

# COVID-19 VACCINE DAMAGE PAYMENTS BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Covid-19 Vaccine Damage Payments Bill introduced in the House of Commons on 11 December 2023 (Bill 110).

- These Explanatory Notes have been prepared by Sir Christopher Chope MP, the member in charge of the Bill, in order to assist the reader of the Bill.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

1. The Covid-19 Vaccine Damage Payments Bill seeks to place a duty on the Secretary of State to make provision about financial assistance to persons who have suffered disablement following vaccination against Covid-19.
2. It also seeks to require the Secretary of State to report to Parliament on:
  - the merits of a no-fault compensation scheme to provide such financial assistance;
  - whether there should be any upper limit on the financial assistance available; and
  - the criteria for eligibility and on whether payment should be made in all cases where there is no other reasonable cause for the death or disablement suffered.

## Policy background

3. On 31 December 2020, the provisions of the Vaccine Damage Payments Act 1979 were extended to include Covid-19 vaccinations. This enabled those who suffered vaccine damage causing at least 60% disablement to receive an *ex gratia* lump sum payment of £120,000.
4. The current level of the *ex gratia* payment was introduced in 2007 and has not been revisited since (for example, it has not been increased by inflation or to reflect the greater cost of living and/or care).
5. The 60% disablement threshold does not replicate the similar threshold for the Industrial Injuries Disablement Benefit which attaches at a lower disablement threshold (normally 14%, with a sliding scale for compensation). Disablement reviews rely upon guidance set out in statutory provisions for the purposes of the Industrial Injuries Disablement Benefit Scheme which account only for specific physical injuries, and not psychological or autoimmune injuries.
6. Applicants to the Vaccine Damage Payment Scheme must also meet a causation threshold determined on the balance of probabilities. As of 31 January 2024, of 9,172 claims to the Vaccine Damage Payment Scheme relating to Covid-19 vaccinations, 163 have been successful, 4,421 have been rejected and 4,249 claims are still awaiting a resolution. 300 have been rejected for lack of causation. As of 5 January 2024, of the claims submitted to the Vaccine Damage Payment Scheme relating to Covid-19 vaccines, 157 claims have been outstanding for more than 18 months; 341 claims have been outstanding for over 12 months and 1,854 claims have been outstanding for over six months.
7. Applicants to the Vaccine Damage Payment Scheme may also have valid civil claims against, for example, vaccine manufacturers for the harms alleged to have been suffered. Applicants are advised, however, to seek and await the outcome of their Vaccine Damage Payment Scheme application before issuing such a civil claim, not least because they may already be able to establish causation if they are successful in their Vaccine Damage Payment Scheme application. The limitation period for such civil claims is generally three years. Owing to the delays in processing Vaccine Damage Payment Scheme claims, and the length of time which has passed since Covid-19 vaccines were first administered, potential claimants are at risk of very soon losing the ability to make a valid civil claim by virtue of the applicable limitation periods.

# Commentary on provisions of Bill

## Clause 1: Review of financial assistance

8. Subsection (1) imposes a statutory duty on the Secretary of State for Health and Social Care to appoint a current or former High Court judge to lead an independent review to assess the costs and benefits of providing compensation without the need to establish fault to:

- all persons who have been disabled by Covid-19 vaccination administered in the UK; and
- the next of kin of persons who have died shortly after such a vaccination.

The Minister must appoint the High Court judge within 30 days of the passing of the Act.

9. Subsections (2) and (3) set out that the independent review must consider:

- the nature, range, severity and duration of disablement caused by each type of Covid-19 vaccination offered in the UK;
  - the adequacy of compensation offered to persons so disabled;
  - whether specific provision should be made for compensation for a person's next of kin in cases where it can be proven that that person has died as a result of a Covid-19 vaccination;
  - the effectiveness of the Medicines and Healthcare products Regulatory Agency in identifying and publicising adverse reactions to Covid-19 vaccinations;
  - the efficiency and effectiveness of the NHS in diagnosing and treating those who have suffered adverse reactions to Covid-19 vaccinations;
  - whether compensation should be disregarded for the purposes of Universal Credit entitlements;
  - the efficacy of the Vaccine Damage Payments Act 1979 and regulations made under it, including in particular the 60% disablement threshold under section 1(4) of that Act;
  - whether the criteria for assessing disablement in accordance with the 60% threshold are sufficient for the purposes of assessing all possible conditions resulting in disablement, including psychological conditions, multi-system inflammatory syndrome and related conditions, autoimmune conditions and other conditions;
  - whether there should be any upper limit on the financial assistance available under such a scheme;
  - what criteria for eligibility could be used for the purposes of providing compensation; and
  - whether payment should be made in all cases where there is no other reasonable cause for the death or disablement suffered.
10. Subsection (4) requires the review to have regard to the effects of providing such compensation on public confidence in UK vaccination programmes.
11. Subsections (5) and (6) require that the person conducting the review must prepare a

report which must make recommendations for legislative or policy change.

12. Subsection (7) requires the Secretary of State to lay before Parliament the report before the end of 90 days on which the person conducting the review is appointed, and within a further 30 days lay before Parliament the Government's response to the findings and any recommendations of the report.

## Clause 2: Financial assistance for Covid-19 vaccine damage

13. Subsection (1) requires the Secretary of State to bring forward proposals for financial assistance to persons who have suffered any disablement as a result of Covid-19 vaccination (and to the next of kin of those who have died shortly after Covid-19 vaccination) and subject those proposals to a 12-week consultation, within six months of the Act passing.
14. Subsection (2) requires that the proposals must have specific provision for those who are the next of kind of persons who have died as a result of a Covid-19 vaccine.
15. Subsection (3) requires the Secretary of State to lay before Parliament the Government's response to the above consultation within 90 days of the end of the 12 week consultation period.

## Clause 3: Amendment of the Limitation Act 1980 in respect of Covid-19 vaccination

16. Subsection (1) requires that the Limitation Act 1980 be amended.
17. Subsection (2) requires that a new subsection be inserted which provides for a 6 year limitation period in respect of actions for personal injury or death following a Covid-19 Vaccination.
18. Subsection (3) provides for necessary consequential amendments.

## Clause 4: Extent, commencement and short title

19. Subsection (1) sets out the territorial extent of the Bill. It will extend to England and Wales, Scotland and Northern Ireland.
20. Subsection (2) provides that the Act will come into force on the day on which it is passed.
21. Subsection (3) provides that the short title of the Bill will be the Covid-19 Vaccine Damage Payments Act 2022 once it becomes an Act.

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