



Asbestos-related diseases: payments from the Department for Work and Pensions

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Section Social Policy

Exposure to asbestos fibres can lead to a number of serious diseases. Compensation may be available under schemes administered by the Department for Work and Pensions (DWP). People suffering from certain conditions may also be able to pursue a civil claim for damages against one or more employers responsible for exposing them to asbestos negligently and/or in breach of a statutory duty.

The main scheme in the UK which pays weekly benefits to people who contracted an industrial disease in the course of their employment is the [Industrial Injuries Disablement Benefit \(IIDB\)](#) scheme. The list of “Prescribed Diseases” for IIDB includes asbestos-related conditions.

There are currently three schemes that provide lump-sum payments to those with asbestos-related diseases who are eligible.

A DWP-administered scheme set up under the [Pneumoconiosis etc \(Workers’ Compensation\) Act 1979](#) provides lump-sum payments for people suffering from certain asbestos-related conditions (or their dependants, if they have died), where they are unable to claim damages because the employer has gone out of business.

Since October 2008 the [Diffuse Mesothelioma Payments](#) scheme has provided up-front lump-sum payments to anyone diagnosed with mesothelioma, in recognition of the difficulties people face obtaining compensation from other sources, and the fact that people usually die within months of diagnosis. It covers those previously not eligible for help, such as the self-employed, those exposed to asbestos in the environment and to family members exposed via workers’ clothing. Payments can be made to dependants, where the person has died. This scheme operates alongside that established under the 1979 Act, for those unable to benefit from it. It is funded by a “compensation recovery” mechanism, so that payments made are recovered from any subsequent successful civil compensation claim.

From 2014, the [new “Diffuse Mesothelioma Payment Scheme” \(DMPS\)](#) can make payments to people with diffuse mesothelioma who were exposed to asbestos either negligently or in

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breach of statutory duty by their employers, and who are unable to bring a claim for damages against the employer or that employer's Employers' Liability (EL) insurer. This is separate from the scheme set up in 2008, which will continue to operate. The new scheme is to be funded by a levy on insurance companies and makes payments to people first diagnosed on or after 25 July 2012. Like the 2008 scheme, payments can be made to dependants, where the person has died.

Further information on the dangers from asbestos and the response of governments can be found in Library standard note SN/SC/5931, [Asbestos: damage, control and policy](#). Information on civil compensation can be found in standard note SN/HA/4450, [Mesothelioma: civil court claims](#). A separate standard note, [Pleural Plaques – The Government's Response](#) (SN/HA/5361), is also available.

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1 Introduction

Information on the four Department for Work and Pensions (DWP) schemes which offer compensation for people suffering from asbestos-related conditions is given below. In addition to these schemes, financial assistance may be available through mainstream social security benefits. Benefits which may be of particular relevance to people suffering from asbestos-related conditions, or to their dependants if they have died, include:

- Employment and Support Allowance
- Disability Living Allowance/Personal Independence Payment
- Attendance Allowance
- Carer's Allowance
- Bereavement benefits
- Funeral Expenses Payments

This is not however an exhaustive list. Further information can be found at the [GOV.UK website](#).

For those who want to know what to know what benefits they may be able to claim, the best advice would be to contact a free advice agency for a "benefit check". Citizens Advice Bureau can arrange benefits checks. Local CABx can be located via their [website](#).

2 Industrial Injuries Disablement Benefit

The Industrial Injuries Disablement Benefit (IIDB) Scheme provides for the payment of benefits to employed earners who suffer disablement as a result of an accident at work, or who contracted a prescribed disease in the course of their work. The benefit is "no-fault", tax-free, non-contributory and is administered by the DWP.¹

The list of prescribed diseases and their associated occupations is in Schedule 1 of the *Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985*.² It is also available at the [DWP website](#). There are approximately 70 prescribed diseases on the list. The following may be relevant to people who have been exposed to asbestos:

- D1 Pneumoconiosis (includes silicosis and asbestosis)
- D3 Diffuse mesothelioma
- D8 Lung cancer, where there is accompanying evidence of asbestosis
- D8A Lung cancer, in the absence of asbestosis
- D9 Diffuse pleural thickening

¹ A brief overview of Industrial Injuries Disablement Benefit is available at the [DWP website](#), see section 9 of the guidance. The rules are set out in greater detail in DWP technical guide DB1, *A guide to Industrial Injuries Disablement Benefits*, August 2009.

² [SI 1985/967 as amended](#)

Pleural plaques are not a prescribed disease for IIDB.

In order for a person to be entitled to IIDB for a particular prescribed disease, he or she must usually have worked in certain jobs known to cause the condition. The type of job for each prescribed disease is specified in the final column in Schedule 1 of the *Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985*. For example, to be eligible for IIDB for prescribed disease D3 (diffuse mesothelioma), a person must have been employed in a job involving “exposure to asbestos, asbestos dust or any admixture of asbestos at a level above that commonly found in the environment at large”.³

It is possible to make a claim for IIDB in respect of a person who would have been entitled to benefit, but who died before making a claim. However, there are time limits for making “posthumous claims”, and an award can only be backdated to three months before the date of death.

The weekly rate of IIDB depends on the degree of the disability caused by the injury or disease in each case. This is expressed as a percentage. For diffuse mesothelioma (D3) and asbestos-related lung cancer (D8 and D8A), disablement is automatically assessed as being 100 per cent, if the employment conditions are satisfied.

The list of prescribed diseases and their associated occupations is not set in stone but is reviewed regularly. The Secretary of State may make changes to the list via regulations, and independent advice is given to the Government by the Industrial Injuries Advisory Council (IIAC) on disease prescription and the working of the scheme. The IIAC last reviewed the prescribed asbestos-related diseases as a whole in 2005⁴, although it has since then produced reports on particular conditions linked to exposure to asbestos.⁵

3 Pneumoconiosis etc (Workers’ Compensation) Act 1979

The *Pneumoconiosis etc (Workers’ Compensation) Act 1979* (PWCA) provides lump sum compensation payments to people suffering from certain dust-related diseases, or if they have died, their dependants, where the disease was the result of exposure to dust in the course of their employment, but they are unable to claim damages from their employers because the employers have ceased business. The diseases include:

- diffuse mesothelioma
- pneumoconiosis (including silicosis, asbestosis, kaolinosis)
- diffuse pleural thickening
- primary carcinoma of the lung (only if accompanied by asbestosis or diffuse pleural thickening)
- byssinosis

There are three main qualifying conditions for entitlement:

³ Schedule 1 SI 1985/967

⁴ IIAC, *Asbestos-related diseases*, Cm 6553, July 2005

⁵ See for example *Laryngeal Cancer and Asbestos Exposure*, IIAC Position Paper 22, July 2008; *Asbestos Exposure and Retroperitoneal Fibrosis*, June 2008

- Industrial Injuries Disablement Benefit should normally be, or have been, payable to the sufferer in respect of the disease;
- every relevant employer has ceased to carry on business (or, if they are still trading, there is no realistic chance of claiming damages from them); and
- the sufferer, or their dependants, must not have taken any court action or received any compensation.

Further information on how to apply for assistance under the scheme is available at the [GOV.UK website](http://GOV.UK).

The scheme was formerly administered by the Department of the Environment, Transport and the Regions, but the Department for Work and Pensions took over responsibility in 2002.

The amounts that can be paid under the scheme are now updated annually by regulations made under the Act.⁶ The *Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2014* (SI 2014/869) sets out the rates payable from 31 March 2014.

4 The 2008 Diffuse Mesothelioma Scheme

The [Diffuse Mesothelioma Scheme](#) came into force on 1 October 2008 as a result of the *Child Maintenance and Other Payments Act 2008*. The Scheme provides lump sum payments for people suffering from diffuse mesothelioma, if they were exposed to asbestos in the UK. It operates alongside the *Pneumoconiosis etc. (Workers' Compensation) Act 1979* (PWCA).

The scheme is intended to provide lump sum payments for people suffering from diffuse mesothelioma who were exposed to asbestos in the UK but are unable to claim compensation from other sources, such as women who washed their husband's contaminated clothes, or the self-employed.

People who are unable to make a claim under the PWCA, have not received payment in respect of the disease from an employer, a civil claim or elsewhere, and are not entitled to compensation from a Ministry of Defence scheme, can claim a lump sum payment under the scheme. Claims can be made by people suffering from diffuse mesothelioma, or a dependant of a deceased person who immediately before their death was suffering from diffuse mesothelioma. Claim within one year of diagnosis or, in the case of dependants, within a year of the date of death.

The amount of the lump sum depends on the person's age when they were diagnosed with the disease. For those first diagnosed with mesothelioma on or after 31 March 2014 (or, if the date of first diagnosis with mesothelioma is unknown, where a claim is made by that person on or after 31 March 2014), the amounts will vary from £85,580 for people aged 37 and under to £13,295 for people aged 77 and over. The rates for dependants will range from

⁶ The Government made a commitment to increase the level of payments each year when the DWP took over the scheme in 2002; SC Deb (DL) 9 February 2006 c3

£44,537 where the person was aged 37 or under when they died, to £7,374 where the person was 67 or over when they died.⁷

The DWP aims to pay 95% of claims within six weeks of receiving the claim form. A person will be asked to submit medical evidence with their claim showing that they suffer from diffuse mesothelioma caused by exposure to asbestos. No further medical examination should be required.⁸

The Diffuse Mesothelioma Scheme is intended to be “cost neutral” over the long term. The scheme is being financed from amounts recovered from later awards of civil compensation made to people who have already received a payment under either the scheme or the *Pneumoconiosis Etc (Workers' Compensation) Act 1979*. Previously, where a person received a lump sum under the 1979 Act, employers and their insurers could deduct an amount equal to that lump sum from a subsequent settlement of civil compensation, and the state could not recover that amount from the employer or insurer. The *Child Maintenance and Other Payments Act 2008* amended the rules on compensation recovery to enable the Government to claw back these sums.⁹

5 The 2014 Diffuse Mesothelioma Payment Scheme (DMPS)

5.1 The legislative background

The *Mesothelioma Act 2014* provides the legislative framework for a new Diffuse Mesothelioma Payment Scheme to make payments to people with the disease who were exposed to asbestos either negligently or in breach of statutory duty by their employer, and who are unable to bring a claim for damages against the employer or that employer's Employers' Liability (EL) insurer. It is intended to address the problem where, by the time an individual has been diagnosed, the employer is no longer in business and it is not possible to trace the employer's EL insurer because the relevant records have been lost or destroyed. The scheme is funded by a levy on insurance companies and can make payments to people first diagnosed on or after 25 July 2012. The scheme is UK-wide and commenced in April 2014.¹⁰

Proposals for a scheme were set out in a consultation paper published by the Labour Government in February 2010. The incoming Government conducted detailed negotiations with the insurance industry before publishing its response on 25 July 2012. Further discussions took place with the insurance industry and other interested parties before the *Mesothelioma Bill* was introduced in the House of Lords on 9 May 2013.

During the passage of the Bill the Government announced a number of changes including an increase in the compensation rate from 70% to 75% of civil compensation levels; following further negotiations with the insurance industry, this was further increased to 80%.

Further background information on the Bill, and its contents can be found in the [Library Research Paper](#) prepared for its Second Reading in the Commons, and the [Standard Note](#) that considered how the Bill had been amended at Committee Stage in the Commons.

⁷ [Mesothelioma Lump Sum Payments \(Conditions and Amounts\) \(Amendment\) Regulations 2014](#); SI 2014/868

⁸ Directgov, [Diffuse mesothelioma payment](#) [accessed 27 June 2011]

⁹ For further background see pp60-65 of Library Research Paper 07/57, [Child Maintenance and Other Payments Bill](#)

¹⁰ [HC Deb 31 March 2014 c583](#)

The Bill had its Commons Report Stage and Third Reading on 7 January 201. No amendments were made at these stages. The Bill received Royal Assent on 30 January 2014 to become the *Mesothelioma Act 2014*.

The *Diffuse Mesothelioma Payment Scheme Regulations 2014* (SI 2014/916) came into force on 5 April 2014.¹¹ In summary, the regulations “establish a scheme to make payments to eligible people with diffuse mesothelioma and eligible dependants of people who have died from diffuse mesothelioma before making an application to the scheme”.¹² The Government explained that “the regulations explain how to make an application to the scheme, what information and evidence will be needed to support an application, how the application will be administered and how applicants can ask for a review and eventually an appeal if they disagree with the decision”, and also define what is meant by a first diagnosis of mesothelioma.¹³

The amounts that can be paid under the scheme are set out under Schedule 4 of the Regulations. The Schedule was subsequently amended by the *Diffuse Mesothelioma Payment Scheme (Amendment) Regulations 2014* (SI 2014/917) which came into force on 1 July 2014. The DWP explained that, during the passage of the original regulations (SI 2014/916), “the commercial process to contract with a provider to deliver the payment scheme concluded. This commercial exercise identified savings in administrative costs that allowed for the levels of payments to successful applicants to be increased”.¹⁴ As a result, “this has the effect of increasing the level of payments made under the scheme for each age category by an average £8000”.¹⁵

5.2 Assessing the scheme and compensation available

Under the scheme, those aged 40 years and under who are eligible for a payment would receive the maximum £216,896, with a sliding scale to 90 years and over with each additional year over 40 reducing the payment by about £2,945.

The [GOV.UK website](#) has a section on the Diffuse Mesothelioma Payment Scheme (DMPS).

The DMPS is run by Gallagher Bassett in accordance with arrangements made with the DWP. There is a website entitled at <https://mesoscheme.org.uk> which provides information on the scheme.

Under the section “Am I eligible to apply?”, the website lists a series of questions:

Have you been diagnosed with Diffuse Mesothelioma? (If you are unsure, contact your health care professional and ask them.)

Was your diagnosis on or after 25th July 2012?

Was your Diffuse Mesothelioma caused by your exposure to asbestos during your employment?

¹¹ The Regulations came fully into force on that date, except for a sub-part of regulation 7 that will come into force when the *Third Parties (Rights against Insurers) Act 2010* comes into force; in the mean-time, the Regulations refer to the *Third Parties (Rights against Insurers) Act 1930* and the *Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930*.

¹² [Explanatory Memorandum to the Diffuse Mesothelioma Payment Scheme Regulations 2014](#), SI 2014/916, p2, para 7.1

¹³ As above, p2, para 7.2

¹⁴ [Explanatory Memorandum to the Diffuse Mesothelioma Payment Scheme \(Amendment\) Regulations 2014](#), SI 2014/917, p2, para 7.2

¹⁵ [Explanatory Note](#), SI 2014/917

Are you able to establish that this exposure to asbestos was as a result of negligence or breach of statutory duty on the part of your employer or one of your employers?

Are you unable to trace all the employers who exposed you to asbestos?

Are you unable to trace your employers' Employers' Liability insurers?

You have not made any claim for Diffuse Mesothelioma from an employer, insurer, the DMPS or anyone else*?

*This does not include a payment under the Pneumoconiosis etc (Workers' Compensation) Act 1979 or the Child Maintenance and Other Payments Act 2008 or social security benefits.

You have not received compensation or a specified payment in respect of Diffuse Mesothelioma and are not eligible to receive a specified payment?*

* This does not include a payment under the Pneumoconiosis etc (Workers' Compensation) Act 1979 or the Child Maintenance and Other Payments Act 2008 or social security benefits.

The website states that "if you have responded Yes to each question you may be eligible to apply to the scheme".¹⁶

The website also states that the steps to take for someone who might be eligible:

1. Contact a solicitor to see if you can make a common law claim against your employer or employer's insurer. If this is not possible, and you think you are eligible for a scheme payment, you can either apply to the scheme yourself, or use a solicitor to assist you in making an application to the scheme.
2. If you believe you are eligible please complete the DMPS [Diffuse Mesothelioma Payment Scheme] Application Form
3. Submit the Application Form with the documents required either via the website or by post to the address provided on the DMPS Application Form.
4. Your application may take up to six weeks to process. If the application form is not completed fully this will delay the process.
5. If your application is successful, a payment will be made in accordance with the tariff. If the application is brought by two or more dependants, please see the information in the 'Questions and Answers' tab. The figures quoted in the tariff table are before any deductions are made for recoverable lump sum payments and social security benefits which were paid in relation to mesothelioma.
6. If your application is unsuccessful and you are dissatisfied with the outcome you can request a review provided you supply information on why the decision should be reviewed.
7. A review will be carried out and if you are still not satisfied with the outcome of that review you can appeal to the First Tier Tribunal which is part of the Tribunal Service.

¹⁶ Gallagher Bassett, [Diffuse Mesothelioma Payment Scheme – Am I eligible to apply?](#), website [taken on 17 September 2014]

8. You may wish to contact a solicitor at any of the above stages. If you have instructed a solicitor they may help you complete the application form, obtain relevant documents with information provided by you and advise you on aspects of the eligibility criteria and about the review process if necessary.¹⁷

The application form referred to under point 2 above is available online at:

https://mesoscheme.org.uk/application_form

¹⁷ Gallagher Bassett, *Diffuse Mesothelioma Payment Scheme – General Advice and Glossary*, website [taken on 18 September 2014]