EXPLANATORY MEMORANDUM TO

THE DIFFUSE MESOTHELIOMA PAYMENT SCHEME (AMENDMENT) REGULATIONS 2015

2015 No. 367

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 The purpose of these regulations is to increase the level of payment that eligible applicants (both sufferers of diffuse mesothelioma and dependants of sufferers who have died) will receive under the Diffuse Mesothelioma Payment scheme.

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

3.1 None.

4. Legislative Context

4.1 These regulations amend the Diffuse Mesothelioma Payment Scheme Regulations 2014 ("the 2014 Regulations") which establish the Diffuse Mesothelioma Payment Scheme ("the Scheme"). Under the Scheme payments are made to eligible people with diffuse mesothelioma, and to eligible dependants of those who have died with 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 the employer and insurer no longer exist or cannot be traced.

4.2 2 Table 1 in Schedule 4 to the 2014 Regulations sets out payment amounts under the Scheme. These regulations increase the amount of the payments made under the Scheme by substituting Table 1 in Schedule 4 to the 2014 Regulations for all those who were first diagnosed with diffuse mesothelioma on or after 10 February 2015, or their eligible dependants. This is in accordance with a Ministerial Statement made on that date.

5. Territorial Extent and Application

5.1 These regulations apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As these regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The Scheme was established by the 2014 Regulations under powers set out in the Mesothelioma Act 2014. The Scheme makes payment to eligible people with diffuse mesothelioma and to eligible dependants of people who have died from diffuse mesothelioma before making an application to the Scheme. To be eligible under the Scheme a person must be first diagnosed with diffuse mesothelioma on or after 25 July 2012 as a result of negligent exposure to asbestos at work in the United Kingdom. A person is only eligible under the Scheme if they have not brought an action against a relevant employer or their insurers, because they are unable to do so on the basis the employer and insurer no longer exist or cannot be traced. In addition they must not have received, or be eligible to receive, damages or certain payments set out in the 2014 Regulations.

7.2 Payment amounts under the Scheme are set out in Table 1 of Schedule 4 to the 2014 Regulations. The payments in Table 1 are dependent on the age of the person when first diagnosed with diffuse mesothelioma or where the application is made by their dependant and the person is diagnosed following their death, the date of their death.

7.3 The amount of the payment is set at a percentage of average civil damages. It is currently set at 80% of average civil damages. The changes made by these regulations increase the amount of payment to 100% of average civil damages for those persons who are first diagnosed on or after 10 February 2015 or their eligible dependants. The changes apply in relation to persons diagnosed from the date of the Written Statement announcing them. These regulations increase the amount of the payments made under the Scheme by substituting Table 1 in Schedule 4 to the 2014 Regulations in these cases.

7.4 The reason why this increase is possible is that the numbers of people applying to the Scheme have been lower than estimated. One of the reasons for this is thought to be due to the success of the Employers' Liability Tracing Office and its increasing ability to trace historic employers' liability insurance policies. There have therefore been savings in the administration costs of the Scheme and this has allowed for the levels of payments to successful applicants to be increased.

- Consolidation

7.5 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. An explanation as to which instruments are maintained on each site is available here.

8. Consultation outcome

8.1 The Department has not consulted on the amendments made to the regulations, but Ministers have discussed the amendments with representatives of the insurance industry as they fund the scheme by way of a levy. They requested some administrative assurances on audit and data relating to the scheme, which were agreed.

9. Guidance

9.1 Guidance on how the Scheme is administered is available on the scheme administrator's website.

10. Impact

10.1 There is no impact on the public sector.

10.2 The impact on the private sector is that Employers' Liability insurers will be required to pay the levy to fund the Scheme as now. The levy to fund the Scheme in its first year of operation has already been set. This levy amount will not be impacted by this change; the change is relevant to the calculation of the levy for future years of operation but we expect this to remain within the funding limit previously agreed with the insurance industry.

10.3 A final stage impact assessment was produced in 2014 to cover, in detail, the impacts of the scheme on the private sector including Employers' Liability insurers, Government and individuals. An update to consider the impact of the change made by these Regulations in the level of payments made under the scheme has not been produced. However, given the lower volume of claims to date compared to the assumptions in the original impact assessment, we expect the costs will still be within 3% of Employers' Liability Gross Written Premium (GWP) as agreed with the insurance industry and described in the original impact assessment.

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.

12. Monitoring & review

12.1 The 2014 Regulations require the Secretary of State to carry out an annual review of the Regulations, to include the Scheme's objectives and the extent to which these have been met. This report must be published.

12.2 The Scheme Administrator is required to report annually to the Secretary of State. This report will be published.

12.3 In addition, the Oversight Committee composed of independent members, is overseeing the working of the Scheme. The Oversight Committee will also report to the Secretary of State.

13. Contact

Ana Easton at the Department for Work and Pensions Tel: 020 7449 5202 or email: Ana.Easton@dwp.gsi.gov.uk can answer any queries regarding the instrument.