

A draft Order laid before Parliament under section 4(2) of the Regulatory Reform Act 2001 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2002 No.

**REGULATORY REFORM
PUBLIC HEALTH**

**The Regulatory Reform (Vaccine
Damage Payments Act 1979) Order 2002**

Made - - - - 2002
Coming into force - - 2002

Whereas—

- (a) the Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
- (b) the Secretary of State has consulted such organisations as appeared to him to be representative of interests substantially affected by the proposals, the Law Commission, the National Assembly for Wales and such other persons as he considered appropriate;
- (c) following that consultation, the Secretary of State considered it appropriate to proceed with the making of this Order;
- (d) a document containing the Secretary of State's proposals was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001(1) and the period for Parliamentary consideration under section 8 of that Act has expired;
- (e) the Secretary of State has had regard to the representations made during this period, in particular to the Fifteenth Report of the Delegated Powers and Regulatory Reform Committee(2) and the Ninth Report of the Deregulation and Regulatory Reform Committee(3);
- (f) a draft of this Order was laid before Parliament with a statement giving details of such representations and Reports and of the changes to the Secretary of State's proposals in the light of them;
- (g) the draft was approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 1, 4(3) and 15(3) of the Regulatory Reform Act 2001, hereby makes the following Order:

(1) 2001 c. 6.
(2) Fifteenth Report on 8th March 2002, HL 92, ISBN 0 104 78810 1.
(3) Ninth Report on 22nd March 2002, HC 708, ISBN 0 215 00255 5.

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002 and shall come into force on the day after the day on which it is made.

(2) The amendments made to the Act by articles 2 and 3 of this Order shall apply to claims for payments under section 1(1) of the Act which are made on or after the day on which this Order comes into force.

(3) This Order extends to Northern Ireland and the Isle of Man.

(4) In this Order “the Act” means the Vaccine Damage Payments Act 1979(4).

Meaning of “severely disabled”

2. In section 1(4) of the Act (meaning of “severely disabled”)(5), for “80 per cent.” there shall be substituted “60 per cent.”.

Time limit for claims

3. In section 3 of the Act (determination of claims), for subsection (1)(c) there shall be substituted—

“(c) on or before whichever is the later of—

- (i) the date on which the disabled person attains the age of 21, or where he has died, the date on which he would have attained the age of 21; and
- (ii) the end of the period of six years beginning with the date of the vaccination to which the claim relates;”.

Transitional claims

4. The provisions in the Schedule to this Order shall have effect and are designated as subordinate provisions for the purposes of section 4(3) of the Regulatory Reform Act 2001.

Consequential amendment

5. In section 7B(1) of the Act (finality of decisions) (6), after “Subject to the provisions of this Act” there shall be inserted “and article 4 of, and the Schedule to, the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002 (modifications of this Act in relation to transitional claims)”.

Signed by authority of the Secretary of State for Work and Pensions.

2002

Parliamentary Under-Secretary of State,
Department for Work and Pensions

(4) 1979 c. 17.

(5) Section 1(4) was amended by paragraph 53 of Schedule 2 to the Social Security (Consequential Provisions) Act 1992 (c. 6) and by paragraph 21 of Schedule 2 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9).

(6) Section 7B was inserted by paragraph 8 of Schedule 7 to the Social Security Act 1998 (c. 14).

SCHEDULE

Article 4

TRANSITIONAL CLAIMS

1. A transitional claim may be made in the cases specified in paragraph 3(1).
2. In this Schedule—
 - (a) references to sections are to sections of the Act;
 - (b) “advised” means—
 - (i) informed in written form; or
 - (ii) informed orally where there is a record in written form created by the adviser at the time when, or shortly after the time when, that advice was given;
 - (c) “in written form” means in a manner which is in, or which is capable of being reproduced in, legible form;
 - (d) “the amended section 1(4)” means section 1(4) as it is in force on or after the specified date;
 - (e) “the amended section 3(1)(c)” means section 3(1)(c) as it is in force on or after the specified date;
 - (f) “the extra-statutory scheme” means the non-statutory scheme of payments referred to in section 7;
 - (g) “the previous section 1(4)” means section 1(4) as it was in force prior to the specified date;
 - (h) “the previous section 3(1)(c)” means section 3(1)(c) as it was in force prior to the specified date;
 - (i) “the specified date” means the date this Order comes into force; and
 - (j) “transitional claim” has the meaning given in paragraph 4.
- 3.—(1) Subject to sub-paragraph (2), the specified cases are those where—
 - (a) a claim for a payment under section 1(1) was made prior to the specified date and—
 - (i) the Secretary of State refused to consider the application for a claim on the ground that the previous section 3(1)(c) was not satisfied but the amended section 3(1)(c) would have been satisfied had it been in force at the time of that refusal; or
 - (ii) it was determined that no payment was due under section 1(1) on the basis that the previous section 1(4) was not satisfied;
 - (b) a claim for a payment was made under the extra-statutory scheme and it was determined that no payment was due on the basis that the disabled person did not suffer disablement to the extent of 80 per cent. or more;
 - (c) no claim for a payment under section 1(1) was made prior to the specified date and the Secretary of State is satisfied that—
 - (i) the reason such a claim was not made was that the disabled person, those acting on his behalf or, as the case may be, his personal representatives had been advised prior to the specified date that either the previous section 1(4) or the previous section 3(1)(c) would not be satisfied if such a claim were made; and
 - (ii) the amended section 3(1)(c) would have been satisfied had it been in force at the date the advice referred to in paragraph (i) was given; or
 - (d) no claim for a payment under the extra-statutory scheme was made whilst it was in force and the Secretary of State is satisfied that the reason such a claim was not made was that the disabled person, those acting on his behalf or, as the case may be, his personal representatives had been advised whilst the extra-statutory scheme was in force that the

requirement in the extra-statutory scheme that the disabled person suffers disablement to the extent of 80 per cent. or more would not be satisfied if such a claim were made.

(2) The Secretary of State shall not be satisfied for the purposes of sub-paragraph (1)(c) or (d) unless there has been produced to him the written form of the advice referred to in those paragraphs or a copy of it.

4. A “transitional claim” is a claim for a payment under section 1 (1) which is made—
- (a) by or on behalf of the disabled person concerned or, as the case may be, by his personal representatives;
 - (b) in the manner prescribed by regulations under the Act for a claim under section 3; and
 - (c) within 3 years after the date on which this Order came into force.

5.—(1) Where sub-paragraph (2) or (3) applies, a transitional claim shall be determined on the basis that the disabled person is, or was immediately before his death, disabled as a result of vaccination against any of the diseases to which the Act applies and whether he is, or was, severely disabled shall be determined in accordance with the amended section 1(4).

- (2) This sub-paragraph applies where—
- (a) a case is a specified case by virtue of paragraph 3(1)(a)(ii); and
 - (b) at the time of the claim referred to in paragraph 3(1)(a) it was determined that the condition that the person was disabled as a result of vaccination against any of the diseases to which the Act applies was satisfied but the condition that he was severely disabled in accordance with the previous section 1(4) was not satisfied.
- (3) This sub-paragraph applies where—
- (a) a case is a specified case by virtue of paragraph 3(1)(b); and
 - (b) at the time of the claim referred to in paragraph 3(1)(b) it was determined that the condition that the person was disabled as a result of vaccination against any of the diseases to which the extra-statutory scheme applied was satisfied but the condition that he suffered disablement to the extent of 80 per cent. or more was not satisfied.

6. Subject to paragraph 5, a transitional claim shall be treated for the purposes of the Act as a claim which satisfies the conditions in section 3(1).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 1 of the Regulatory Reform Act 2001. It reduces the burdens imposed by the Vaccine Damage Payments Act 1979 (“the Act”) by making amendments to the Act. Article 1 provides for citation, commencement, extent and interpretation.

Article 2 amends section 1(4) of the Act to provide that “severely disabled” shall be defined as disablement to the extent of 60 per cent. or more.

Article 3 substitutes section 3(1)(c) of the Act to provide that a claim under the Act must be made before whichever is the later of the date on which the disabled person attains the age of 21, or, where

he has died, would have attained that age, and the end of a period of 6 years beginning on the date of the vaccination against the disease to which the claim relates.

Article 4 and the Schedule make transitional provision to enable claims to be made under the Act in certain circumstances where claims have been or, had they been made, would have been, rejected or not considered under the provisions in force prior to the coming into force of the amendments made by this Order.

Article 5 makes a consequential amendment to section 7B(1) of the Act, to refer to the transitional provision made in article 4 and the Schedule.