EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (No.3) REGULATIONS 2008

2008 No. 2365

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 amends The Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008 and provides that a person is not entitled to a lump sum payment if they have received a payment from any authority, body, trust or employer exempted from insurance, by or under Article 7 of the Employers' Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972.

2.2 This instrument corrects technical discrepancies to make it clear that a compensator is required to notify a person how their compensation has been calculated, where the calculation takes into account lump sum payments. This instrument also corrects technical discrepancies to clarify that appeals to a tribunal can be made against decisions on the recovery of lump sum payments and that appeals to the Social Security Commissioner can be made where the decision was erroneous in a point of law. This instrument defines the term "certificate" to mean a certificate of recoverable lump sum payments, including where any of the amounts are nil.

2.3 This instrument also amends a number of other regulations to increase the permitted work earnings limits from £88.50 to £92.00 weekly. This is the amount that can be earned without a person being treated as being capable of work for the purpose of Incapacity Benefit and other benefits. Corresponding increases are made to the limit applying to Councillors receiving incapacity benefits and to recipients of Unemployability Supplement under the Industrial Injuries Scheme. The instrument also introduces a disregard for payments made to former members of the Armed Forces so that compensation payments for injury or disablement are not treated as pension income which might otherwise cause a reduction in Incapacity Benefit. The instrument also introduces more flexibility to the current rule which allows Appeal Tribunal members with a disability qualification to work for up to 1 day a week. The amendment will mean that work can be done for one day or two half days a week. This amendment also applies to members of the Disability Living Allowance Advisory Board.

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

None.

4. Legislative Background

4.1 Regulation 2(1) of the Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008 provides that a person is not entitled to a lump sum payment if they have received a payment from any body exempted from insurance under section 3 of the Employers' Liability (Compulsory Insurance) Act 1969. These regulations correct an omission and make the same provision for payments received under the corresponding Northern Ireland legislation.

4.2 Schedule 1 of the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008 modifies certain provisions of the Social Security (Recovery of Benefits) Act 1997, to provide for the recovery of lump sum payments made under the new Mesothelioma scheme and under the Pneumoconiosis etc. (Workers' Compensation) Act 1979, from subsequent awards of civil compensation. Schedule 2 to these Regulations make consequential amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999, which provides for appeals against decisions about the recovery of lump sum payments. These Regulations correct minor technical discrepancies to ensure the 2008 Regulations work as intended.

4.3 The increases to permitted work earnings limits and related limits are made because the National Minimum Wage increases from £5.52 to £5.73 from 1 October 2008. The amendments to disregard compensation payments to former members of the Armed Forces and for Appeal Tribunal members follows the Employment and Support Allowance Regulations (SI 2008/794). Employment and Support Allowance is due to commence in October 2008.

5. Territorial Extent and Application

This instrument applies to Great Britain.

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

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 the Secretary of State 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 the Secretary of State 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)

7.4 One of the qualifying conditions for Incapacity Benefit and related benefits is that a person is incapable of work, although permitted work can be undertaken within limits to encourage people to return to work or to encourage social contact. Normally, this must involve work that is less than 16 hours a week and within certain earnings limits. The higher earnings limit is set at a level that allows people to work for less than 16 hours at the national minimum wage rate. This is to encourage people to move towards full-time work. If the rate was not linked to the national minimum wage some people would lose entitlement to benefit simply because their earnings increased each October and the value of the earnings limits would be eroded over time. The earnings limit increases from £88.50 to £92 a week from 1 October 2008. Corresponding increases are made to the earnings limits for Councillors receiving Incapacity Benefit or Severe Disablement Allowance. The earnings level for the purposes of the Unemployability Supplement under the Industrial Injuries Disablement Benefit scheme is increased from £4,602 a year to £4,784 a year (£92 multiplied by 52 weeks).

Consultation

7.5 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.

7.6 The mesothelioma scheme 2008 will help up to 600 people a year 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.

7.7 There has also been an informal consultation with the Social Security Advisory Committee in line with normal practice where there is no statutory duty to consult the Committee.

7.8 The amendments relating to permitted work, former members of the Armed Forces and tribunal members have been considered by the Social Security Advisory Committee. The increase in the earnings limit applicable to Unemployability Supplement has been considered by the Industrial Injuries Advisory Committee. Both committees approved the regulations without requiring a formal referral.

Guidance

7.9 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. Incapacity Benefit procedural guidance and the Decision Maker's Guide will be updated to reflect the increase in earnings limits and the special rules for former members of the Armed Forces, Tribunal Members and Disability Living Allowance Advisory Board Members. The Decision Maker's Guide is available online at Decision Makers Guide and in main libraries.

Consolidation

7.10 This instrument amends regulation 2 of the Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008 and Schedules 1 and 2 of the Social Security (Recovery of Benefits) (Lump Sum Payments) Regulations 2008. They are the first amendments to those regulations so consolidation is not considered appropriate at the moment.

7.11 In relation to the amendments concerning permitted work, payments to former members of the Armed Forces, work done by tribunal members, we do not intend to consolidate the existing regulations once this instrument has been laid. Our reasons are that "The Law on Social Security" provides this function and will incorporate the amendments made by this instrument. This publication is available free of charge at DWP - Advisers - The Law Relating to Social Security - Blue Volumes - Contents and in main libraries.

8. Impact

8.1 A full impact assessment has not been published for this instrument as it has no impact on the costs of the private or voluntary sectors.

8.2 The impact on the public sector is negligible – as a result of this instrument the number of additional cases where compensation recovery is likely to be undertaken by the Department for Work and Pensions in less than five a year.

9. Contact

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

9.2 Steve Brooke at Jobcentre Plus, Department for Work and Pensions, can answer any queries regarding the Incapacity Benefit and related changes. Tel: 0113 232 7418 or e-mail: steve.brooke@jobcentreplus.gsi.gov.uk .