

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (INDUSTRIAL INJURIES) (PRESCRIBED DISEASES)
AMENDMENT REGULATIONS 2012

2012 No. 647

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**
 - 2.1 This instrument makes provision to enable a person who has osteoarthritis of the knee, and who worked as a carpet fitter or floor layer for at least 20 years in aggregate to apply for Industrial Injuries Disablement Benefit.
 - 2.2 It also amends the entries for the existing Prescribed Disease A4 (PD A4, which is a prescribed disease for occupations involving prolonged periods of hand-writing, typing or other repetitive movements of the fingers, hand or arm; and for Prescribed Disease C3 (PD C3), poisoning from exposure to phosphorus, or compounds of phosphorus. PD A4 is amended to include specific mention of the hand and forearm in the disease description to make it clearer which part of the body should be affected. PD C3 is amended to clarify the prescription and bring it into line with current scientific opinion and evidence for the condition.
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 IIAC's recommendation that osteoarthritis of the knee in carpet fitters, and carpet and floor layers be added to the list of prescribed diseases, and that its recommended changes to the existing diseases PD A4 and PD C3 be made.
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, 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 IIAC as set out in its report Osteoarthritis of the knee in carpet fitters and carpet and floor layers in November 2010 (Cm 7964). http://iiac.independent.gov.uk/pdf/command_papers/Cm7964.pdf
- 7.4 Construction workers may typically undertake kneeling and squatting under heavy load. IIAC identified robust direct evidence of a greater than doubled risk in carpet fitters and carpet and floor layers, including those outside the construction industry, but excluding those who worked mainly laying concrete floors. IIAC recommended that carpet fitters and carpet and floor layers working for at least 20 years in total should be added to the list of the prescribed diseases for osteoarthritis of the knee. There was insufficient evidence to warrant prescription for any other group of construction workers, or for those whose job involved laying concrete floors. The new provisions for osteoarthritis of the knee are expected to result in successful claims from up to 900 people who have worked as carpet-fitters and floor layers.
- 7.5 IIAC's recommendation means that claims for IIDB will be able to be made from the employed earners who have worked in those jobs for at least 20 years in total.
- 7.6 These regulations also include changes to two existing diseases covered by the Industrial Injuries Disablement Benefit scheme. The amendments to prescribed diseases PD C3 and PD A4 are clarifications of existing policy and are unlikely to have any material effect on the outcomes of IIDB claims.
- 7.7 The prescribed disease PD C3 (Poisoning from exposure to phosphorus, or compounds of phosphorus) is amended following IIAC's recommendations in its 2002 report on Conditions due to Chemical Agents (Cm 5395) http://iiac.independent.gov.uk/pdf/command_papers/Cm5395.pdf. Although this report was produced in 2002, implementation was deferred pending the outcome of further scientific reviews which were being undertaken by the Department for the Environment, Food and Rural Affairs (DEFRA). IIAC has since considered DEFRA's evidence, as well as all other scientific evidence published since its original report of 2002, and concluded that there was no evidence that would make it alter its recommendations regarding PD C3.

- 7.8 The changes clarify the prescription and are in line with the Department of Health's Committee on Toxicity and with the Pesticide Safety Directorate. The removal from the prescription of poisoning due to exposure to inorganic compounds of phosphorus, and poisoning from exposure to the anti-cholinesterase action of organic phosphorus compounds reflects IIAC's opinion that the existing Industrial Accident provisions within the Industrial Injuries Disablement Benefit scheme would cover such exposures. Pseudo anti-cholinesterase action of organic phosphorus compounds has been removed as it is no longer used in toxicology. There are very few successful claims for this prescribed disease. Over the last 5 years, there have been around 10 claims for PD C3.
- 7.9 PD A4 is a prescribed disease for occupations involving prolonged periods of hand-writing, typing or other repetitive movements of the fingers, hand or arm. The terms of prescription had been amended in 2007 following IIAC recommendations to modernise terminology in its report 'Work related upper limb disorders' report (Cm. 6868).
http://iiac.independent.gov.uk/pdf/command_papers/Cm6868.pdf
- 7.10 In a recent Upper Tier Tribunal decision (CI 1386 09) [Social Security & Child Support Commissioners](#) the judge suggested that the regulations for PD A4 had become ambiguous following the change in terminology from 'writer's cramp' to the more modern medically recognised term 'task specific focal dystonia'. IIAC has therefore added a reference to the hand or forearm along with 'task specific focal dystonia' to make it clear that no other parts of the body are covered by the prescription. IIAC has not found evidence to extend coverage to include other parts of the body for PD A4.

- ***Consolidation***

- 7.11 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/advisers/docs/lawvols/bluevol/>

8. **Consultation**

This is a minor change to existing regulations to bring more people suffering work related diseases within the IIDB scheme, and to bring the list of diseases up to date in line with scientific opinion. The draft regulations represent no policy shift. They follow recommendations in reports produced by the Industrial Injuries Advisory Council (IIAC), who consulted and took evidence from a number of interested parties listed in the reports, including medical and scientific experts, employers and unions. The draft regulations were subsequently referred to IIAC for approval. In light of the above, we considered that no further consultation was necessary

9. **Guidance**

A guidance bulletin detailing the additions and changes to the list of diseases will be issued to claim processors in the office with responsibility for processing IIDB claims.

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 prepared 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@Jobcentreplus.gsi.gov.uk can answer any queries on the instrument.