EXPLANATORY MEMORANDUM TO

THE DIFFUSE MESOTHELIOMA PAYMENT SCHEME (LEVY) REGULATIONS 2014

2014 No. 2904

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 These Regulations require an active insurer (defined in the Mesothelioma Act 2014 as a person who at any time during a reference period is an authorised insurer within the meaning of the compulsory insurance legislation) to pay an annual levy based on their relative market share for the purpose of meeting the costs of the Diffuse Mesothelioma Payment Scheme ("the Scheme"). The Scheme, established under powers set out in the Mesothelioma Act 2014, makes payments to eligible people with diffuse mesothelioma (diagnosed on or after 25 July 2012), or eligible dependants of people who have died of diffuse mesothelioma before they made a claim under the Scheme. The Scheme began taking applications on 6 April 2014, and started making payments to successful applicants from 1 July 2014. These Regulations are the final element of the legislative arrangements for the Scheme.

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

3.1 None.

4. Legislative Context

4.1 These Regulations are made under powers set out in section 13 of the Mesothelioma Act 2014 which are being exercised for the first time. Section 13 was commenced on 1 September 2014. These Regulations operate alongside other statutory instruments that establish and operate the Scheme. The other statutory instruments are The Social Security (Recovery of Benefits)(Lump Sum Payments) Regulations 2008[1] and The Diffuse Mesothelioma Payment Scheme Regulations 2014 [2].

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

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[1] S.I 2008/1596 as amended by The Social Security(Recovery of Benefits)(Lump Sum Payments)(Amendment) Regulations 2014 S.I 2014/1456

[2] S.I 2014/916

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, which came into effect on 6 April 2014, makes payments to eligible sufferers of diffuse mesothelioma (or their eligible dependants where a person has died from diffuse mesothelioma before making an application under the Scheme) who are unable to bring a civil action for damages against a liable employer or that employer's relevant employers' liability insurer as they no longer exist or cannot be traced. The insurance industry agreed to fund the Scheme in recognition of the failure of the market to ensure that historic employers' liability insurance policies could be traced.

7.2 In line with the commitment by the insurance industry to fund the Scheme, these Regulations place an obligation on active insurers to pay towards the cost of the levy based on their relative market share and sets out how different payment amounts for different active insurers are determined. Individual active insurers will be notified in writing of the amount of their payment by a company who will be under contract with the Department for Work and Pensions to collect the levy. In notifying active insurers of the amount due from them, the contractor operating on the Department's behalf must clearly set out the payment amount due from them, including how it was calculated in a particular case, when the payment amount is required and how it can be made. The Department must also publish, on an annual basis, information on the costs of the Scheme.

7.3 Each active insurer's payment amount will be calculated based on their relative market share in the 12-month period ending on 31st December which is the reference period. Information on relative market share will be drawn from the data held by the relevant insurance industry bodies. In calculating the relative market share for the reference period, the relative market share of active insurers for the calendar year two years before the reference period will be used. This is because the insurance industry cannot provide up-to-date information of relevant market share within the reference period in which the payment amount must be paid, and therefore information from two years previous will be used as a proxy as this is the period when each active insurer's relative market share can be accurately assessed.

7.4 The Department for Work and Pensions intends to announce the total amount of the levy through a Written Ministerial Statement. The Regulations allow for the payment amount from active insurers to be collected either in one instalment or in several. In Year 1 of the Scheme (financial year 2014-15), the total amount of the levy will be set and collected in one instalment. A Written Ministerial Statement shortly after these Regulations come into effect will

announce the total amount of the levy for Year 1. That amount will be payable by the insurance industry by the end of March 2015. For Year 2 of the Scheme and beyond (2015-16 and subsequent years), the Department expects that the payment amount will be collected in two instalments during the financial year, with each instalment announced in a Written Ministerial Statement. In this event, the first instalment of the payment amount will be announced in June and payable by September and the second instalment announced in December and payable by the end of March. The Department will continue to work with the insurance industry through the appropriate channels on the practical implications of collecting payment amounts in two instalments.

7.5 The Regulations also provide the Secretary of State with the power to recover the debt if any insurer does not pay their payment amount in full.

- Consolidation

7.6 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 here 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*, 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 three months. The Government's response to the consultation was published on 25 July 2012[3].

8.2 A total of 57 respondents fell into three main groups: claimant representatives, insurers' representatives and business representatives. Claimant and business representatives supported a scheme of last resort to compensate people unable to bring a civil damages claim, although business representatives were concerned about the costs of such a scheme. Insurers' representatives felt that the establishment of a payment scheme of last resort would be disproportionate and inequitable, putting the costs on current active insurers rather than those that took the insurance premiums.

8.3 The Government was not persuaded that a universal payment scheme should be set up, but did decide to set up a scheme for individuals suffering from diffuse mesothelioma as they were statistically finding it more difficult to trace employers' liability policies than those with other conditions.

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

8.4 No formal consultation has been undertaken on this instrument to supplement that already undertaken on this issue. However, building on the earlier consultation outlined above, the Department for Work and Pensions has worked actively with the insurance industry over the last year on the development of these Regulations, and they have been made aware, not only during the passage of the Mesothelioma Bill, but during the drafting process of the Regulations, of the content of the Regulations including the period for which the levy was to be paid.

8.5 These Regulations are not referable to the Social Security Advisory Committee (SSAC). These Regulations are made under powers in the Mesothelioma Act 2014 which is not an enactment set out in section 170(5)of the Social Security Administration Act 1992 (1992 Act) which sets out a list of enactments which are referable to SSAC.

9. Guidance

9.1 Guidance relating to these Regulations is not necessary because the Regulations relate to payment amounts by active insurers to fund the costs of the Scheme. The Department's communications strategy for informing the insurance industry of the levy and how it is to be collected is outlined at paragraph 7.4 above.

10. Impact

10.1 An Impact Assessment was prepared for the Mesothelioma Act 2014 (published November 2013) and includes an assessment of the impact of levy on active insurers. The impact assessment is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/262466/mesothelioma-payment-scheme-ia-nov-2013.pdf

10.2 The impact on the private sector is that active insurers will be required to pay to fund the Scheme. As noted in the impact assessment: "[This] option has been developed with the insurance industry, is relatively quick to implement, and the costs are widely spread so there is no disproportionate impact on any one party."

10.3 There is no impact on the public sector.

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. Some 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 during the 2010 consultation 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 Scheme Administrator, who was appointed following an open competition, will be required to report annually to the Secretary of State for Work and Pensions about the performance of the Scheme. This report will be published, and is expected to be available shortly after the end of each financial year. In addition, an Oversight Committee has been set up outside legislation composed of independent members to oversee the workings of the Scheme. The Oversight Committee will also report annually to the Secretary of State, and this report will be published. The Secretary of State will publish an annual report about the performance of the Scheme. The Secretary of State's first report must be published on or before 30th November 2015.

13. Contact

13.1 Rebecca Murphy can answer any queries regarding the instrument. (Tel: 020 7449 5314 or email: rebecca.murphy@dwp.gsi.gov.uk)