**EXPLANATORY MEMORANDUM TO**

**THE MESOTHELIOMA LUMP SUM PAYMENTS (CONDITIONS AND AMOUNTS) (AMENDMENT) REGULATIONS 2010**

**2010 No. [Draft]**

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

## 2. Purpose of the instrument

2.1 To increase the rates of payments made under The Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008 (which pays lump sums to people with mesothelioma) with the corresponding higher rates payable under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 (which pays lump sums to people with various dust-related diseases, including mesothelioma).

2.2 Where a claim is made by the sufferer, the new rates will apply to those diagnosed with mesothelioma on or after 1 April 2010. Where a claim is made on or after 1 April 2010, and the date of diagnosis can not be identified, the new rates will apply.

2.3 Where the claim is made by a dependant the new rates will apply where the sufferer died on or after 1 April 2010.

2.4 In addition, from 1 April 2010 all dependants rates will be increased. A £5000 increase will be made to dependants unless this would mean that the dependant would be paid more than the sufferer if he had claimed in life. In these cases the dependants payment will be equalised with equivalent sufferers rate.

2.5 This mirrors changes being made to dependant rates under the 1979 Act.

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

3.1 None.

## 4. Legislative Context

4.1 There is no statutory obligation to increase the rates of payments under the Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008 (2008 scheme). However, the Government made a commitment to equalise payments made under the 2008 scheme with those of the Pneumoconiosis etc. (Workers' Compensation) Act 1979 (1979 Act) as funds became available.

4.2 In addition, a commitment was made to look at reducing the difference in payment to sufferers and dependants as funds became available. The rates payable to dependants under the 1979 Act have been increased by up to £5000, thereby reducing the difference in payment between sufferers and dependants.

## 5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

## 6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State, Lord McKenzie of Luton, has made the following statement regarding Human Rights:

6.2 In my view the provisions of The Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2010 are compatible with the Convention rights.

## 7. Policy background

- ***What is being done and why***

7.1 The Pneumoconiosis etc. (Workers' Compensation) Act 1979 (1979 Act) and the 2008 Mesothelioma Scheme (2008 scheme) as set out in Part 4 of the Child Maintenance and Other Payments Act 2008 pay a lump sum to people with mesothelioma; or to their dependants where they were unable to claim in lifetime.

7.2 The 2008 scheme is wholly funded from compensation recovery, where 1979 Act and 2008 scheme payments are recovered from any subsequent civil damages paid in respect of the same disease. When the Mesothelioma Scheme was introduced in October 2008, rates were set at a level that could be afforded from compensation recovery, which are currently lower than the 1979 Act rate.

7.3 There is no statutory obligation to increase payments under the 2008 scheme but these regulations fulfil the commitment given by Ministers to equalise amounts with 1979 Act rates as soon as compensation recoveries allow.

7.4 Ministers also gave a commitment to look at reducing the difference in payment to sufferers and dependants as funds became available. This is why an amount up to £5000 is being added to dependant rates payable under the 1979 Act.

7.5 This additional payment is reflected in these regulations and goes some way to address the imbalance under both schemes.

- ***Consolidation***

7.6 This instrument increases the rates paid under the 2008 scheme and therefore consolidation is not relevant.

## 8. Consultation outcome

8.1 Consultation is not necessary because there is no change in policy, and there is no scope to change the outcome. When these rates were set a commitment was given that they would be equalised with 1979 Act rates when compensation recovery allowed. These regulations fulfil that commitment.

## 9. Guidance

9.1 A guidance bulletin detailing new rates will be issued to claim processors in the Jobcentre Plus Barrow office with responsibility for processing these claims.

## 10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

## 11. Regulating small business

1.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 The changes in the payable rate aim to maintain the value of payment in line with those paid under the 1979 Act which will be reviewed each year in line with the annual changes to rates under the Industrial Injuries Disablement Benefit scheme.

12.2 An internal check with the Barrow office will be made on 1st April 2010 to ensure the increase in rates has been successfully implemented.

## 13. Contact

Susan Parker at the Department for Work and Pensions - Tel: 01253 332748 or email to susan.m.parker@dwp.gsi.gov.uk - can answer any queries regarding the instrument.