EXPLANATORY MEMORANDUM TO

THE VACCINE DAMAGE PAYMENTS (SPECIFIED DISEASE) (REVOCATION AND SAVINGS) ORDER 2010

2010 No. 1988

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

This Order removes Influenza caused by the pandemic influenza A (H1N1) 2009 virus ("H1N1 swine flu") from the list of diseases covered by the Vaccine Damage Payments Act 1979 ("the Act") but ensures that people who were vaccinated against the disease before this Order comes into force are still covered by the Act.

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

None.

4. Legislative Context

4.1 The Act requires the Secretary of State to make a payment (subject to the conditions of entitlement in the Act) if he is satisfied that a person is, or was immediately before his death, severely disabled as a result of vaccination against any of the diseases to which the Act applies. The list of the diseases covered by the Act can be found in paragraph 7.3 of this Explanatory Memorandum.

4.2 The Act also enables the Secretary of State to add or remove diseases from the list of diseases covered by the Act by an order made by statutory instrument and to extend the Act to people over the age of 18 years where required. H1N1 swine flu was added to the Act last year to cover the United Kingdom and Isle of Man's planned 2009/10 H1N1 swine flu vaccination programme.

4.4 That programme is now coming to an end so this instrument removes H1N1 swine flu from the Act. The instrument will also ensure that people vaccinated against this disease before the new Order comes into effect will still be covered by the Act.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom and to the Isle of Man.

5.2 Officials on behalf of the government of the Isle of Man have been consulted and consented to this instrument.

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

What is being done and why

7.1 The Act provides lump sum payments to ease the present and future burdens of those who have been severely disabled by vaccinations against specified diseases.

7.2 The Act is designed to cover those diseases that are or have been vaccinated against by the routine childhood immunisation programme. This focus on children was approved by Parliament when the legislation was passed in 1979 and there has never been any intention to cover vaccinations aimed primarily at adults.

7.3 The specified diseases to which the Act applies are the same (except for H1N1 swine flu) as those that are, or have been, vaccinated against as part of the routine childhood immunisation programmes that are administered by the United Kingdom Government and the Devolved Administrations. These are:

- Diphtheria
- Tetanus
- Pertussis (Whooping Cough)
- Poliomyelitis
- Measles
- Mumps
- Rubella (German measles)
- Tuberculosis (TB)
- Smallpox (up to August 1971)
- Haemophilus influenza type b infection (HIB)
- Meningococcal Group C (Meningitis C)
- Pneumococcal infection
- Human papillomavirus
- Influenza caused by the pandemic influenza A (H1N1) 2009 virus

(Mumps, Haemophilus influenza type b infection, Meningococcal Group C, pneumococcal infection, human papillomavirus and influenza caused by the pandemic influenza A (H1N1) 2009 virus have previously been added to the list of diseases in the Act, by separate Orders.)

7.4 The Department of Health was preparing a mass vaccination programme to protect against H1N1 swine flu pandemic in 2009. Given the unusual circumstances it was agreed that the Act would cover the 2009/10 vaccination programme against H1N1 swine flu as a temporary exception to its normal use, particularly as the programme may have been available to the entire population.

7.5 The 2009/10 H1N1 swine flu vaccination programme is now drawing to an end as the 2010/11 seasonal flu vaccination programme, due to start on the 1 September 2010, will include the H1N1 virus strain. The Department of Health has advised that circumstances do not justify continuing this exception. If H1N1 swine flu is not removed before the seasonal flu programme begins on the 1 September 2010 the Act would inadvertently cover routine seasonal flu vaccinations predominantly given to adults, undermining the original intention of the Act. Unfortunately this means the Order is being laid during recess.

7.6 This instrument therefore removes H1N1 swine flu from the Act and ensures that people vaccinated before the new Order comes into effect will still be covered by the Act.

Consolidation

7.7 There are no plans to consolidate these regulations. This Order does not make any substantive changes to the Act and simply removes one of the specified diseases.

8. Consultation outcome

8.1 No consultation has been carried out as there is no change in policy and the Order simply removes one of the diseases specified in the Act.

8.2 The H1N1 swine flu was added to the Act in 2009 as a temporary exception and was subject to timely review by the Department of Health and the Department for Work and Pensions. Circumstances no longer justify continuing this exception as the H1N1 strain of the virus will be included in the 2010/11 seasonal flu vaccination programme. Accordingly, this instrument ends this exceptional use by removing H1N1 swine flu from the Act and ensures that the Act will continue to cover people vaccinated before this Order takes effect.

9. Guidance

The Department for Work and Pensions will communicate this change through its usual channels including *Directgov* and leaflets.

10. Impact

10.1 There is no impact on the private and voluntary sectors.

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

The legislation does not apply to small business.

12. Monitoring & review

The Order will not be subject to monitoring or review since it ends a temporary exception which is no longer required and H1N1 virus strain will be included in the seasonal flu vaccination programme from 1 September 2010.

13. Contact

Nada Balasingham at the Department for Work and Pensions Tel: 0207 449 5276 or email: Nada.Balasingham@dwp.gsi.gov.uk can answer any queries regarding the instrument.