EXPLANATORY MEMORANDUM TO

THE DIFFUSE MESOTHELIOMA PAYMENT SCHEME (AMENDMENT) REGULATIONS 2014

2014 No. 917

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To provide further detail of the change to the levels of payments that eligible applicants will receive from the Diffuse Mesothelioma Payment Scheme. It supplements but does not replace the Explanatory Memorandum that supports the original Regulations which can be found at (http://www.legislation.gov.uk/uksi/2014/916/pdfs/uksiem_20140916_en.pdf).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Diffuse Mesothelioma Payment Scheme allowed for by the Mesothelioma Act 2014 will make payments to eligible sufferers of diffuse mesothelioma who are unable to bring a civil action for damages against a liable employer or that employer's relevant employer liability insurer as they no longer exist or cannot be traced.

4.2 Payments made by the Diffuse Mesothelioma Payment Scheme will be based on a tariff set out in Schedule 4 to the Regulations. This instrument provides for a revised tariff to allow individuals to receive a higher rate of payment than allowed for in the original Regulations(http://www.legislation.gov.uk/uksi/2014/916/pdfs/uksiem_20140916_en.pdf).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to the 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 Diffuse Mesothelioma Payment Scheme Regulations (DN Insert Number) set out how the payment scheme will operate and include a tariff table detailing the level of payments successful applicants to the scheme will be entitled to.

7.2 During the passage of these Regulations 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.

7.3 This instrument contains a revised table of payments to ensure that all eligible applicants to the scheme receive payments at the higher level.

7.4 **Consolidation**

"Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk . An explanation as to which instruments are maintained on each site is available here."

8. Consultation outcome

8.1 In February 2010 the Department for Work and Pensions published the consultation document, *Accessing Compensation - Supporting people who need to trace Employers' Liability Insurance*,[1] which sought stakeholders' views on proposals for improving the process for tracing employment and insurance records, as well as providing greater support to individuals who are unable to trace such records. The consultation lasted 3 months. The Government's response to the consultation was published on 25 July 2012[2].

8.2 A total of 57 respondents fell into three main groups: claimant representatives, insurers' representatives and business representatives. Claimant and business representatives supported the establishment of an electronic database of EL polices as well as a scheme of last resort to pay people unable to bring a civil damages claim, although business representatives were concerned about the costs of such a scheme.

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[1] For consultation document see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185024/elci-compensation-consultation.pdf

[2] For Government response to consultation see: http://webarchive.nationalarchives.gov.uk/+/http://www.dwp.gov.uk/docs/elci-compensation consultation-response.pdf

Insurers' representatives supported an electronic database of policies but not the establishment of a payment scheme of last resort as disproportionate and inequitable putting the costs on today's insurers rather than those that took the insurance premiums.

8.3 The Government decided that, as the insurance industry had set up an electronic database, it would take no legislative action on that point and were not persuaded that a universal payment scheme should be set up but decided to set up a scheme only for those with mesothelioma who were statistically finding it more difficult to trace EL policies than those with other conditions.

9. Guidance

9.1 Guidance on how the scheme will be administered will be produced by the scheme administrator. We expect this to made available on their website around the timer that scheme payments start to be made around July 2014.

10. Impact

10.1 The impact on the private sector is that EL insurers will be required to pay a levy to fund the mesothelioma scheme.

10.2 There is no impact on the public sector.

10.3 An impact assessment has been published which considers the impact of this change in the level of payments made under the scheme on the private sector or on civil society, a copy of which is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/286525/mesothelioma-payment-scheme-ia-mar-2014.pdf.

It is attached to this memorandum and will be published alongside it on: www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The insurers that will pay the levy to fund the scheme will not be small enterprises. The effect on small businesses will be on some small solicitors who will now receive a payment towards the applicant's legal fees who would not have done so without the scheme.

11.3 Small business was consulted at the same time as everyone else in 2010 when options for action were presented. Since then meetings with certain small business representatives have taken place to update them on what is happening.

12. Monitoring & review

12.1 The Mesothelioma Scheme Administrator (who was appointed following an open competition) will be required to report annually to the Secretary of State in an agreement to be set up with whoever the Secretary of State appoints as Scheme Administrator. This report will be published. In addition, an Oversight Committee will be set up outside legislation composed of independent members to oversee the workings of the Scheme. The Oversight Committee will also report to the Secretary of State.

13. Contact

Lee Eplett at the Department for Work and Pensions Tel: 0207 4495127or email: Lee.Eplett@dwp.gsi.gov.uk can answer any queries regarding the instrument.