

## EXPLANATORY MEMORANDUM TO

### The Pneumoconiosis, etc., (Workers' Compensation) (Specified Diseases and Prescribed Occupations) (Amendment) Order (Northern Ireland) 2024

S.R. 2024 No. 46

#### 1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities (“the Department”) to accompany the Statutory Rule (details above) which is to be laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Article 3(1) of, and paragraph 8(1) of the Schedule to, the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979 and is subject to the affirmative resolution procedure.

#### 2. Purpose

- 2.1 Pursuant to the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979 (“the 1979 Order”), 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 Order legislation mirrored five diseases that had been prescribed for the purpose of obtaining entitlement to Industrial Injuries Disablement Benefit (IIDB). The disease definitions set out in IIDB legislation have been updated over time following recommendations made by the Industrial Injuries Advisory Council (IIAC).
- 2.2 This Order makes the changes required to re-align the definitions of certain specified diseases under the 1979 Order 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 Order scheme will be amended to include “Unilateral Diffuse Pleural Thickening”<sup>1</sup> and “Asbestos-Related Primary Carcinoma of the Lung”<sup>2</sup>, thereby widening the scheme to include customers with these diseases who meet the eligibility criteria. This Order ensures that the original policy intent of the 1979 Order is reflected in the legislation.

#### 3. Background

- 3.1 The diseases covered by the 1979 Order are: Pneumoconiosis, Byssinosis and Diffuse Mesothelioma, and such other diseases as are specified by the Department. The Pneumoconiosis, etc., (Workers' Compensation) (Specified Diseases) Order (Northern Ireland) 1986 (“the 1986 Order”) specifies additional diseases to which the 1979 Order applies.

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<sup>1</sup> 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

<sup>2</sup> Primary carcinoma of the lung is the medical term for lung cancer that starts in the lung.

- 3.2 The purpose of this Statutory Rule is to amend the diseases specified in the 1986 Order so that “Primary Carcinoma of the Lung (where there is accompanying evidence of Asbestosis<sup>1</sup> 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”.
- 3.3 Resulting amendments are made to the Pneumoconiosis, etc., (Workers’ Compensation) (Prescribed Occupations) Order (Northern Ireland) 2007 (“the 2007 Order”) which lists the occupations prescribed for the purpose of each disease to which the 1979 Order applies. The prescribed occupations set out within the 2007 Order are pertinent in determining whether there is a ‘relevant employer’. It is a condition of entitlement under the 1979 Order that every ‘relevant employer’ has ceased business.
- 3.4 Consequential amendments will also be made in a subsequent Statutory Rule to the Pneumoconiosis, etc., (Workers’ Compensation) (Payment of Claims) Regulations (Northern Ireland) 1988 (“the 1988 Regulations”) to amend the definition of disease and remove the definition of Primary Carcinoma of the Lung.
- 3.5 These changes re-align the definitions of certain specified diseases under the 1979 Order 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.

*What is being done and why?*

- 3.6 The changes proposed by this Statutory Rule 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 in respect of “Unilateral” Diffuse Pleural Thickening, will become entitled to a one-off, lump-sum compensation award under the 1979 Order scheme, subject to the claimant meeting the other eligibility criteria.

*What did any law do before the changes to be made by this Statutory Rule?*

- 3.7 The 1979 Order 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’.

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<sup>1</sup> Asbestosis is a chronic lung condition that is caused by prolonged exposure to high concentrations of asbestos fibres in the air

- 3.8 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 (Northern Ireland) 1986. However, over time the prescriptions of diseases in IIDB legislation have been amended.
- 3.9 Since 1986, the Department 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 Order 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.”
- 3.10 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<sup>1</sup>. 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<sup>2</sup>. PD D8A, “primary carcinoma of the lung” (with occupational exposure to asbestos), was added in its place.
- 3.11 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 Order, and these updated diseases were not added to the specified disease list in the 1979 Order 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?*

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

*Numbers affected?*

- 3.13 The number of claimants likely to gain entitlement to a lump-sum award under the 1979 Order following this change are expected to be in single figures per year. This estimate is based on internal modelling using the

<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/515546/diffuse-pleural-thickening-iiac-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/515546/diffuse-pleural-thickening-iiac-report.pdf)

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/328181/asbestos-related-diseases-cm6553.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/328181/asbestos-related-diseases-cm6553.pdf)

number of 1979 Order lump-sum awards the Department has made for the relevant specified diseases in previous years.

#### **4. Consultation**

- 4.1 As the Order makes, in relation to Northern Ireland, only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain it does not have to be submitted to IIAC.

#### **5. Equality Impact**

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on proposals for this Order and concluded that it does not have significant implications for equality of opportunity or good relations. In light of this, the Department considered that an equality impact assessment is not necessary.

#### **6. Regulatory Impact**

- 6.1 The Order does not require a Regulatory Impact Assessment as it does not impose any costs on business, charities, social enterprises or voluntary bodies.

#### **7. Financial Implications**

- 7.1 Any costs arising as a result of this Order are not expected to be significant.

#### **8. Section 24 of the Northern Ireland Act 1998**

- 8.1 The Department is satisfied that this Order complies with section 24 of the Northern Ireland Act 1998 (Convention rights, etc.).

#### **9. EU Implications**

- 9.1 Not applicable.

#### **10. Parity or Replicatory Measure**

- 10.1 The corresponding Great Britain Regulations in part are the Pneumoconiosis etc. (Workers' Compensation) (Specified Diseases and Prescribed Occupations) (Amendment) Regulations 2024 and came into force on 23rd February 2024.
- 10.2 In line with the long-standing policy of parity in social security, the Order will, subject to affirmation by resolution of the Assembly, come into operation on the same date as the GB Regulations, or as soon as possible afterwards. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support, as provided for in section 87 of the Northern Ireland Act 1998.

#### **11. Additional Information**

- 11.1 Not applicable.