EXPLANATORY MEMORANDUM TO

THE DIFFUSE MESOTHELIOMA PAYMENT SCHEME (AMENDMENT) REGULATIONS 2025

2025 No. 1069

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Sir Stephen Timms MP, Minister for Social Security and Disability at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

2.2 Lorenzo Peri, Senior Civil Servant for the Disability and Health Support Directorate, at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Dawn Harrison at the Department for Work and Pensions, e-mail dawn.harrison@dwp.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Diffuse Mesothelioma Payment Scheme (DMPS) makes compensation payments to eligible people diagnosed with diffuse mesothelioma (a cancer of the thin membrane that lines the chest and the abdomen). The DMPS also covers eligible dependents of those who have died from diffuse mesothelioma without having made a claim in life. Payments are based on a tariff set out in Schedule 4 (Amount of Scheme Payment) to the Diffuse Mesothelioma Payment Scheme Regulations 2014[1] which was last amended by the Diffuse Mesothelioma Payment Scheme (Amendment) Regulations 2015[2].

4.2 This instrument makes an amendment to the existing compensation payment tariff to increase the tariff across all age groups by 49%. This will enable those who make successful applications to the DMPS to receive a higher level of compensation that is proportionate with those current average payments awarded through civil claims for occupational mesothelioma.

[1] https://www.legislation.gov.uk/uksi/2014/916/contents/made
[2] https://www.legislation.gov.uk/uksi/2015/367/regulation/2/made

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The Diffuse Mesothelioma Payment Scheme (DMPS) was established in April 2014. It is a scheme of last resort and crucial to those who have been diagnosed with diffuse mesothelioma due to negligent exposure to asbestos during their employment and are unable to pursue a civil claim for damages. This is because their former employer no longer exists and/or their employer's insurer cannot be traced.

5.2 The DMPS is not government or publicly funded but funded by a levy which is imposed on the Employers' Liability insurance industry.

5.3 Scheme payments are tariff-based according to the applicant's age on confirmed diagnosis of diffuse mesothelioma. Dependants of people diagnosed with diffuse mesothelioma and who have sadly died, may be eligible for the same level of compensation.

5.4 During the passage of the Mesothelioma Bill (2013-2014), the Department made a commitment to review the level of compensation payments from 2018 to ensure that the tariff is proportional to current average payments awarded from civil claims for occupational mesothelioma.

What was the previous policy, how is this different?

5.5 The tariff was previously reviewed in February 2015 and Schedule 4 of the 2014 Regulations was amended on 31st March 2015. The result of that review was that the tariff increased from the basis of 80% to 100% of average civil compensation payments awarded for occupational mesothelioma.

5.6 Compensation payments were previously formulated on a tariff basis that equated to calculations of a percentage figure (80%) derived from the average payments awarded from civil claims for occupational mesothelioma. During this time DMPS compensation payments ranged from £216,896 for those aged 40 and under to £69,649 for those aged 90 and over. Compensation payments were increased on 31st March 2015 by the Diffuse Mesothelioma Payment Scheme (Amendment) Regulations 2015 which broadly brought the payments in line with 100% of civil damages.

5.7 In 2013 the Department commissioned the National Institute of Economic Research (NIER) to undertake work to establish the Scheme tariff[3]. For consistency and as this was the only method available the NIER approach has been applied to reach the new rate.

5.8 The tariff has remained the same since March 2015 and this statutory instrument increases the Diffuse Mesothelioma Payment Scheme (DMPS) compensation tariff by 49%.

[3] https://assets.publishing.service.gov.uk/media/5a7c47a7ed915d7d70d1dca2/research-report-858.pdf

5.9 Extensive research has since been undertaken to progress the Diffuse Mesothelioma Payment Scheme (DMPS) tariff review. Data has been collected from insurers and personal injury lawyers relating to average civil compensation payments awarded to their successful clients across all age groups for the period 2016 to 2021. All data has been analysed, and the figures have been compared to the existing DMPS tariff.

5.10 Analysts reviewed 1695 cases across a range of age groups from 40 years and under to 90 years and over for the period 2016 to 2021. An internal report (Report to Evidence Amendment to the Diffuse Mesothelioma Payment Scheme Compensation Tariff), was produced to evidence the findings from the analysis. Key information from the report highlights that the average (or mean) level of compensation is £183,600. The report will be published aligned to the Coming into Force date of these regulations on the Gov.uk website - Diffuse Mesothelioma Payment Scheme.

5.11 The average civil compensation by year of award shows; 2015 - £170,987, 2016 - £163,495, 2017 - £182,343, 2018 - £171,786, 2019 - £190,485, 2020 - £196,944 and 2021 - £199,459. By looking at the average compensation each year, there is broadly an upward trend.

5.12 Additional factors applied to calculate the average compensation included the Consumer Price Index from 2016 to date and the increase in legal fees from £7,000 per case to £13,700 per case. The increase in legal fees is consistent with legal fees currently charged for average compensation payments awarded through successful civil claims for occupational mesothelioma.

5.13 By applying an average (mean) calculation for average civil claims, legal fees and Consumer Price Index provides for a consistent approach across all age groups on the compensation tariff and substantiates the amendment to increase the compensation tariff by 49%.

6. Legislative and Legal Context

How has the law changed?

6.1 The Department has reviewed the DMPS rates of compensation and decided to uprate these, so they are proportionate with those average payments awarded from civil claims for occupational mesothelioma. This instrument increases the current payments as set out in Schedule 4 of the 2014 Regulations by 49%.

Why was this approach taken to change the law?

6.2 As it is over ten years since the regulations were amended, honouring the commitment to review the tariff and amend the regulations will align the DMPS compensation payments to the current average civil compensation payments and ensure that successful applicants will benefit from an increase in compensation awarded.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no statutory duty to consult. However, previously it was agreed and established as best practice to engage with the Association of British Insurers (ABI), personal injury lawyers and other key stakeholders to provide administrative assurances on audit and data processes relating to the Diffuse Mesothelioma Payment Scheme.

7.2 The annual levy is imposed on the employers' liability insurance industry by the levy regulation (2014 No.2904)[4] and is recalculated each year.

7.3 During the tariff review all key stakeholders have been engaged and kept informed to manage their expectations. The Association of Personal Injury Lawyers welcome the review. Furthermore, the Association of British Insurers are anticipating a significant increase to the tariff and there have been no objections to this.

8. Applicable Guidance

8.1 There is no applicable guidance or changes as the Diffuse Mesothelioma Payment Scheme (DMPS) operates under the authority of the Mesothelioma Act 2014[5]. As allowed for in the legislation, two contracted service providers administer the DMPS. TopMark Claims Management (part of the Davies Group Ltd), manage the DMPS applications and payments process and Tracing Services Ltd (a subsidiary of the Motor Insurance Bureau), collect the annual levy monies from the active Employer Liability insurers.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the provisions and their impacts are all within the rules of being out of scope of regulatory provisions as set out in section 2.3 of the Better Regulation Framework Guidance.[6]

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the DMPS is not Government or publicly funded. The DMPS is funded entirely by an annual levy imposed on the Employers' Liability insurance industry and active insurers contribute to their share of the levy. An increase in the level of compensation will be met by the levy.

9.3 The statutory instrument will increase the level of compensation payments made under the DMPS and consequently impact the active Employers' Liability insurers who are obliged to pay towards the total amount of the levy based on their relative market share. Varying the levy is outside the scope of Regulatory Provision. Therefore, no Impact Assessment is required.

9.4 The legislation does not impact small or micro businesses.

9.5 To ensure that there is no financial burden passed onto employers and employers' liability insurers' customers, the government agreed with the Association of British Insurers (ABI) that the annual levy must be set at no more than 3% of the Employer Liability (EL) Gross Written Premium (GWP), as per page 2 of the Mesothelioma Heads of Agreement dated 13 July 2012[7]. GWP is the total amount of insurance premiums an insurer underwrites during a specific period, before any deductions for expenses like reinsurance or commissions are made. Since the Diffuse Mesothelioma

[4] https://www.legislation.gov.uk/uksi/2014/2904/contents/made
[5] https://www.legislation.gov.uk/ukpga/2014/1
[6] https://assets.publishing.service.gov.uk/media/67587ba55a2e4d4b993bfa83/better-regulation-framework-guidance-2023.pdf
[7] https://www.parliament.uk/globalassets/documents/commons-committees/Justice/Letter-from-James-Dalton-ABI-mesothelioma-claims-process.pdf

Payment Scheme (DMPS) was established, it was agreed that the insurance industry would fund the full cost of the Diffuse Mesothelioma Payment Scheme (DMPS). To avoid passing any costs to Employer Liability (EL) insurance customers and businesses via increased premiums, the levy must remain below the 3% of the total EL market.

9.6 The levy does not aim to generate a surplus, and the funds collected via the levy cannot be used for any other purpose than to fund the DMPS. Conversely, the contracted service providers cannot make any profits from the DMPS and all service charges are applied at standard operating costs only. The levy is likely to increase for 2026 but will remain in line with the agreement to maintain the 3% Gross Written Premium.

9.7 There is no, or no significant impact on the public sector because as previously highlighted, the DMPS is not publicly or government funded.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to conduct an internal review of the DMPS tariff every two years ensuring that as with this review, all key internal and external stakeholders will be involved in the review process.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to the negative procedure and does not amend the primary legislation no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Acts”).