which advises the Secretary of State for Work and Pensions solely on matters relating to Industrial Injuries Disablement Benefit (“IIDB”). In particular, the Council advises the Secretary of State on the diseases which it recommends should be listed (or “prescribed”) within the 1985 Regulations as conditions capable of giving rise to entitlement to payment of IIDB, and on the conditions it recommends be attached to such entitlement. The Council bases this advice on the best available scientific evidence. If prescribed within the 1985 Regulations, a disease is known as a “prescribed disease” and is given a designation consisting of an alphabetic letter and a number, e.g. B1, to which is attached a medical description of the disease.

7.2 In order for a disease to qualify for prescription within the 1985 Regulations for the purposes of entitlement to IIDB, the disease must be one that can be considered to have been caused by the nature of a person's occupation. For certain diseases, the 1985 Regulations set out a presumption that the disease in question was caused by a person's occupation. However, for those diseases not benefiting from that presumption, it is for the claimant to prove that their disease was caused by the nature of their occupation.

7.3 The recommendations of the Council implemented by these Regulations are set out in reports published by the Council during 2013-14. The relevant command papers are: Cm 8846 on Terminal Cancers, Cm 8880 on Presumption Changes, Cm 8906 on Chronic Obstructive Pulmonary Disease and Cm 8670 on Occupational Chloracne. See links below:

<https://www.gov.uk/government/publications/chronic-bronchitis-and-emphysema-effects-of-treatment-and-the-medical-assessment-iiac-report>

<https://www.gov.uk/government/publications/industrial-diseases-presumption-that-an-illness-is-due-to-working-conditions>

<https://www.gov.uk/government/publications/terminal-cancers-and-industrial-injuries-disablement-benefit-iiac-report>

<https://www.gov.uk/government/publications/occupational-chloracne-report>

### Terminal Cancers

7.4 These Regulations extend the provisions within the 1985 Regulations that provide for persons who are diagnosed with certain specified diseases to benefit from the following:

- a) An automatic assessment of 100% disablement (and thus to entitlement to the highest rate of IIDB); and
- b) An exemption from the usual 90 day waiting period for payment of IIDB following onset of or diagnosis with the disease.

7.5 Together these are known as the "exceptional entitlement rules". Currently certain lung cancers (prescribed diseases C4, C22b, D10 and D11) and angiosarcoma of the liver (prescribed disease C24) are not covered by the exceptional entitlement rules. These Regulations implement the recommendation of the Council that these prescribed diseases be added to the list of those benefitting from the exceptional entitlement rules.

7.6 All of the prescribed diseases currently covered or to be covered by the exceptional entitlement rules also benefit from prioritisation in the processing of their claims for IIDB ("priority processing"). One disease not covered by the exceptional entitlement rules but currently benefiting from priority processing is asbestos related diffuse pleural thickening disease (prescribed disease D9). The Council recommended that this disease be removed from the list of prescribed diseases benefiting from priority processing, to reflect its status as a non-malignant disease with a far better prognosis than that of asbestos related cancers. This recommendation is not implemented by these Regulations, as this change does not require legislative change, but will be implemented instead through amendments to operational guidance.

## Presumption rules

7.7 These Regulations update the rules which enable a decision maker to presume (unless there is clear evidence to the contrary), that a particular prescribed disease is caused by the nature of the person's current or past occupation (the "presumption rules").

7.8 Presumption can be beneficial for claimants as it removes the burden of gathering supporting evidence. That evidence gathering process can be slow, costly and difficult, especially for a claimant who is suffering from a serious illness. The presumption rules apply where a person has both been diagnosed with a particular disease, and has worked in a particular related occupation (the "prescribed occupation"). The Council undertook a detailed review of the presumption rules in 2013-14 to assess whether they continued to reflect current scientific knowledge regarding both the length of time for which the diseases benefiting from presumption could potentially remain undetected due to a lack of discernible symptoms (the "latency period"), and regarding the likelihood that those diseases had been caused by the nature of the related prescribed occupations.

7.9 These Regulations reflect the recommendations made by the Council following this review. They change the rules relating to the length of time that can have passed between a person working in a prescribed occupation and their diagnosis with a prescribed disease for presumption still to apply. These Regulations change the 1985 Regulations to list in one paragraph those twenty diseases for which the presumption only applies if a person has been diagnosed with a prescribed disease within one month of their having worked in a prescribed occupation, and to list in a separate second paragraph those twenty-six diseases for which the presumption will apply regardless of how much time has passed since a person has worked in a prescribed occupation. These Regulations also change the disease-specific rules regarding time limits for presumption for prescribed conditions B1 (anthrax), B4(b) (anaemia caused by hookworm disease), B5 (tuberculosis), B7 (infection by genus brucella) and B8A (hepatitis A).

7.10 Finally, these Regulations also reduce the number of prescribed occupations for which presumption will apply in relation to condition B5 (tuberculosis).

7.11 The changes made by these Regulations simplify and clarify the presumption rules, and this will make the claims process more efficient, thereby simplifying and speeding up the process for both the Department and for customers.

## Occupational Chloracne

7.12 Chloracne is a very rare disease that can be linked in a majority of cases to exposure to substances collectively known as chloracnogens. The Council has noted that the disease can be severely disabling and have enduring effects, continuing for years after exposure to chloracnogens has ceased. It also noted that psychological symptoms can accompany the skin disfigurement caused by chloracne. The Council recommended that chloracne be added to the list of prescribed diseases contained at Part 1 of Schedule 1 to the 1985 Regulations, and these Regulations implement that recommendation.

7.13 This addition to Schedule 1 to the 1985 Regulations, at [http://lawvolumes.dwp.gov.uk/docs/Sch\\_1\\_SS\\_PD\\_Regs\\_1985](http://lawvolumes.dwp.gov.uk/docs/Sch_1_SS_PD_Regs_1985), will allow workers who have contracted chloracne after being exposed to chloracnogens to claim Industrial Injuries Disablement Benefit.

## Chronic Bronchitis and Emphysema

7.14 The Council undertook a review of the medical assessment of chronic bronchitis and emphysema (prescribed disease D12). That review concluded that this prescribed disease should be renamed chronic obstructive pulmonary disease (COPD), and this recommendation is implemented by these Regulations.

7.15 Persons who claim IIDB following diagnosis with this prescribed disease undergo an assessment of airway capacity. Rules currently allow the results of that assessment to be adjusted to take account of any medication they may take, so that in some cases claimants are brought within the threshold whereby benefit can be paid. However, current scientific opinion is of the view that such adjustments carry a risk of inequitable treatment between claimants who take and those that do not take medication for their condition. The Council therefore recommended that the prescription for this disease be redefined so that the effects of medication are no longer taken into account as part of the medical assessment process. This recommendation is implemented by these Regulations.

## Dysbarism and Anthrax

7.16 These Regulations make a number of other changes to the table of prescribed diseases contained in Part 1 of Schedule 1 to the 1985 Regulations, as recommended by the Council. In addition to the changes made to the description and title of condition D12 (chronic obstructive pulmonary disease), it also changes the title and description of three other conditions; A3 (dysbarism and osteonecrosis), B1 (cutaneous anthrax and pulmonary anthrax), and B4 (cutaneous larva migrans and iron deficiency anaemia).

## Consolidation

7.17 "Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website [legislation.gov.uk](http://legislation.gov.uk). An explanation as to which instruments are maintained on each site is available [here](#)."

## **8. Consultation outcome**

A formal consultation has not been carried out by the Department for Work and Pensions on these Regulations. These draft regulations follow recommendations in the Command Papers referred to at paragraph 7.3 above. The Papers were produced by the Industrial Injuries Advisory Council (IIAC), which consulted and took evidence from a number of interested parties 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**

9.1 The list of diseases covered by the scheme will be updated immediately to reflect all the changes made by these Regulations, as recommended by the Industrial Injuries Advisory Council. 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>

9.2 The list of diseases can also be accessed via the GOV.UK website. Guidance on the changes will be available to administrative staff in the offices with responsibility for processing Industrial Injuries Disablement Benefit claims. The guidance on the changes will be in the Decision Makers Guide at <http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide>

9.3 Claimants will be informed about the changes as part of the claims process. Leaflets and GOV.UK pages will be updated as necessary.

## **10. Impact**

10.1 There is no impact on business or civil society organisations.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been produced for this instrument.

## **11. Regulating small business**

The legislation does not apply to small business.

## **12. Monitoring & 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**

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