# EXPLANATORY MEMORANDUM TO

# THE SOCIAL SECURITY (INDUSTRIAL INJURIES) (PRESCRIBED DISEASES) AMENDMENT REGULATIONS 2009

## 2009 No. 1396

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

## 2. Purpose of the instrument

2.1 This instrument makes provision to enable a person who has osteoarthritis of the knee, and who worked underground as a coal miner for 10 years in aggregate before 1986, to apply for Industrial Injuries Disablement Benefit.

2.2 It also provides for work from 1986 onwards as a coal face worker at a non-mechanised coal face, and for certain other categories of work, such as a conveyor belt cleaner, to be included in the 10 years qualifying period.

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

3.1 None.

## 4. Legislative Context

4.1 The Industrial Injuries Advisory Council (IIAC) gives advice to the Secretary of State on matters relating to Industrial Injuries Disablement Benefits.

4.2 In August 2008, IIAC published a report recommending that osteoarthritis of the knee in coal miners be added to the list of prescribed diseases. The Secretary of State agreed to implement IIAC's recommendations.

4.3 This instrument amends the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985. It adds a new disease – A14 Osteoarthritis of the knee – to the list of diseases covered by the Industrial Injuries Disablement Benefit scheme.

## 5. Territorial Extent and application

5.1 This instrument applies to Great Britain. Similar statutory rules are to be introduced in respect of Northern Ireland.

## 6. European Convention on Human Rights

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

## 7. Policy Background

7.1 These regulations implement the recommendations of IIAC as set out in its report Osteoarthritis of the knee in coal miners in August 2008 (Cm 7440).

http://www.iiac.org.uk/pdf/command_papers/Cm7440.pdf

7.2 IIAC is an independent statutory body that advises the Secretary of State for Work and Pensions solely on matters relating to the industrial injuries benefit scheme. In particular, IIAC advises the Secretary of State on which diseases should be prescribed for the purpose of claims to Industrial Injuries Disablement Benefit, having studied the available evidence.

7.3 There are conditions that must be satisfied before a disease may be prescribed. First the disease ought to be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of a person's occupation and not as a risk common to all persons. Second, it must be possible, in the absence of special circumstances, to establish or presume with reasonable certainty the attribution of particular cases to the nature of the employment.

7.4 IIAC found that up until the mid 1980s, all underground coal miners had jobs involving prolonged kneeling and squatting under heavy loads. Those conditions would have persisted from the mid 1980s onwards only for certain occupational categories of miners. IIAC held that osteoarthritis of the knee in coal miners, who worked underground for at least 10 years, could be attributed to the nature of their occupation and recommended that the disease be added to the list of prescribed diseases.

7.5 Informal consolidation of the instrument will be included in due course in the Department's "The law relating to Social Security" (the Blue Volumes), which are available at no cost to the public on the internet at http//www.dwp.gov.uk/advisers/docs/lawvols/bluevol/

## 8. Consultation

8.1 This is a minor change to existing regulations to bring more people suffering work related diseases within the IIDB scheme. IIAC consulted and took evidence from all interested parties, including medical and scientific experts, employers and unions, in producing its report. These regulations reflect IIAC's recommendations in its report, and were referred to IIAC for its approval.

## 9. Guidance

9.1 Information on the change, and how to claim Industrial Injuries Disablement Benefit, has been made public via press release and in targeted press publications as well as through the usual DWP channels. DWP officials are working closely with Unions to ensure maximum uptake.

## 10. Impact and costs impact

10.1 The impact on business, charities or voluntary bodies is nil.

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

11.1 This instrument does not apply to small business

## 12. Monitoring and review

12.1 This instrument simply implements the Industrial Injuries Advisory Council's recommendation to add the disease osteoarthritis of the knee in coal miners to the list of diseases covered by the Industrial Injuries Disablement Benefit scheme. No specific monitoring and review of the claims process will be carried out above that which is currently in place as part of the Department's routine data collection.

## 13. Contact

Malcolm Connell at the Department for Work and Pensions Tel: 0113 23 24764 or e-mail: Malcolm.Connell@Jobcentreplus.gsi.gov.uk can answer any queries on the instrument.