

# Chapter 73 - Old cases

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# Chapter 73 - Old cases

## WC (Supp) and PB and MDB described

### Introduction

#### Abolition of schemes

73001 WC (Supp) and PB and MDB will not apply from 5.12.12<sup>1</sup>. Therefore, from that date, people wishing to claim for

1. accidents which happened **or**
2. diseases caused by employment

before 5.7.48 should claim IIDB under the normal rules<sup>2</sup>. Apart from DMG 73002 – 73003, the only guidance being retained is on other compensation (see DMG 73332 et seq) and death benefit (see DMG 73412 et seq).

*1 WR Act 12, s 64(2); 2 SS CB Act 92, s 94(1) & 108(1)*

#### People receiving WC (Supp) or PB and MDB

73002 People receiving WC (Supp) or PB and MDB before 5.12.12

1. transferred to IIDB **and**
2. received benefit at the corresponding rates<sup>1</sup>

from 5.12.12.

**Note:** People who received lesser incapacity allowance or partial disablement allowance were paid a higher rate of benefit from 5.12.12 under the corresponding rates.

*1 Industrial Injuries Benefit (Injuries Arising Before 5 July 1948) Regulations, reg 2 & Sch*

#### Claims for WC (Supp) or PB and MDB made but not determined before 5.12.12

73003 Where a claim for WC (Supp) or PB and MDB is made but not determined before 5.12.12, the DM should treat that claim as a claim for IIDB<sup>1</sup>.

*1 Industrial Injuries Benefit (Injuries Arising Before 5 July 1948) Regulations, reg 3*

73004 – 73331



## Entitlement to other compensation

73332 The third condition for entitlement to disablement allowance is that the claimant must never have received, nor be entitled to receive compensation for the disease under

1. WC legislation<sup>1</sup> **or**
2. any compensation scheme or law outside GB<sup>2</sup> (other than compensation in respect of total or partial incapacity for work under
  - 2.1 specified legislation<sup>3</sup> **or**
  - 2.2 by virtue of any scheme or law in force in any country or territory outside GB providing for compensation in respect of the disease.

*1 Workmen's Compensation Acts and Schemes; 2 PB & MDB Scheme, art 3(1)(d); 3 Refractories Industries (Silicosis) Scheme 1931 & Sandstone Industry (Silicosis) Scheme 1931*

73333 A person who has been awarded WC for the disease is excluded from PB and MDB even though no compensation was received because, for example

1. an employer went bankrupt **or**
2. the person chose to have the compensation commuted to a lump sum.

73334 People who

1. have not been awarded WC for the disease **and**
2. still appear to have a valid claim

are excluded from receiving benefit under PB and MDB unless they can show that they are unable to make a successful claim against their employer.

73335 A person is not prevented from receiving a full allowance under PB and MDB if they are receiving payment of WC for

1. an accident **or**
2. some disease other than that claimed under PB and MDB.

**Note:** See DMG 73340 for an exception.

### **People totally disabled by accident or disease not covered by PB and MDB**

73336 People awarded WC for **total** disablement resulting from an accident or disease cannot get further compensation if they later suffer a second accident or disease. As they have been totally disabled by the first accident or disease they do not have any earning capacity left to lose.

73337 People totally disabled by an accident (or a disease not covered by PB and MDB) are prevented from obtaining WC if they subsequently develop

1. pneumoconiosis **or**
2. byssinosis or Scheduled disease 1 or 2.

As no WC is payable for the disease under PB and MDB the person is not barred from receiving an allowance under PB and MDB (except in the circumstances set out in DMG 73340).

73338 It should be noted that Scheduled diseases 3 - 10 were not covered under WC legislation<sup>1</sup> and the question of entitlement to compensation under that legislation cannot therefore arise.

*1 Workmen's Compensation Acts*

### **People totally disabled subsequently develop pneumoconiosis**

73339 Guidance on obtaining certification under WC legislation<sup>1</sup> and the time limits is in DMG 73342 - 73345. Certification has not been used since 1991 and the following guidance only applies to claims made before that date. Since 5.7.99 disablement is decided by DMs following advice from medical services.

*1 Workmen's Compensation Acts*

73340 People totally disabled by an accident or some other disease not covered by PB and MDB who subsequently develop pneumoconiosis would be excluded from PB and MDB if

1. they were certified within the time limit as being disabled by pneumoconiosis **and**
2. they did not receive compensation for pneumoconiosis solely because they were already receiving, or were entitled to receive, WC for an accident or some other disease.

### **People totally disabled subsequently develop byssinosis or Scheduled disease 1 or 2**

73341 People who were totally disabled by an accident or some other disease not covered by PB and MDB are eligible for benefit provided that they are certified as disabled by

1. byssinosis **or**
2. Scheduled disease 1 **or**
3. Scheduled disease 2.

The fact that they may have been certified outside the time limits makes no difference. Nor does it matter if they are still receiving WC for the accident or other disease. But note that where an allowance is in payment under WC (Supp), the guidance in DMG 73564 et seq should be followed.

## **Certification under workmen's compensation legislation**

73342 A claim to compensation for pneumoconiosis or byssinosis under the WC legislation<sup>1</sup> must be supported by a certificate from the Silicosis (or Byssinosis) Medical Board that a claimant is disabled by the disease. There is no such Board for the other industrial diseases; claimants should obtain a certificate from a "certifying surgeon" that they are suffering from the disease.

*1 Workmen's Compensation Acts*

73343 In order to qualify for compensation, claimants must

1. obtain their certificate (unless excepted because their employer agreed they were liable to pay compensation) **and**
2. establish that the disease is due to the nature of any employment in which they were employed at any time within the twelve months before the date of disablement.

73344 If the disease developed more than twelve months after the claimant had left the relevant employment, there is no entitlement to compensation.

73345 When claimants have obtained their certificate, they have still to claim compensation. The claim has to be made within six months of the date of development of the disease or as soon as may be allowed for reasonable cause.

## **Time limit for certification for pneumoconiosis**

73346 The time limit for certification under

1. all Schemes for pneumoconiosis under WC legislation<sup>1</sup>, except the Asbestos Industry (Asbestos) Scheme 1931 and the Refractories Industries (Silicosis) Schemes, was five years from the date of leaving the industry
2. the Asbestos Scheme was three years
3. the Refractories Scheme was three years **unless** the claimant did not again become employed in an industry with a silicosis risk. In such a case there was no time limit.

*1 Workmen's Compensation Acts*

## **Claimant receives damages**

73347 Benefit under PB and MDB is not payable<sup>1</sup> if the claimant, representative or any relative of the claimant receives damages whether

1. at common law **or**
2. under specified legislation<sup>2</sup>.

*1 PB & MDB Scheme, art 3(1)(f); 2 Fatal Accidents Act 1976; Law Reform (Miscellaneous Provisions) Act 1934*

73348 Where a weekly allowance is involved, a payment of damages will always have an effect. If damages have been received before the date of claim an allowance is not payable. If a weekly allowance is in payment the award should be allowed to continue up until the date when the claimant or representative recovers damages. The decision should then be superseded because of a relevant change of circumstances and terminated.

## **Damages and death benefit**

73349 If death benefit is involved, the benefit is not payable if the damages are received **before** the claim is made.

73350 A payment of damages received **after** the date of claim has no effect on the payment of death benefit. This applies even if the damages are received between the date of claim and the date the DM decides the claim.

73351 - 73411

## Death benefit

73412 Death benefit is only payable to, or for the benefit of, certain dependants of the deceased<sup>1</sup>. It is paid as a lump sum payment<sup>2</sup>.

*1 PB & MDB Scheme, art 9(1); 2 art 9(4)*

## Conditions for payment of death benefit

73413 Death benefit is payable if

1. death was due to<sup>1</sup>
  - 1.1 pneumoconiosis **or**
  - 1.2 byssinosis **or**
  - 1.3 one of Scheduled diseases<sup>2</sup> **and**
2. death occurred after
  - 2.1 31.12.49 - where the relevant disease is pneumoconiosis, byssinosis<sup>3</sup> or Scheduled disease 1 or 2<sup>4</sup> **or**
  - 2.2 27.7.67 - where the relevant disease is one of Scheduled diseases 3 - 5<sup>5</sup> (except where **2.7a** applies) **or**
  - 2.3 27.5.69 - where the relevant disease is Scheduled disease 6<sup>6</sup> **or**
  - 2.4 8.8.79 - where the relevant disease is Scheduled disease 7<sup>7</sup> **or**
  - 2.5 1.4.85 - where the relevant disease is Scheduled disease 8<sup>8</sup> **or**
  - 2.6 1.4.87 - where the relevant disease is Scheduled disease 9<sup>9</sup> **or**
  - 2.7 24.6.93 - where the relevant disease is<sup>10</sup>
    - 2.7.a Scheduled disease 4 and the nature of the occupation is that shown at (d) in the right hand column of Appendix 1 to this Chapter **or**
    - 2.7.b Scheduled disease 10 **and**
3. the deceased had been employed before 5.7.48
  - 3.1 in an occupation scheduled for the relevant disease **and**
  - 3.2 that occupation was scheduled before the date of death<sup>11</sup> **and**
4. the deceased had not been entitled to compensation as set out in DMG 73332 et seq.

*1 PB & MDB Scheme, art 9(1); 2 Sch 1; 3 art 2(1)(a); 4 Sch 4; 5 Sch 4; 6 Sch 4; 7 Sch 4; 8 Sch 4; 9 Sch 4; 10 Sch 4; 11 art 2*

## Persons to whom death benefit is payable

73414 The dependants entitled to claim death benefit are those members of the deceased's family who were wholly or partly dependent or treated as dependent on the deceased at the time of death<sup>1</sup>.

*1 PB & MDB Scheme, art 9(2)*

73415 A person is treated as dependent on the deceased at the time of death if that person would have been dependent but for the disablement due to the disease<sup>1</sup>.

*1 PB & MDB Scheme, art 9(3)*

73416 Member of the deceased's family is defined<sup>1</sup> as the

1. wife **or**
2. husband **or**
3. father **or**
4. mother **or**
5. grandfather **or**
6. grandmother **or**
7. stepfather **or**
8. stepmother **or**
9. son **or**
10. daughter **or**
11. grandson **or**
12. granddaughter **or**
13. stepson **or**
14. stepdaughter **or**
15. brother **or**
16. sister **or**
17. half-brother **or**
18. half-sister **or**
19. surviving civil partner<sup>2</sup>

of the deceased.

*1 PB & MDB Scheme, art 9(2); WC Act 25; PB & MDB Scheme, art 9(2)*

73417 Where the dependant claiming death benefit dies before the claim has been decided, no award can be made to that dependant<sup>1</sup>. But note that another dependant can make a further claim.

*1 PB & MDB Scheme, art 9(5)(a)*

## Conditions to be satisfied

73418 Dependants claiming death benefit must also satisfy the conditions that

1. they were ordinarily resident in the UK at the date of death<sup>1</sup> **and**
2. neither they, nor any other member of the deceased's family has
  - 2.1 received or been entitled to compensation for the disablement or death under the WC legislation<sup>2</sup> **or**
  - 2.2 recovered any sum by way of damages at common law or specified legislation<sup>3</sup>.

*1 PB & MDB Scheme, art 9(5)(b); 2 art 3(1)(e); Workmen's Compensation Acts; 3 PB & MDB Scheme, art 3(1)(f); Fatal Accidents Act 1976; Law Reform (Miscellaneous Provisions) Act 1934*

## Calculation and payment of the amount of death benefit

73419 The amount of the lump sum is calculated paid in a specified order of priority<sup>1</sup> (see DMG 73420 - 73425).

*1 PB & MDB Scheme, art 9(4)*

73420 Where the deceased is survived by

1. a widow who was living with the deceased at his death **or**
2. a widower who was wholly dependent on the deceased and who was living with her at her death **or**
3. a surviving civil partner who was wholly dependent on the deceased and living with them at the time of their death

the amount of £300 is payable to the widow, widower or surviving civil partner<sup>1</sup>.

*1 PB & MD Scheme, art 9(4)(a)*

73421 Where DMG 73420 does not apply but the deceased is survived by

1. a widow who was not living with the deceased but who at his death was entitled to receive periodic payments of maintenance of not less than the amount prescribed under legislation<sup>1</sup> **or**
2. a widower who was wholly dependent upon the deceased **or**
3. a surviving civil partner who was wholly dependent on the deceased at the time of their death **or**

4. a child who was at the date of death residing with the deceased and for whom the deceased was entitled to CHB

the amount of £300 divided equally between the widow, widower or surviving civil partner and the child or children<sup>2</sup>.

*1 SS CB Act 92, Sch 7, para 15(1)(b); 2 PB & MDB Scheme, art 9(4)(b)*

- 73422 Where the deceased is survived by a widow, widower or surviving civil partner as in DMG 73421 but no children the amount of £300 is payable to the widow, widower or surviving civil partner<sup>1</sup>.

*1 PB & MDB Scheme, art 9(4)(c)*

- 73423 Where the deceased is survived by a child or children only as in DMG 73421 **4.** the amount of £300 is payable to the child or equally divided between the children<sup>1</sup>.

*1 PB & MDB Scheme, art 9(4)(d)*

- 73424 Where DMG 73420 – 73423 do not apply but the deceased is survived by any other member of the family who was wholly maintained by the deceased at the date of death the amount of £300 is

1. payable to that member of the family **or**
2. if more than one member of the family, equally divided between each member<sup>1</sup>.

*1 PB & MDB Scheme, art 9(4)(e)*

- 73425 Where there are no surviving dependants as in DMG 73420 - 73423 but there is a surviving member of the family who was **partly** maintained by the deceased at the date of death an amount of not more than £300 is payable

1. to that member **or**
2. if more than one member, to those members

as may be reasonable and in proportion to the loss sustained by such member or members of the family<sup>1</sup>.

*1 PB & MDB Scheme, art 9(4)(f)*

73426 - 73999

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