EXPLANATORY MEMORANDUM TO

THE MESOTHELIOMA LUMP SUM PAYMENTS (CONDITIONS AND AMOUNTS) REGULATIONS 2008

2008 No. Draft

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. Description

2.1 This instrument provides for the conditions that must apply before a lump-sum payment under the Mesothelioma Scheme 2008 can be awarded.

2.2 It also provides for the amount of lump-sum payment and for a balancing payment to be made if a payment under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 is appropriate after a lump-sum payment under the Mesothelioma Scheme 2008 has already been awarded where the payment due under the 1979 Act is greater than the 2008 Mesothelioma Scheme payment.

2.3 This instrument also provides for the circumstances in which a person is not entitled to a lump-sum payment, including if there is entitlement to a payment under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006, the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005 or, if they have received a payment either, under the UK Asbestos Trust established on 10th October 2006, for the benefit of certain persons suffering from asbestos-related diseases, or, under the EL scheme established on 23rd November 2006, for the benefit of certain persons suffering from asbestos related diseases.

The instrument also provides for a lump-sum payment to be disregarded if it is liable to be repaid so that a further lump-sum payment may be properly made.

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

3.1 None.

4. Legislative Background

4.1 These regulations are being made to give effect to the powers in sections 46(3) and 47 of the Child Maintenance and Other Payments Act 2008. This is the first use of these powers. These regulations are linked to the Mesothelioma Lump Sum Payments (Claims And Reconsiderations) Regulations 2008, the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008. This instrument also exercises powers conferred

by section 1(1) of the Pneumoconiosis etc. (Workers' Compensation) Act 1979 to enable a payment under the Mesothelioma Scheme 2008 to be offset against an award under the 1979 Act.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

In my view the provisions of the Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008 are compatible with the Convention rights.

7. Policy background

Policy

7.1 On 16 May 2006 the Secretary of State for Work and Pensions announced that DWP and external stakeholders had agreed to work together to identify ways to speed up claims for those with mesothelioma.

7.2 On 20 July 2006 SoS announced a number of interim measures to ensure faster compensation for those with mesothelioma, as well as his intention to put in place a long term solution to try to ensure that those with mesothelioma can receive compensation in life.

7.3 On 13 March 2007 SoS announced proposals to provide faster compensation to all people with mesothelioma by setting up a cost-neutral scheme that would be funded through the introduction of compensation recovery, both in respect of payments made under this scheme and under the existing lump-sum payment scheme for dust related diseases under the Pneumoconiosis etc (Workers' Compensation) Act 1979 (including an extra-statutory payment made following the rejection by the Secretary of State of a claim made under the 1979 Act).

Consultation

7.4 A consultation period ran from 4 September to 26 November 2006 and a number of meetings with interested stakeholders were arranged in London, Leeds and Glasgow. A summary of responses was published on 1 March 2007, see http://www.dwp.gov.uk/publications/dwp/2007/iidb/mesothelioma-cases-consultation-report.pdf. A mesothelioma event was held in

London on 13 March 2007 at which a wide range of stakeholders discussed the proposed change.

7.5 The mesothelioma scheme 2008 will help up to 600 people who do not currently receive help from the Government with a payment estimated at £10,000 during the first two years of the operation of the new scheme.

Guidance

7.6 The start of the new mesothelioma scheme will be publicised by way of a press release. Claim forms for Industrial Injuries Disablement Benefits will continue to advise people to claim a lump sum payment under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 and this same claim form will also be used as a claim for the new mesothelioma scheme 2008. In addition the Department's leaflet MESOA4DWP "Help and Advice for People with Mesothelioma" will be updated by early 2009 to contain references to the new mesothelioma scheme.

Consolidation

7.7 This instrument amends regulation 3 of the Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) Regulations 1988 but, as this is only the second substantial amendment to the legislation (apart from annual uprating regulations) for 20 years, there are currently no plans to consolidate the relevant legislation.

8. Impact

8.1 A full impact assessment has not been published for this instrument as it has no impact on the costs of business, charities and the voluntary sector.

8.2 The proposals would add approximately £72,000 (2008/09) and £76,000 (2009/10 onwards) to DWP's administration costs.

9. Contact

Peter Schutterlin at the Department for Work and Pensions Tel: 020 7712 2082 or e-mail: peter.schutterlin@dwp.gsi.gov.uk can answer any queries regarding the instrument.